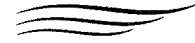


TE OHU KAIMOANA



MĀORI FISHERIES TRUST

12 October 2010

File: Policy / MS

Population Management Planning Review
Department of Conservation
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SUBMISSION ON POPULATION MANAGEMENT PLANNING REVIEW

Introduction

1. This submission is from Te Ohu Kaimoana in its role as corporate trustee of Te Ohu Kai Moana Trust (Te Ohu) and responds to the paper from the Department of Conservation (DOC) on a revision to the Population Management Planning (PMP) provisions of the Wildlife Act 1953 (WA) and Marine Mammals Protection Act 1978 (MMPA).
2. In making this submission Te Ohu does not seek to undermine any submission that you may receive from iwi or their representative organisations. We have not yet had an opportunity to fully canvass the views of iwi in respect of the PMP proposals and the view set out in our submission. Therefore we make this submission as a final draft pending feedback received from iwi. If we do receive feedback from iwi by Tuesday 19 October we will forward this to DOC.

DOC's Proposals

3. DOC has stated that the purpose of its review of PMP provisions is to improve the legislative provisions of the MMPA and WA so as *to produce an effective tool to enable the recovery of any threatened marine species*. DOC also states that one of the outcomes of the review is likely to be legislative amendment.

General Comments

4. We generally support the submissions of Aotearoa Fisheries Ltd (AFL) the New Zealand Seafood Industry Council (SeaFIC) and the DeepWater Group Ltd (DWG) but would like to add the following comments.

Final Draft

The Treaty of Waitangi and the Fisheries Settlement

5. The review has given no consideration to the impact that the proposed changes could have on rights granted to Maori under the Fisheries Settlement – including the right to utilise fisheries resources under the Quota Management System. Clearly Te Ohu has a fundamental concern with protecting and enhancing the rights of Maori secured and guaranteed by the Treaty of Waitangi. The Treaty recognises the rights and duties of the Crown, Maori and citizens and provides the framework within which these rights and duties can be negotiated. No one of the Articles of the Treaty should be considered in isolation – the relationship between all three should be considered. As such:
 - (i) Article I of the Treaty gives the government the right to make laws. This includes the right to make laws for resource conservation. However in finding the most appropriate options, regard should be had to Articles II and III
 - (ii) Article II of the Treaty guarantees to Maori their tino rangatiratanga – tribal authority over tribal resources. This includes a right to manage and develop resources in accordance with tribal practices – as long as they are practiced sustainably.
 - (iii) Under Article III, Maori hold rights of citizenship, which includes rights to be treated equitably and fairly.
6. In today's terms, Article II of the Treaty involves a bundle of rights including ownership and rights of access, use and management. Some of these elements have been given recognition in law, for instance through the Treaty of Waitangi Fisheries Claims Settlement Act 1992, the Maori Fisheries Act 2004 (MFA) and the customary regulations. Thus, Te Ohu considers that it is an important principle that decision-makers ensure that they do not:
 - (i) prejudice the settlement of outstanding claims
 - (ii) erode or prevent the full implementation of existing and future settlements.
7. Te Ohu accepts that environmental sustainability is paramount. However in the absence of a systematic approach to decision-making that includes an assessment of the risk being faced in any given situation, it is too easy for decisions to be made in reaction to political imperatives under the guise of sustainability. The Crown, in accordance with its Article I responsibilities, needs to ensure that Maori rights are not unnecessarily compromised by such imperatives. Where those rights are displaced for reasons other than demonstrated sustainability management then Maori would expect to be compensated.
8. Bearing these matters in mind, we are concerned that the proposals in the consultation document do not contain sufficient information, analysis and sound policy rationale to justify the proposed policy shifts let alone legislative amendment.
9. An important component of working with Maori is the need to work with properly mandated representatives. As you will be aware, the MFA identifies the iwi eligible for fisheries settlement assets and provides for a mandating process for representative organisations. Fifty three of fifty seven iwi organisations have now been mandated.

10. The Ministry of Fisheries is working to tailor its consultation and decision-making processes to work through these organisations. In dealing with the issue of PMPs, we would like to stress the need for DOC to take an approach that reflects that being developed by MFish. We will make more specific comments on this matter elsewhere in the submission.

Scope of the review

11. As signalled earlier, Te Ohu considers that the scope of the review – which focuses only on DOC's roles and responsibilities under the WA and MMPA rather than the wider framework for managing threatened species is far too narrow. The scope should include a review of MFish's responsibilities under the Fisheries Act 1996 (FA) which duplicates some of the provisions to an extent, and how these align with DOC's obligations. It should also include a review of the effectiveness of PMPs and associated MALFiRMs as one of a number of different tools for doing the job. In this respect we agree with SeaFIC and the DWG submissions that should PMPs be one of the options considered, it should only be considered as a tool of last resort. However ultimately, we see that the option of removing the provision for PMPs should be seriously considered.
12. In the event that a comprehensive review of PMPs is not undertaken we provide the following comments on each of the proposals put forward by DOC.

Comment on Specific Proposals

13. **Creating a simpler, more efficient process for PMP preparation and approval**

i) Simplify the process for PMP creation

We support the proposal to make the process of PMP development simpler and more efficient. However, we stress that the components allowing for structured stakeholder input (for example through working groups) be reflected in the new process, as well as provision for consultation with directly affected parties such as Te Ohu and iwi. We also refer here to our earlier comments about the need for a structured approach to working with iwi through Mandated Iwi Organisations. A joint approach between MFish and DOC should build on the work that MFish is doing to develop this kind of approach. These components are essential to the development of outcomes that will work in practice which in turn provide the best possible outcome for the species and threat being managed.

ii) Consider the decision making framework

We support joint decisions being made by the Ministers of Conservation and Fisheries. However, our preference is for a single decision making process preferably utilising the Minister of Fisheries' authority under s 15 of the FA. We agree with SeaFIC and the DWG that there is no rational reason for the PMP provisions to exist in light of s 15 of the FA.

14. **Developing a workable tool for managing interactions between fishing and protected marine species**

i) Reduce the legislative scope of species for which a PMP may be developed.

We would like to echo the comments we made earlier about the need for a robust decision making process that ensures the integrity of Maori rights and Treaty settlements. Ultimately Te Ohu considers there is a wider issue at stake with the New Zealand Threat Classification System (NZTCS) and that is the need to ensure that the assessment of threatened status does not unnecessarily restrict Maori access to their commercial and non-commercial customary resources.

As such we have serious reservations about the integrity of the NZTCS and in particular how marine species enter and exit that system as well as where they are placed or classed within it. If the NZTCS is going to play an integral part in the PMP development process, we suggest that the scope of the review should be extended to include reconsideration of the process for determining how new species enter the NZTCS as well as the removal of species that are no longer threatened. We agree with the DWG that if a species is to be declared "threatened" based on a classification system, such a system and the process of classification must be robust and more transparent than appears currently the case.

ii) Set a biologically meaningful and achievable goal

We support SeaFIC's proposal for a single statutory goal for MALFIRMS – that goal being: "allowing threat status to improve as soon as reasonably practicable". Providing a robust risk assessment process is incorporated into the process that includes decision-making principles (for instance consistent with the information principles contained in the FA), we consider this approach is flexible and appropriate.

iii) Clarify that the objective for setting all MALFIRMs is recovery

Te Ohu agrees with SeaFIC and the Deepwater Group that this objective is ambiguous with its reference to the "recovery of the population," "the recovery of a species" and "maintenance of populations", along with the suggested removal of area based MALFIRMs. We agree that maintaining a recovery objective for area/population based MALFIRMs could have significant implications for utilisation and note that the maintenance objective for "populations" was intended to be a safeguard in this situation. We also note the interpretation difficulties that have been associated with the term "population".

iv) Tighten the definitions of mortality for the purposes of a PMP

We do not support the proposed redefinition of human-related mortality. We agree with SeaFIC that the crucial question is "the extent to which fishing related mortality is affecting the population in comparison with all other sources of mortality".


v) Clarify the risk assessment

We agree with SeaFIC's detailed submission on this proposal and echo our earlier comments in relation to the Government's responsibility under Article I to provide a robust risk assessment process that ensures that Maori rights are not unnecessarily compromised.

vi) Consider how to take account of fishing-related mortality of species that range outside of NZ waters

We do not support the proposal to use the proportion of time the species spends in NZ waters as a proxy to apportion the NZ MALFiRM from the total MALFiRM. The amount of time that a species spends in an area of water is only one factor for consideration the other being the risk that the species is subjected too while in those waters. For example a species may spend 50 percent of the year in NZ waters but because of our quota management system and other fishing management controls that species is subjected to greater risk for the 50 percent of its time spent outside of NZ waters.

15. If you have any questions about this submission please contact Maru Samuels in the first instance at maru.samuels@teohu.maori.nz.



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