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Input and Participation Process Submissions
Fisheries Policy
Ministry of Fisheries
P.O. Box 1020
Wellington

Tena koe

Submission on the “Ministry of Fisheries (MFish) Treaty Strategy - Building better input and participation processes”

Introduction

This submission responds to the Ministry of Fisheries undated Treaty Strategy released for consultation during October 2008.

This submission is from Te Ohu Kai Moana Trustee Limited (Te Ohu Kaimoana) – the corporate trustee for Te Ohu Kaimoana trust, which was established under s.31 of the Maori Fisheries Act 2004.

The purpose of Te Ohu Kai Moana Trust is to advance the interests of Iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries related activities, in order to:

- Ultimately benefit the members of Iwi and Maori generally,
- Further the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi, and
- Contribute to the achievements of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

In carrying out its role, Te Ohu Kaimoana works actively with Iwi through Mandated Iwi Organisations (MIOs), (also able to be Iwi Aquaculture Organisations (IAOs)) and their Asset Holding Companies (AHCs) who have received or who will receive fisheries assets under the Fisheries and Aquaculture Settlements. Consistent with this we have seen the:

- draft and final version of the *Kahungunu Ki Uta, Kahungunu Ki Tai* submission on the Treaty Strategy and support and fully endorse their views and request for further assistance to implement their strategy
- written notes on the oral submission provided by the *Te Taihauauru Forum* representatives dated 11 February 2009 and endorse their comments especially in relation to the Treaty Strategy being very light on the “How”. We particularly endorse their aims to develop a unique Pataka Moana management plan based on Tangaroa being the Pataka and founded on tikanga from their area.

Please send comments on this draft submission to:
Tania.McPherson@teohu.maori.nz by 20 April 2009

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We also work actively with the wider fishing industry and participate in industry organisations to protect and develop the interests of Iwi and Maori as the beneficiaries of these settlements.

While we have seen the draft and final version of the SeaFIC submission, we consider that it takes a very narrow view of the Treaty Partnership between Iwi/Maori and the Crown and concluded that it is not very unhelpful for either of the partners – the Crown or Iwi/Maori in constructively taking the settlements forward.

This submission sets out our views on the proposed MFish Treaty Strategy given that our purpose as described above is intimately related to the aims of your strategy but also in light of our experience of working with Iwi/Maori and assisting them to achieve their own aims and aspirations. This submission however, does not in any way seek to undermine any submission that you might receive from individual Iwi (and their hapu) or iwi collectives (and their hapu). Nor does it remove any obligations on the Ministry of Fisheries to consult appropriately and effectively with iwi/Maori and other stakeholders in the appropriate fashion.

We would welcome continuing to discuss these recommendations with you and to explore further how the Treaty Strategy can focus on “how” these ideas can be progressed. Thank you for the opportunity to provide you with our thoughts on this topic. Please do not hesitate to call should you have any questions about this submission.

Naku noa, Na.

Craig (Laws) Lawson
General Manager Policy
Te Ohu Kaimoana Trustee Ltd.

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Executive Summary

Summary of Problems

Having considered the consultation document Te Ohu Kaimoana agrees with your analysis of the problem, being the difficulties of providing good input and participation processes for Iwi/Maori to integrate their interests, build capacity, participate effectively and work collaboratively in relation to fisheries management with the Crown.

However, it should be noted that this is not a new problem. It has been an issue that the Crown at varying levels and times has attempted to address. Some examples included the Oceans Policy, Soundings and Shared Fisheries all of which have failed to plan for and provide opportunity for Iwi/Maori to participate effectively in their development. Current examples include the involvement of Iwi/Maori in multi stakeholder groups such as Marine Protected Areas Forums and Fisheries Plan Advisory Groups none of which are being approached in a consistent, principled or equitable manner. Given this we consider that those processes will fail to deliver quality or meaningful outcomes for Iwi/Maori.

We note with interest that the Price Waterhouse Coopers report on 2030 also identifies a number of areas in which Iwi/Maori views, capacity and governance need to be enabled, strengthened or improved.

Te Ohu considers it is time to learn from these experiences - to examine why some have failed while others may have made some progress. There is a need to move beyond the current situation of poor planning processes and institutional arrangements which tend to separate and fragment Maori rights and interests rather than integrate and strengthen them. We agree it is time to build on progress and while MFish have attempted to provide support for Iwi/Maori, progress made in this area needs to be led by Iwi/Maori with independent support services.

Summary of Solutions

We note the consultation document provides very few options for how the problems can be solved. With the exception of an invitation to review the current set of resources and the addition of rohe moana management plans there is very little else that is new.

Te Ohu Kaimoana considers that there are three key areas that need to be addressed. We have suggested for each area how progress might be made and the remainder of this submission addresses each in turn:

1. Provide an enabling framework using a principled approach consistent with tikanga
2. Provide support for Iwi and their hapu to implement the framework in a way that is appropriate to their situation
3. Implement the strategy in a way that we learn from experience and adapt.

For any issues dealing with input and participation of Iwi/Maori begin by ensuring that any response is coordinated through MIOs who should be supported and enabled to work with their hapu and AHCs collectively.

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Solutions

1. Provide an enabling framework using a principled approach consistent with tikanga

Enable Iwi/Maori to be self determining

The key to delivering on a successful programme of work aimed at improved input and participation processes is to enable Iwi/Maori to help themselves to get on with the business. For too long now Government agencies (including MFish) have tried to address the problem by improving their own capacity and capability to manage what they perceive as their Treaty obligations and relationships rather than improving the situation for Iwi/Maori. Table 1 on page 15 of your paper very clearly demonstrates how MFish have followed this path. We consider that while this may have been a necessary precursor to understanding the dynamics operating, it is now time to be clear about how far the Crown can go in delivering on its obligations itself.

There is an obvious need for the Crown to be clear on its role in relation to the Treaty Partnership. The Crown's role is not to direct Iwi/Maori input and participation but to enable and support it. This requires both a change of understanding and attitude towards the Treaty Partner and also a change of practice at the operational and implementation level.

How is tikanga relevant?

A principled approach consistent with tikanga provides the correct fundamental basis for moving forward. In Maori terms, all living things are the descendants of Ranginui (the "Sky Father") and Papatuanuku (the "Earth Mother") and are thus related through whakapapa. Maori developed a set of principles and practices that guide the way these relationships are handled.

The set of principles and practices that is used to maintain mauri (see appendix 1) is called tikanga. The attention paid to tikanga ensures that harmony with the universe is maintained. Observation of tikanga became the practice of the kaitiaki.

We note section 3.4 (page 13) in the document that refers specifically to providing opportunities for tangata whenua to express the meaning of kaitiakitanga. However kaitiakitanga can not be viewed in isolation from all the other principles that together make up tikanga. Again the suggestion is that MFish build its capacity to advise the Minister so that he/she can have particular regard to kaitiakitanga.

These principles are entirely relevant to this discussion – we believe sound outcomes will be achieved for Maori if they are acknowledged by MFish as they develop the Treaty strategy. For example it could be argued that the way the Crown has worked with Maori has undermined whanaungatanga – by undermining the processes that hold Iwi together.

The challenge for us all is to find ways to ensure these principles are able to be given effect in the way MFish works with Iwi/Maori. We see two particular challenges for the Crown:

- not overstepping its role by directing Iwi/Maori, and

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- establishing a principled approach consistent with tikanga to allow Maori to express rangatiratanga (self determination).

2. Provide support for Iwi and their hapu to implement the framework in a way that is appropriate to their situation

Fundamental to providing an operational level of support for Iwi/Maori to organise and prepare themselves to have input and participation in fisheries management is the need for them to:

- establish a system of representation suited to their area and situation that encompasses their range of rights and interests
- have access to existing information and management systems that are used in relation to their area – in an easy to understand format and
- have the ability to generate good information to bring to the table – in a form that is useful and can be integrated with other types of information.

Representation should bring together the range of Iwi and hapu interests

For many years now we have advocated to the Crown and MFish that it begin building relationships with Iwi and hapu through Mandated Iwi Organisations (MIOs). The consultation document recognises that not working through these Iwi organisations has caused problems in trying to resolve differences between the commercial and non-commercial fisheries interests of Iwi and hapu. We continue to believe that working through MIOs is the right way to begin.

The consultation document suggests that MIOs are only accountable to individuals and not hapu or Marae, further suggesting that there is some doubt that MIOs are accountable to Marae and /or hapu. However the right of the individual to vote, set out in the Maori Fisheries Act, only relates to whether the constitution which sets out the political structure for that iwi should be accepted. That constitution can have many different processes for members of the Iwi to vote for members of the Board of MIOs. However, we know that many Iwi have chosen to work through the structures of their hapu, or other geographically based groupings within their respective rohe. The key is to work with MIOs and their hapu to understand their unique situations and develop systems and processes that support their needs.

Later in this submission we discuss how Te Ohu Kaimoana has worked with MIOs and their hapu to develop fisheries strategies and systems that will progressively deal with their commercial and non-commercial interests.

Provide tools and support

If Iwi and their hapu are to effectively integrate their commercial and non-commercial interests, they will need access to real information about what is happening in their local non-commercial fisheries, and understand the relationship between non-commercial and commercial activities. In this way, they will be able to better identify the kinds of tools they may need, for example to provide for their non-commercial needs.

Moreover, if they are to have effective input and participation into fisheries management, they will need to be able to have active involvement in gathering the information. To enable that to happen, the Crown should assist in providing tools and support to help explain existing information and management systems and support the generation of new fine scale information collection at the local level.

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This might involve:

- supporting the use of other types of communications technology such as broadband that enables communities in remote areas to organise their representation on various issues
- bringing GIS technology forward to help display information in a more suitable manner than has been achieved in the past
- providing electronic catch reporting software that can integrate with existing internet and cell phone devices that are widely in use already
- supporting independent service provider's time and expertise to assist Iwi and their hapu to prepare and deliver quality submissions in a professional manner.

Critically there is a need to understand that one size does not fit all and that unique differences need to be accommodated to enable the most efficient and effective outcomes to be achieved in each area.

The core competencies required to support Iwi and their hapu to deliver meaningful outcomes for them at the local and/or regional level are rare.

This is further complicated by the existing process of having MFish staff attempt to provide services for Iwi/Maori in an environment fraught with perceptions of conflict of interest (both internally and externally) and competing priorities evident between the Crown and Iwi/Maori. This combination of factors has pervaded the implementation of the Treaty Strategy and prior to that the Deed of Settlement project since its inception. What is needed now is a step away from Crown control over these processes. New ways are needed to support Iwi/Maori in their quest for self determination.

We believe an effective way to do so is for MFish to rethink the way it applies its resources to this area, and to restructure its operations. We do not doubt the intentions of the Crown nor the professionalism of the Ministry's staff. However none of this will ever overcome the perceptions that one partner in the relationship is telling the other what it is the other partner needs. This is not conducive to a long-term relationship based on mutual respect.

We believe it would be appropriate to consider funding an independent service provider that has the freedom to truly facilitate the aspirations of Maori by delivering professional and expert advice and services.

3. *Implement the strategy in a way that we learn from experience and adapt*

What problems did we identify from Oceans Policy, Soundings and Shared Fisheries?

What is common to all three of these attempts at policy reform is that in each case:

- Iwi/Maori have significant and broad ranging rights and interests that could be potentially affected by the actions of the Crown including customary commercial, non-commercial and recreational rights and interests
- None of them provided Iwi/Maori with any assurances or safeguards that those rights and interests would be protected
- All of them used different *ad hoc* approaches to involving Iwi/Maori and therefore lost an opportunity to build up over time a well co-ordinated and supported representative body to discuss issues in an ongoing manner

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- None of them established a process that enabled sufficient time or resources for representatives that were participating to relay information back to their constituents and respond in a considered manner
- All of them employed a national rather than regional approach that lacked consideration of unique differences at the local level.

2030, fish plans and the concept of rohe moana plans represent new opportunities to learn from experience and improve input and participation of Iwi/Maori in fisheries management. MFish should take stock of these lessons and rethink how the current opportunities can be aligned to bring about more consistent and equitable means for Iwi/Maori to participate in them.

Lessons from the process to develop the Kahungunu Ki Uta Kahungunu Ki Tai plan

Our overall summary of what was needed in the development of the Kahungunu Ki Uta Kahungunu Ki Tai plan is:

- Champions and supporters are needed to align Iwi, hapu, and their respective commercial and non-commercial governance and operational structures
- A good communications strategy that sets out the stages of the plan and target dates with key people identified to ensure the people at the local level are kept in the picture
- Independent trusted technical people with relevant skills and knowledge about fisheries management
- Facilitation and plan writing capability
- Committed funds, research expertise and information gathering and management systems.

Further challenges for the group will involve:

- Acquiring and/or building the core competencies necessary to implement the plan
- The use of improved information management tools to both record non-commercial catch and effort data on each hapu's geographic base. This will enable analysis of management options to satisfactorily achieve non-commercial outcomes at least cost to commercial results. Note that these systems will also allow the aggregated information to be provided quarterly to Mfish.
- MFish support with awareness that their involvement does not involve directing but supporting where needed
- Alignment or ability to adapt to MFish processes and opportunities that arise during plan development.

Te Ohu fully supports the submission provided by *Kahungunu Ki Uta Kahungunu Ki Tai* in this regard and suggests that Mfish take this opportunity to assist and support this group to build on success and implement their plan.

Pataka pilot to address information and technology needs and develop new tools to meet non-commercial customary needs

Te Ohu Kaimoana is working actively with Ngati Ruanui, Nga Rauru Kii Tahī and Taranaki Tūturū to assist them to develop and run a pilot Pataka/Whata process that meets their needs and aspirations. The overall aims of this project have been to:

- enable the Iwi and their hapu to bring their commercial and non-commercial customary interests together in a mutually supportive way

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- empower Iwi/Maori to collect locally relevant information that can be integrated into wider fisheries management processes so that they can bring informed views to the table
- provide technology to support the collection of such information
- encourage Iwi/Maori to share information for their collective benefit.
- enable Iwi/Maori to participate effectively in MFish management decisions

This process has resulted in a new software “tool” that will be trailed as part of the Pataka pilot. The tool will enable the iwi to collect new fine-scale information about customary non-commercial catch within their area. It is also designed with security that will ensure that the information that is put into it by the Iwi can only be accessed by the iwi unless they choose themselves to share the information with others.

Need to monitor and review in an adaptive way

While we have provided suggestions to improve the Treaty Strategy framework overall, clearly there is a need to ensure that we all continue to learn and adapt from our experiences.

The two examples that we have included in our submission provide a current basis from which we can all learn. The key aims of these examples should be monitored to see how progress is made and if they run into difficulties then we should work together to overcome these. The key aims include:

- Kahungunu ki Uta Kahungunu ki Tai Strategy – developing cohesion and working together to plan for the future identifying a range of areas where there is further work to do and setting out an implementation plan for the future. The challenge now will be to see the implementation plan to fruition and this is where Mfish can enable, support and learn from experience
- Ngati Ruanui, Nga Rauru and Taranaki Tuturu – Pataka/Whata systems to integrate commercial and non-commercial customary interests in a mutually supportive way and empower Iwi to collect locally relevant non-commercial information to assist them in the future.

While we have discussed these two examples of work that could be done to further the progress on input and participation of Iwi/Maori in fisheries management we do not wish to suggest that other work elsewhere should also not progress. These are simply some living examples that we have had the opportunity to be involved in.

Finally we note that the **2030** report suggests under the result area “Accountable governance ensured” (page 6) that ensuring fisheries management system integrity include an action to “Establish mechanisms to monitor Ministry and sector performance”. We support this proposal and suggest that it be incorporated into the Treaty Strategy not as a possible review at some time in the future but as a dedicated component of the Strategy itself with timeframes attached to it and with agreed performance measures.

Conclusions and Recommendations

In broad strategic terms, Te Ohu Kaimoana recommends that what is needed to improve Iwi/Maori input and participation in fisheries management is to:

- enable strategically
- support operationally
- learn and adapt during implementation.

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Response to specific questions asked by MFish Treaty Strategy

Summary of questions for discussion

- I. What is your vision for fisheries management, for the Crown-tangata whenua relationship, and for your involvement in fisheries? What do you think of the MFish Treaty Strategy Strategic Vision?
- II. What characteristics do you think good input and participation processes should display and what do you think of the MFish proposed list?
- III. What are your views on progress, problems and options for moving forward to achieve better input and participation processes and what do you think of the options proposed by Mfish?

Proposed list of characteristics for the input and participation process

- 4.1 Input and participation processes should bring together mandated representatives of hapu and iwi.
 - A good communication plan and effective communication networks are essential to building robust mandates at the local level and integrating with the Mandated Iwi Organisation and its Asset Holding Company
 - The process should be flexible enough to encompass the uniqueness of each area and build on established structures to create cohesion rather than division
 - This process should be supported and enabled by MFish not directed by it
 - The process could be supported with improved communication technology.
- 4.2 Input and participation processes should integrate all tangata whenua fisheries interests, and particularly customary non-commercial and customary commercial.
 - Mandated representation (see above) needs to be based on bringing together the rights and interests of Iwi/Maori in a way that is suited to each area (i.e. it needs to be based in and on the tikanga for that area)
 - That process could be supported by external assistance with expertise in fisheries management, plan writing and facilitation
 - The process needs to be flexible enough to learn and adapt to change.
- 4.3 Input and participation processes should build tangata whenua capacity to manage their customary non-commercial fisheries and participate in multi-stakeholder management processes, allowing them to be proactively [involved] early [in the process] (at the time of defining the questions, rather than answering them).
 - The process should enable Iwi/Maori to help themselves to get on with the business of managing their own interests (i.e. rangatiratanga self-determination)
 - That process could be supported by MFish providing information and assistance to achieve that aim.
 - This might mean doing things differently to the way that things have been done in the past (for example bringing forward new tools and explaining how MFish fisheries management processes work in a user-friendly manner)
- 4.4 Input and participation processes should build the capacity of MFish to advise the Minister so he/she can have particular regard to kaitiakitanga.
 - The process should enable Iwi/Maori and the Crown to agree on a principled approach consistent with tikanga that is suited to their situation as a basis for working together

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- Kaitiakitanga is only one component to a full set of Maori principles that together make up tikanga but it can not be expressed in isolation to all the other components
 - The process should support, enable and build Iwi/Maori capacity to express tikanga before further building MFish capacity to translate it for the Minister.
- 4.5 Input and participation processes should build an effective and efficient working relationship between tangata whenua and Mfish.
- Agreed. MFish can support the development of more efficient processes by ensuring that its actions do not further undermine Iwi/Maori processes to achieve cohesion
 - MFish can improve working relationships with Maori by ensuring that its internal activities are well co-ordinated and integrated – which has not been the case to date (i.e. the Treaty Strategy, 2030 and Fish Plans are not aligned and nor do they provide a consistent or equitable approach for input and participation of Iwi/Maori)
- 4.6 Input and participation processes should incorporate monitoring and review, including discussions between tangata whenua and Mfish on how the process should be developed over time.
- Agreed. This process can be greatly improved by displaying some flexibility and a willingness to adapt and try new ways of doing things at the implementation level that is suited to the uniqueness of the people of the area
 - This process could be supported by a review of what has worked and what has not worked to help clarify issues and support new ways of working together

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Appendix 1. Use a Principle Approach Consistent with Tikanga

Tikanga: Examples of Maori Principles and Practices	
The suffix “tanga”	The suffix “tanga” added to a base word converts the base word into a process word changing it from a noun to verb.
Mauri	Everything in the natural world possesses mauri, a “special power possessed by Iwi which makes it possible for everything to move and live in accordance with the conditions and limits of its existence. Everything has mauri, including people, fish, animals, birds, forests, land, seas and rivers: the mauri is that power which permits these living things to exist within their own realm and sphere.”
Kaitiakitanga	Mauri is protected by kaitiaki. Kaitiakitanga is the broad notion applied in different situations. “The root word in kaitiakitanga is tiaki, which includes aspects of guardianship, care and wise management. The prefix kai denotes the agent by which the tiaki is performed. Kaitiaki therefore stands for a person and/or other agent who performs the tasks of guardianship. Kaitiakitanga is the practice of guardianship.
Mana	Mana can be described as the enduring, indestructible power of the gods. In modern times mana has taken on various meanings.
Rangatiratanga	Rangatiratanga is the process of exercising mana at the level of Iwi or hapu depending upon the issue at hand. If an issue is of interest to the Iwi as a whole, then members of the Iwi, through their mandated representative structures, would expect to be involved. The same principle applies at the hapu and whanau level.
Manaakitanga	Manaakitanga implies a duty to care for others, in the knowledge that at some time others will care for you. This can also be translated in modern Treaty terms as “create no further grievances in the settlement of current claims”
Whanaungatanga	Whanaungatanga is the process through which Maori, through their kinship ties, meet their obligations towards each other and to the natural world. It is the “basic cement that holds things Maori together.
Kotahitanga	Collective action and unity. Kotahi mean one with tanga added as the suffix it means oneness.

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Tikanga: Examples of some Modern Day Maori Management Practices

Adaptive management	Maori adopted these tikanga after generations of living in one territory and learning to live within natural limits. They learnt through a process of trial and error to understand how their activities affected each other, and the environment in which they lived. On that basis they managed resources in a way that used some, developed some and rested some, ensuring that the mauri of all resources was kept in balance.
Integrated/ holistic management	From the mountains to the sea all things are connected or related. This equates to a type of ecosystem management. Culture is defined by our interaction with our environment. Maori rights and interests span the full spectrum (including customary non-commercial, customary commercial, recreational, environmental and spiritual).
Wise decision-making	The best decisions are those that everyone agrees with by consensus. To achieve consensus people need to meet and talk about the issues face to face. In all situations progress should be made while seeking to minimise any negative impacts on others interests to avoid the creation of new grievances.