



TE OHU
KAIMOANA



MĀORI FISHERIES TRUST

23 January 2009

The Chairperson
Board of Inquiry
Sustainable Water Programme of Action
Ministry for the Environment
PO Box 10-362
Wellington

Tena koe

Submission on the Proposed National Policy Statement for Freshwater Management

Introduction

1. This submission is on the proposed National Policy Statement for Freshwater Management (NPS) released for consultation by the Ministry for the Environment. This is a joint submission from Te Wai Maori Trustee Limited (Wai Maori) – the corporate trustee for Te Wai Maori Trust and Te Ohu Kai Moana Trustee Limited (Te Ohu Kaimoana) – the corporate trustee for Te Ohu Kai Moana Trust.
2. The purpose of Te Wai Maori Trust is to advance Maori interests in freshwater fisheries and in achieving this purpose, Wai Maori must promote the protection and enhancement of freshwater fisheries habitat in lakes, rivers, and other water bodies, particularly those that have traditionally supported iwi and whose shores have been the location of their marae.
3. Wai Maori has worked to understand the freshwater fisheries and freshwater environment as well as ascertain what are iwi and Maori aspirations for their freshwater environment. Iwi and Maori have a holistic view of their freshwater environment from the species to the quality of the water that supports them to the habitat that surrounds them. Restoring the ecological and spiritual integrity of degraded waterways is an important principle. This includes replenishing water quantity, improving water quality, and habitat restoration.

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4. 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:
 - a. ultimately benefit the members of iwi and Maori generally;
 - b. 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
 - c. contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.
5. Te Ohu Kaimoana is the trustee for assets to be allocated to iwi under the Fisheries Settlement. The fisheries Deed of Settlement and the Treaty of Waitangi Fisheries Claims Settlement Act 1992 settled claims to customary fishing rights that were protected by Article II of the Treaty. The nature of these rights was such that they contained a commercial and non-commercial component. These rights were exercised within an integrated management regime based amongst other things on the practice of kaitiakitanga. However the settlement separated these rights into two different regulatory regimes:
 - a. commercial rights in the form of Individual Transferable Quota – allocated to Te Ohu Kaimoana Trust for allocation to iwi; and
 - b. non-commercial rights, which would be given recognition through the making of regulations to recognise and provide for input and participation by Maori in the management and conservation of New Zealand's fisheries.
6. In carrying out its role, both Wai Maori and Te Ohu Kaimoana work with iwi organisations who have received or who will receive fisheries assets under the Settlement. We also work actively with the wider fishing industry and participate in industry organisations to protect the interests of iwi and Maori as the beneficiaries of the Settlement.
7. Te Ohu Kaimoana previously submitted on the freshwater for a sustainable future: issues and options in 2005. Within this submission our key points included the need to ensure that Maori values in relation to freshwater are protected and provided for and to provide improved and consistent provision for iwi/Maori input and participation in freshwater management at all levels of decision making.
8. This paper reaffirms and is consistent with the points raised in our 2005 submission. While our previous submission was on the initial proposal for freshwater management policy reform, the same issues are relevant for the development of a national policy statement for freshwater management

Maori and Water

9. Wai Maori and Te Ohu Kaimoana acknowledge that the issue of sustainable water management is a key concern for iwi, Maori and New Zealand. This is evident in the consultation hui held by government in early 2005 with Maori that resulted in the Wai Ora report. This report demonstrated the importance of water – culturally and economically – to iwi and Maori.
10. Maori have a holistic relationship with water whereby water formed part of an undivided entity did not distinguish between lakes, lagoons, rivers, swamps, their associated beds or the adjoining land. Maori land was not restricted to the waters edge but extended to the bed of the water body.

11. These water bodies formed a network from the mountain to the sea and provided the migratory pathway from many freshwater species. These mahinga kai were pertinent to the survival of iwi who depended upon the knowledge of mahinga kai and participation in gathering was important for maintaining traditional practices. It is also important that water quantity and quality was maintained as they impacted on these cultural values and traditional knowledge and practices.
12. Such a holistic view towards freshwater management is, we recommend, what is required in order to improve the quality of freshwater in New Zealand. In order to adequately address the issue of freshwater all relevant government departments should be included so that all impacts on water quality can be assessed by the relevant central government agency. A cross departmental approach should allow for greater cohesion over freshwater.
13. This holistic approach 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 and demonstrates that Maori have an intrinsic relationship with water quality, habitat protection and species enhancement. These are views that have been provided by many iwi and Maori as input into existing council planning documents. It is our view that this special relationship Maori have with water needs to be adequately reflected in the proposed NPS and the broader Sustainable Water Programme of Action (SWPoA).

Proposed National Policy Statement for Freshwater Management

Tangata Whenua Values and Interests

14. Our key concern is that the proposed NPS does not provide clear guidance to regional councils on how tangata whenua values and interests will be identified. While a distinct high level objective goes some way in ensuring that iwi and hapu are involved in the sustainable management of freshwater, we believe further direction and clarification is required to councils to better aid them in the development of effective plans and policies.
15. The degree of Maori involvement in decision-making under the Resource Management Act 1991 (RMA) is inconsistent amongst regional councils. Involvement is generally based on informal relationships established between Maori and regional councils and it is apparent that there are various levels of effectiveness amongst regional councils.
16. Both Wai Maori and Te Ohu Kaimoana believe that despite the compulsory inclusion of consideration under the RMA, successful implementation and inclusion of tangata whenua values and interests fluctuates amongst regional councils. The utilisation of existing provisions under the RMA will not, in our opinion, achieve the intention of the proposed NPS.
17. The intent of the NPS to provide clear central government policy could be strengthened through appropriate representation. Te Ohu Kaimoana has submitted on numerous occasions¹ that local and central government must make strenuous efforts to work with properly mandated representative organisations in addition to iwi authorities.

¹ See for example Te Ohu Kaimoana Trustee Limited (2006) Submission on the Review of the New Zealand Coastal Policy Statement to the Department of Conservation; (2001) Submission on Ocean Policy.

18. For the purposes of fisheries allocation Te Ohu Kaimoana has recognised 57 Mandated Iwi Organisations. As a minimum we propose that these iwi and iwi 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.
19. Wai Maori and Te Ohu Kaimoana recommend that central government provide guidance to local government that they should, in the first instance, always contact the relevant mandated iwi organisations on all natural resource matters as well as iwi authorities.
20. While we rely to some extent on good process for identifying tangata whenua values, the statement should also provide explicit reference to the Fisheries Settlement. There could be an objective or policy (for inclusion in objective 8) regarding protecting the interests of Crown and Maori in enduring Treaty of Waitangi Settlements and that policies should be developed to require councils to give special consideration to the effects of their decisions on the Fisheries Settlement and ensure any adverse effects are avoided, remedied, or mitigated.
21. As to what is the proper standard of water quality - we recommend that standard is whether you cannot drink water in its natural state. If it is unfit for human consumption then it should be unfit to extract fish or other food sources from.

Protection of Treaty Rights in Freshwater

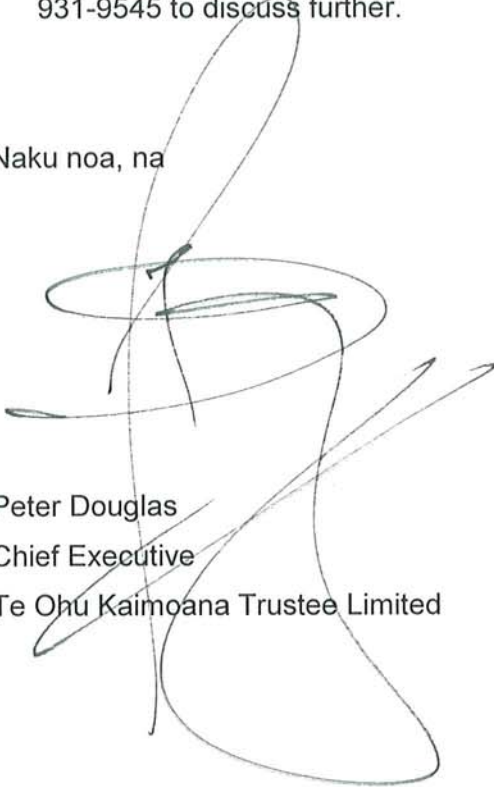
22. To develop an improved freshwater management system, Wai Maori and Te Ohu Kaimoana acknowledges the statement in the section 32 evaluation for the proposed NPS that Maori continue to reaffirm that they have interests and rights in water. This has not yet been considered or debated as the potential allocation of freshwater resources does raise unresolved Treaty rights. To this end, Wai Maori and Te Ohu Kaimoana believe that this is an important issue that needs to be addressed when developing an improved management system for freshwater in the future. The proposed NPS for water management also needs to ensure that it explicitly recognises rights granted under other legislation and does not compromise the ability for Crown and Maori to settle future claims to freshwater.
23. Further, we need to reiterate that in the broader SWPoA programme, a package of actions is needed to address Treaty rights (including claims to ownership) in freshwater when developing an improved management system for water management in New Zealand.

Summary

24. We therefore conclude that greater clarity is required on how tangata whenua values and interests will be identified. This can be achieved by regional councils working closely with appropriate representation such as mandated iwi organisations and iwi authorities. In addition, objective 8 – iwi and hapu roles and tangata whenua values and interests – should include reference to the Fisheries Settlement to ensure the endurance of this settlement. Clarity is also required to address Treaty rights (including claims to ownership) in freshwater when developing an improved management system for the future.

25. Our own consultation process is extensive with iwi however in this particular case we are aware of the on-going dialogue between Crown and Maori Leaders in relation to water management. We anticipate that this group will also be submitting on the proposed NPS for freshwater management. If you have any questions concerning our submission please contact myself or Claire Nesus on 931-9545 to discuss further.

Naku noa, na



Peter Douglas
Chief Executive
Te Ohu Kaimoana Trustee Limited