

21 December 2001

Consultation
Climate Change Programme
PO Box 55
WELLINGTON

Tena koe

Submission of Te Ohu Kai Moana to the Government's proposal to ratify the Kyoto Protocol

Introduction

Te Ohu Kai Moana is a statutory organisation which accounts to both Iwi and Parliament with the following purpose and values:

Statement of Purpose: Te Ohu Kai Moana exists to:

- Facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing;
- Secure the growth, development, allocation and transfer to Iwi of assets in recognition of the rights confirmed and guaranteed by the Treaty of Waitangi;
- Ensure fisheries are managed in a manner consistent with the rights guaranteed and confirmed by the Treaty of Waitangi; and
- Secure proper recognition of Maori Customary Fishing Rights and to promote these rights with Hapu / Iwi.

Statement of Values: Te Ohu Kai Moana acknowledges:

- The Treaty of Waitangi is the foundation for Te Ohu Kai Moana's operation and activities;
- It will act in a manner consistent with that of a Kaitiaki for the assets it controls;
- It will act in accordance with its accountability provisions promulgated to Iwi;
- It will pursue the development and standing of Maori through Iwi in terms of Rangatiratanga over fisheries; and
- The fisheries settlement should ultimately be for the benefit of all Maori.

Te Ohu Kai Moana was established as a result of litigation against the Crown taken by four Maori parties, which resulted in the Maori Fisheries Act 1989. Subsequent litigation and negotiations led to the second phase of legislation in 1992 which brought to a close and finally settled Maori commercial fishing claims before the Waitangi Tribunal.

Maori, through Te Ohu Kai Moana, are major commercial stakeholders in New Zealand's seafood industry. Maori have a substantial interest in over 300,000 tonnes of quota representing some 35% of the Total Allowable Commercial Catch (TACC), and therefore provide a substantial contribution to New Zealand's economy.

The climate change problem

Te Ohu Kai Moana does not call into question the need for international action to manage the effects of climate change. For Maori, the ocean and all life that exists within it is the realm of Tangaroa – it sustains us and is provided for us to act as kaitiaki for future generations. Thus we recognise the need to take the potential impacts of climate change seriously, and to find effective ways of addressing them.

Te Ohu Kai Moana also recognises that “sustainability comes first”. In our submission to the Ministerial Advisory Committee on Oceans Policy (MACOP), we proposed that: “in the allocation of rights to use the oceans, the effects of this use on Maori and other rights/consent holders should be avoided, remedied or mitigated.”

At the same time, we noted that “hand in hand with the recognition of Maori rights is the need to give those rights priority against other rights when situations involving conflict arise. The only situations in which compromise should occur include those in which environmental sustainability is under threat (here, Article I [of the Treaty of Waitangi] must prevail over Article 2) – but only to the extent needed to achieve sustainability and even then by the least intrusive means.

Through the Treaty of Waitangi, Maori have a special relationship with the Crown. Part of that relationship involves a duty by decision-makers to undertake active protection of Article 2 rights of Maori. For some issues, Maori have negotiated settlements to address claims they have made under the Treaty. These include the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 which provides for Maori commercial and non-commercial fishing rights. Maori also assert that their Article 2 rights include water, the foreshore and seabed.

We would expect the Government, in exercising its Article 1 rights, to ensure that its chosen approach to resolving an environmental problem:

- will not impose disproportionate costs on Maori, and create grounds for further Treaty grievances
- is likely to be effective in addressing the problem.

The Government has stated that it intends to ratify the Kyoto Protocol by September 2002. Many parties have raised concerns about the likely effectiveness of this move in the absence of a global commitment to the protocol.

As the Government completes this round of consultation on the implications of this step, we would like to reiterate the definition of consultation, used by Justice McGechan in the High Court:

“Consulting involves the statement of a proposal not yet finally decided upon. Listening to what others have to say, considering their responses and then deciding what will be done.”¹

The Judge noted that genuine consultation should include:

- Sufficient information provided to the consulted party, so that they can make intelligent and informed decisions
- Sufficient time for both the participation of the consulted party and the consideration of the advice given
- Genuine consideration of that advice, including an open mind and a willingness to change.

The Kyoto Protocol as the proposed solution

With the above issues in mind, Te Ohu Kai Moana supports the submission made by SeaFIC that:

1. New Zealand should not ratify the Kyoto Protocol until:
 - the economic, social and environmental costs, benefits and risks of ratification have been fully debated and are clearly understood by all parties; and
 - Government and other sectors are confident that the Kyoto Protocol has become a truly global regime;
2. If, as a result of further analysis and debate, New Zealanders consider that the costs of ratification for New Zealand outweigh any uncertain future benefits, then ratification should not proceed. Instead, the Government should look to other methods for taking meaningful steps to address the implications of climate change domestically (that show a positive cost benefit ratio); and
3. The National Interest Analysis should be prepared with the involvement of all potentially affected sectors.

Impacts on Maori

Te Ohu Kai Moana notes with concern that the Government’s documentation on the impacts of climate change, and the implications of policy options on Maori did not address the seafood sector, in which Maori now make up the largest part of the industry.

SeaFIC’s submission outlines some of the implications of ratification for the seafood industry. These comments are based on a report prepared by the New Zealand

¹ *Air New Zealand Ltd v Wellington International Airport Ltd*, High Court Wellington Registry, CP No. 403/91, McGechan J, January 1992, p.8

Institute of Economic Research.² The report notes that “any policy change that adversely impacts on the profitability of seafood industries would reduce the value of Treaty settlement assets, hinder the further growth of fishery assets accumulated by Maori and the capacity within Maori to utilise them.”³

Te Ohu Kai Moana is aware that the economic interests of Maori are associated not only with the fishing industry, but also with rural land, much of it now being developed for forestry (both indigenous and exotic). In some cases, this land has always been in Maori hands. In others, lands are being returned through Treaty Settlements.

You will no doubt have received information from the New Zealand Forest Owners Association and the New Zealand Forestry Industry Council that ratification of the protocol, without global commitment, will also have a detrimental affect on the competitiveness of New Zealand’s forestry sector in relation to other countries such as Chile, Brazil, China, Malaysia and Indonesia.⁴ We understand that the Federation of Maori Authorities has also raised these and other related concerns with you.

Ratification of the protocol cannot be justified without a more robust analysis of the likely effectiveness of implementation options and their impact on Maori interests, including costs, benefits and opportunities.

Participants in the National Hui held in Wellington on 30 November 2001 raised many of these issues and concerns. However they were also keen to identify and explore innovative solutions to the problem of climate change, and the potential opportunities that might result. They welcomed the opportunity to come together in a collective forum to pursue these ideas.

Te Ohu Kai Moana urges the Government to slow down the timetable for ratification to allow for further analysis and debate about the effectiveness of ratification, and its implications for New Zealand. This should include a process to review and debate the content of the National Interest Analysis before it is submitted to Parliament.

Recommendations

Te Ohu Kai Moana urges the Government to extend the time frame for ratification of the Kyoto Protocol to allow for:

- Full debate on the economic, social, environmental costs, benefits and risks of ratification, including the costs and benefits for Maori
- The creation of a forum to enable Maori to further explore not only the costs of ratification, but also the potential benefits and opportunities that might arise

² Climate change Policy and the New Zealand Seafood Industry. Implications for the Evolving Policy Debate. Report to Seafood Industry Council (November 2001).

³ *ibid*: p 11

⁴ New Zealand Forest Industries Council (30 November 2001): Climate Change: the Kyoto Protocol and the New Zealand Forest Industry – Information Sheet.

- Participation by the seafood sector and Maori in the further development of the National Interest Analysis.

Naku noa, na

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