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Water Programme of Action
Ministry for the Environment
P.O. Box 10-362
Wellington

Tena koe

Freshwater for a sustainable future: issues and options
(December 2004)

Introduction

This submission is from Te Ohu Kai Moana Trustee Limited (“Te Ohu”) which, following the passage of the Maori Fisheries Act 2004 (“the MFA”) was established to:

“advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to –

- (a) ultimately benefit the members of iwi and Maori generally; and*
- (b) further the agreements made in the Deed of Settlement; and*
- (c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and*
- (d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.”*

The 1992 Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act (“the fisheries settlement”) contained three key promises to iwi Maori, which related to marine and freshwater fisheries:

- provision for 20 percent of all new species that entered the Quota Management System (QMS);
- provision for customary (non-commercial) fishing (i.e. harvest for customary purposes and local area management tools such as taiapure, mataitai and rahui); and
- provision for Maori input and participation in conservation and fisheries management of New Zealand’s fisheries resources.

The MFA also provides that as a means to further the purpose of Te Ohu Kai Moana Trust, Te Ohu may in relation to fisheries, fishing and fisheries related activities act to protect and enhance the interests of the 57 iwi and Maori in the country. The MFA made further specific provision for Te Ohu to establish a freshwater Trust known as the *Te Wai Maori Trust* with a \$20 million dollar fund established to “*..advance Maori interests in freshwater fisheries...*”

The Te Wai Maori Trust can make grants to support proposals that assist in coordinating the activities of agencies involved in freshwater and habitat management.

In addition, Maori have unresolved claims to freshwater. The allocation of freshwater resources for example for the purposes of abstraction, discharge and occupation raises unresolved Treaty rights. Our submission raises these issues as important considerations for freshwater management.

Executive Summary

Te Ohu's key concerns with the reform of the way that freshwater is managed include the following **issues**:

1. the need to ensure that Maori values in relation to freshwater are protected and provided for;
2. the need to provide improved and consistent provision for iwi/Maori input and participation in freshwater management at all levels of decision making;
3. the need to understand that Maori resource management is underpinned by an ethic of sustainable utilisation and adaptive management that is "holistic";
4. the need to develop a freshwater management system that is consistent with protecting present and future settlements between iwi/Maori and the Crown; and
5. the need to protect Treaty rights in freshwater.

In relation to the issues raised above we propose the following list of corresponding **actions** for inclusion in the development of a method to manage freshwater for the future:

1. Setting national priorities for the allocation of freshwater using "national" uses and values is likely to create a hierarchy for allocation based on mainstream views of the "highest value". However, Maori values and priorities may differ substantially from other New Zealanders and therefore need to be approached in a different manner (see issue 1 above);
2. this leads us to conclude that actions are needed to:
 - develop an appropriate framework for interacting with iwi on key matters including issues of national importance to Maori; and
 - the structure for engagement needs to be developed consistent with appropriate iwi representation (see issue 2 above);
3. we conclude that actions are needed to address identification of objectives for freshwater management that:
 - address the goals of sustainable utilisation of freshwater fisheries including minimum flow and water quality as well as enabling the migratory passage of freshwater fisheries;
 - future uses of freshwater (see issue 3 above);
4. in the absence of an Oceans Policy (incorporating freshwater management or its equivalent for freshwater) there is a need for actions to ensure that government does not:
 - prevent Maori from exercising their customary relationship with Tangaroa (the Oceans and including freshwater systems)
 - erode or prevent the full implementation of existing and future settlements
 - prejudice the settlement of outstanding claims (see issues 4 above); and
5. an action or package of actions is needed to address Treaty rights (including claims to ownership) in freshwater when developing an improved management system for the future (see issue 5 above).

Thank you for the opportunity to provide our submission on issues and options for consideration in the sustainable management of freshwater for the future.

Te Ohu and its ancillary Trusts have a key role in working with iwi and advancing their interests in fisheries and related resources including freshwater. We consider that Te Ohu could fill a useful role with you in the development of this overarching water management policy.

Te Ohu's key concerns with the reform of the way that freshwater is managed in the future include:

1. The need to ensure that Maori values in relation to freshwater are protected and provided for

Te Ohu reaffirms the views of many iwi/Maori that have provided input into existing Council planning documents¹ that:

- All water is important as water is essential for all life;
- most water bodies have specific mahinga kai;
- the productive capacity of mahinga kai is a sign that the mauri of the water body remains intact
- this in turn provides for kaitiakitanga to be exercised through the ability of iwi/Maori to demonstrate manaakitanga by way of providing traditional foods for cultural purposes such as hui and tangi;
- culturally appropriate practices such as rahui can be implemented by kaitiaki when there are indications that the mauri of a particular water body is at risk of degradation;
- however, it is better to manage natural resources using a holistic preventative approach that removes or manages degrading impacts before they enter water bodies;
- water bodies form a network from the mountain to the sea that provide the migratory path for many freshwater species (including eels, currently managed under the quota management system and which Maori have both a 20% commercial share in and customary access to) that are taonga;
- in addition some water bodies have specific wai tapu and wai taonga that are considered tapu for a number of different traditional reasons; and
- these sites therefore need protection from the adverse effects of development (including water abstraction, point source and diffuse discharge).

There are three key provisions that all persons exercising functions and duties under the RMA are required to address including:

- Matters of national importance – the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga - section 6(e);
- have particular regard to kaitiakitanga – section 7(a); and
- take into account the principles of the Treaty of Waitangi– section 8

Action 3 on page 19 of the discussion document addresses nationally important values but does not specifically address matters of national importance to Maori, their culture and traditions, kaitiakitanga or the principles of the Treaty of Waitangi.

¹ Regional Policy Statements and any freshwater management documents that were associated with those policy statements available on the web-sites of Northland Regional Council, Auckland Regional Council, Wellington Regional Council, Southland Regional council.

As you will be aware, Maori society is based on a structure that is defined by whanau (family), hapu (subtribe) and iwi (tribe). The question of “what is of national interest to Maori” must be identified through interaction with this structure.

We conclude that an action setting national priorities for the allocation of freshwater using “national” uses and values is likely to create a hierarchy for allocation based on mainstream views of the “highest value”. However, Maori values and priorities may differ substantially from other New Zealanders and therefore need to be approached in a different manner.

2. The need to provide improved and consistent provision for iwi/Maori input and participation in freshwater management at all levels of decision making

We acknowledge the discussion in the document relating to the RMA proposal to improve iwi/Maori participation in Council planning and consent processes.

For the purposes of fisheries allocation Te Ohu has recognised 57 iwi arranged into 10 natural groupings (see fig 1 below). In Te Ohu's view, these regional iwi groupings proposed by iwi more appropriately recognise the “kinship” ties of the iwi within these groups as well as the historical and cultural links that they have to their waka.

As a minimum we propose that those iwi and iwi groupings are a sound basis for determining iwi representation for freshwater management. If a national body of iwi representation were desirable for the purpose of developing any matters of national importance to Maori then these iwi and groupings would be appropriate for representation purposes.

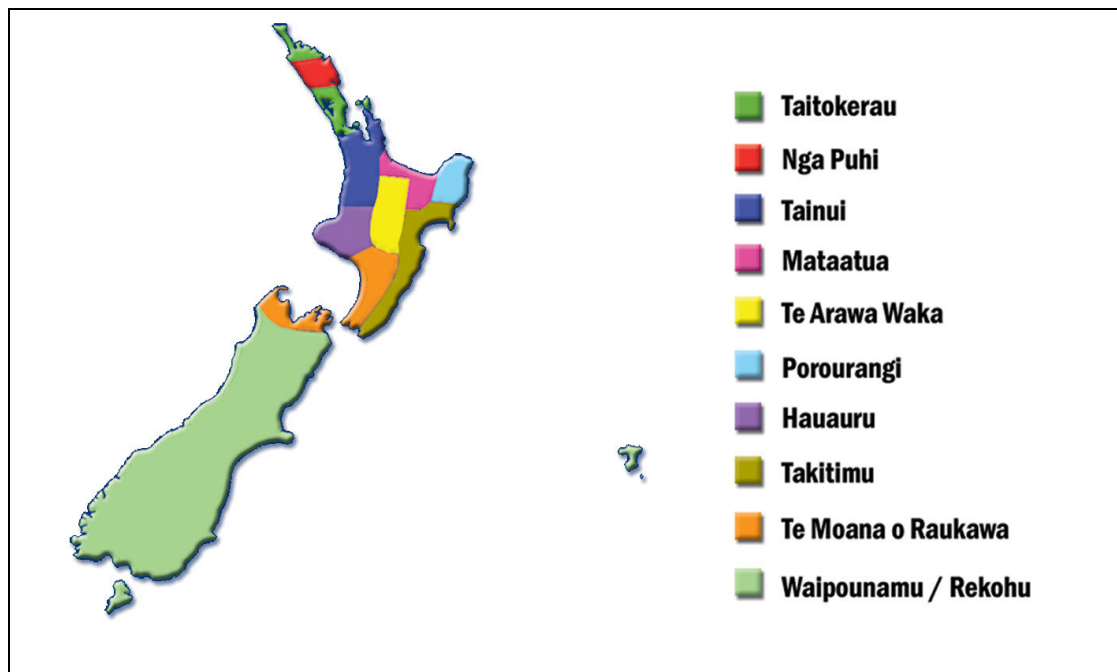


Fig: 1 Te Kawai Taumata / The Electoral College

While the development of these groupings did not have the express purpose of freshwater management Te Ohu considers that this structural arrangement, which has been endorsed by iwi, should be taken into account as a firm basis for considering matters of national importance to Maori.

As part of developing this submission we contacted a random selection of four² Regional Councils to find out how Iwi/Maori consultation in relation to planning and resource consent processes is undertaken. We also obtained copies of each Council's Regional Policy Statements to see how Iwi/Maori matters of importance had been incorporated.

We found that:

- despite the compulsory inclusion of consideration under the RMA sections 6(e), 7 and 8, successful implementation and involvement of Maori values through these plans occurred at various levels of effectiveness depending on financial circumstances;
- while engagement occurred within each region, the frequency and effectiveness of such engagement was directly related to the financial capacity of both:
 - Councils (i.e. major cities had more rate payers to fund the work of the councils in these areas whereas smaller cities had less) and
 - Iwi/Maori (i.e. Iwi with settlements such as Ngai Tahu and Tainui had funds and therefore greater capacity available to engage effectively) to participate
- Effective relationships characterised by trust and regular communication tended to be underpinned by greater wealth which has enabled communication and co-operation to develop within a shared understanding of resource management issues.

Te Ohu's current and future work programme over the next few years in relation to the primary purpose under the MFA involves transferring fisheries and aquaculture assets to 57 Iwi throughout the country. As part of regularly working with these Iwi to prepare them to receive these assets it is likely that engagement will be with the He Kawai Taumata (Electoral College) groupings. Such fora make it easier to engage over a range of subjects in fisheries and other related issues effectively and efficiently.

In addition Te Wai Maori Trust – whose annual business plan Te Ohu must approve - has the sole focus to advance Maori interests in freshwater fisheries and habitat management. It can make grants to support proposals that assist in coordinating and consolidating the activities of recipients of grants with the activities of agencies involved in freshwater and habitat management, viz Regional Councils, or that act as models that are able to be provided elsewhere after being aware of the extent to which other agencies are already advancing such management proposals.

Te Ohu's role will therefore be to help facilitate appropriate structures for engagement and the development of collaborative views relating to resource management, in this case freshwater management.

This leads us to conclude that actions are needed to:

- develop an appropriate framework for interacting with Iwi on key matters including issues of national importance to Maori; and
- the structure for engagement needs to be developed consistent with appropriate Iwi representation.

² Northland Regional Council, Auckland Regional Council, Wellington Regional Council and Southland Regional Council.

3. The need to understand that Maori resource management is underpinned by an ethic of sustainable utilisation and adaptive management that is “holistic”

The traditional Maori approach to resource management is holistic. In dealing with freshwater management the scope for consideration would include the flow of water from the mountains to the sea³ including the following:

- We acknowledge that the freshwater consultation document addresses:
 - the land/freshwater interface through the discussion on discharge permits;
 - water bodies through the discussion on “in-stream values”; **but**
 - it does not appear to include discussion on the freshwater/marine or terrestrial/marine interface at the coastal margin.
- as the health of coastal fisheries, and in particular shellfisheries, are intimately linked to the health of those who consume them, food safety is an additional issue that should be given explicit consideration when managing freshwater for the future;
- many freshwater fish species managed under the Fisheries Act spend part of their life cycle in both the marine and freshwater environments e.g. eels. Therefore the connections, including unobstructed passage, between freshwater and marine management are important;
- to Maori, important food gathering sites and the resources contained within them known as mahinga kai involve important freshwater resources (eels, freshwater crayfish, lamprey, kokopu, mudfish, whitebait but also watercress, flax, bird life, etc, etc) that form an important component of Maori culture.

We conclude that actions are needed to address identification of objectives for freshwater management that:

- address the goals of sustainable utilisation of freshwater fisheries including minimum flow and water quality as well as enabling the migratory passage of freshwater fisheries;
- future uses of freshwater.

4. The need to develop a freshwater management system that is consistent with protecting present and future settlements between iwi/Maori and the Crown

There is currently a range of Treaty Settlements that relate to the management of freshwater. For example:

- the Treaty of Waitangi (Fisheries Claims) Settlement Act included provision for
 - Maori to receive 20% of all species that entered the Quota Management System (including freshwater species);
 - freshwater customary regulations to recognise and provide for iwi/Maori non-commercial interests; and
 - input and participation into management and conservation of New Zealand’s fisheries (including freshwater fisheries);
- the Te Arawa Lakes Settlement provided for ownership of the lake bed and subsoil stratum;

³ See for example the draft Ngai Tahu Iwi Planning Document

- the Ngati Tuwharetoa (Bay of Plenty) Settlement provides for the protection of traditional foods and food gathering areas and conservation values
- the Lake Taupo Settlement provides
 - Tuwharetoa ownership of the lake and rivers flowing into and out of Lake Taupo; and
 - a co-management regime for both the beneficiaries of Tuwharetoa; and
 - public access.

In addition there are a number of claims or settlements underway that relate to freshwater and freshwater resources that lie within iwi rohe. For example. The Wanganui River claim, The Flora and Fauna claim. As these claims have yet to be settled it is important that the Crown does not act in a manner inconsistent with reaching a full and final settlement with the iwi concerned.

Clearly there is a need to be cognisant of current and future settlements to ensure that the value and integrity of those settlements is maintained. It would be inconsistent and a sign of bad faith for the Crown to offer compensation through settlements and then claw it back through a reform which impacts on their total value.

While the Oceans policy provided a potential means of resolving this issue, it does not at present include the freshwater environment, nor is it progressing at a pace likely to encompass freshwater. Therefore it is necessary for the freshwater reform to tackle the Treaty and Treaty Settlement issues in isolation from wider issues.

In the absence of an Oceans Policy⁴ (incorporating freshwater management or its equivalent for freshwater) there is a need for actions to ensure that government does not:

- prevent Maori from exercising their customary relationship with Tangaroa (the Oceans and including freshwater systems)
- erode or prevent the full implementation of existing and future settlements
- prejudice the settlement of outstanding claims

5. The need to protect Treaty rights in freshwater

Treaty rights in relation to freshwater have not yet been considered or debated. The discussion document is silent on the matter of Treaty rights (including ownership) which exist in freshwater. This is an important issue that needs to be addressed when developing an improved management system for freshwater in the future.

For example, use of market based instruments like the Quota Management System (QMS) – raises the issue of freshwater ownership of the underlying resource. We would expect similar issues will need to be worked through in the implementation of any such market based instruments for managing freshwater.

The discussion document raises important issues relating to the operation of the articles of the Treaty of Waitangi and the principles of the Treaty when developing national priorities and protecting nationally important water bodies. As discussed earlier:

- what is nationally important to Iwi/Maori may differ substantially from what is important to mainstream New Zealander's;

⁴ See our earlier submission on the Oceans Policy available on our web-site

- the Treaty relationship requires the treaty partners to act in good faith so as not to erode the value of settlements when developing new management systems; and
- the Treaty relationship requires a genuine effort to consult and to provide for iwi/Maori participation in managing natural resources.

Furthermore, an appropriate provision for the exercise of kaitiakitanga in allocation and management decisions is not resolved. For example, the QMS provides for both commercial and non-commercial expressions of kaitiakitanga through;

- the ability of iwi/Maori to input and participate in management decisions at all levels of fisheries management decision making;
- the ability of “kaitiaki” to issue permits for customary use within defined rohe; and
- the ability of “kaitiaki” to manage mataitai and taiapure through the development of local by-laws or by making recommendations to the Minister of fisheries.

We therefore conclude that an action or package of actions is needed to address Treaty rights (including claims to ownership) in freshwater when developing an improved management system for the future.

Finally, Te Ohu and its ancillary Trusts have a key role in working with iwi and advancing their interests in fisheries and related resources including freshwater. We consider that Te Ohu could fill a useful role with you in the development of this overarching water management policy.

Our board will be meeting in May and we would like to invite you to attend to update our board members and board members of Te Wai Maori Trust on proposals to take forward freshwater management. If you have any questions concerning this submission please do not hesitate to contact myself or Tania McPherson at this office to discuss it further.

Naku noa, na.

Craig Lawson
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Te Ohu Kai Moana Trustee Ltd.