

17th August 2001

Dame Cath Tizard
Chairperson
Ministerial Advisory Committee on Oceans Policy
PO Box 5582
WELLINGTON

Tena koe Dame Cath

SUBMISSION FROM TE OHU KAI MOANA ON OCEANS POLICY (STAGE ONE)

I am pleased to put before you Te Ohu Kai Moana's submission on Stage One of the Oceans Policy.

Representatives of Iwi met with Te Ohu Kai Moana on 14th August to discuss a working draft of this submission, and confirmed that key issues for Iwi/hapu include:

- Te Ao Maori needs to be taken seriously
- Maori rights are a priority – we are not just another interest group
- the Crown needs to ensure that Maori rights under the Treaty of Waitangi are recognised
- these include the rights of Iwi/hapu to practice their tikanga
- Iwi/hapu want a greater role in management of the marine environment
- everything in the environment is related so we need a more holistic approach to management
- relationships between Iwi/hapu, and central/local government agencies are variable and need to be improved.

They also endorsed the kaupapa that Te Ohu Kai Moana has put forward in our submission and stressed that Maori should play a key role, alongside the Crown, in further developing the Oceans Policy.

Te Ohu Kai Moana welcomes the opportunity to help develop options for Maori involvement in the Oceans Policy as planning for the next stages commences.

Heoi ano ra

Shane Jones
CHAIRPERSON

Submission from Te Ohu Kai Moana to the Ministerial Advisory Committee on Oceans Policy

Summary

Te Ohu Kai Moana's vision for the oceans is:

Sustainable development: growth that builds economic, social and cultural strength while maintaining healthy ecosystems.

The following goals and principles are essential to the achievement of Te Ohu Kai Moana's vision:

Goals	Duties and principles
Maintain the relationship between Maori and Tangaroa	<ul style="list-style-type: none">➤ <i>Recognise Maori customary and commercial rights to fisheries and oceans</i>➤ <i>In the allocation of rights to use the oceans, avoid, remedy or mitigate the effects of this use on Maori rights and those of other existing rights/consent holders</i>➤ <i>Meet partnership responsibilities - recognise the Treaty of Waitangi and its principles, and work with Iwi/hapu through appropriate representatives</i>➤ <i>Recognise and provide for the relationship of Maori and their traditions with their ancestral lands, water, sites wahi tapu and other taonga</i>➤ <i>Support kaitiakitanga – recognise the role of Iwi/hapu in management of the oceans</i>
Healthy ecosystems	<ul style="list-style-type: none">➤ <i>Recognise that land and the sea are related.</i>➤ <i>Use a consistent geographical framework for decision-making, based on ecosystem characteristics, and recognising the connection between land and the sea</i>
Provide for utilisation within sustainable limits	<ul style="list-style-type: none">➤ <i>Recognise the presumption to allow utilisation of oceans resources within sustainable limits</i>➤ <i>Reflect our responsibility to mokopuna (grandchildren) by ensuring that we all have a continuing duty to minimise adverse effects</i>➤ <i>Use an effects-based approach to management</i>➤ <i>Implement a comprehensive approach to risk assessment</i>➤ <i>Take a precautionary approach in decision-making, and an adaptive approach to management</i>➤ <i>Use the most appropriate management tools</i>➤ <i>Ensure information that benefits everyone is funded by everyone.</i>
Co-operation in the pursuit of holistic management	<ul style="list-style-type: none">➤ <i>Delegate responsibility to appropriate decision-makers</i>➤ <i>Encourage participation by all interested parties</i>

Key issues for Maori include:

- Te Ao Maori needs to be taken seriously
- Maori rights are a priority – we are not just another interest group
- the Crown needs to ensure that Maori rights under the Treaty of Waitangi are recognised
- these include the rights of Iwi/hapu to practice their tikanga
- Iwi/hapu want a greater role in management of the marine environment
- everything in the environment is related so we need a more holistic approach to management
- relationships between Iwi/hapu, and central/local government agencies are variable and need to be improved.

Te Ohu Kai Moana has put forward our vision, goals, duties and principles as a means of ensuring that these issues are addressed.

Te Ohu Kai Moana agrees with the view of the Ministerial Advisory Committee on Oceans Policy (MACOP) that the vision, goals and principles that will underpin an Oceans Policy are the “tahuhu” for marine management. On that basis, no decisions on other related marine reviews (such as the review of aquaculture, recreational fishing rights and the Marine Reserves Act) should be made until the tahuhu is in place.

Te Ohu Kai Moana would also expect that before the Government makes any final decisions about the vision, goals and principles that should guide an Oceans Policy, Maori and the public have an opportunity to comment on any proposals made by the MACOP, or any preliminary views held by the Government.

Maori wish to see a clear reflection of the partnership envisaged in the Treaty of Waitangi given expression in the on-going development and implementation of the Oceans Policy. Te Ohu Kai Moana requests the opportunity to discuss and develop options for giving expression to that partnership with the MACOP, appropriate Ministers and officials.

Kia Hora Te Marino
Kia Whakapapa Pounamu Te Moana
Kia Tere Te Karohirohi

May the calm be widespread
May the sea glisten as the greenstone
And may the shimmer of summer dance across your pathway

1.0 Introduction

Te Ohu Kai Moana welcomes this opportunity to put before the Ministerial Advisory Committee on Oceans Policy (MACOP) this submission on the vision, goals and principles that should guide the management of New Zealand's oceans. As a nation, it is timely to be asking ourselves about the beliefs and values that should guide our conduct in the marine environment.

In this submission, Te Ohu Kai Moana makes use of the words "Maori", "Iwi" and "hapu". In using "Maori", Te Ohu Kai Moana implies that Maori rights are exercised through the representative structures of Iwi, hapu and whanau.

2.0 The Kaupapa of Te Ohu Kai Moana

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.

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 must ultimately be for the benefit of all Maori.¹

Te Ohu Kai Moana is aware that the New Zealand Seafood Industry Council (SeaFIC) has made an oral presentation to the MACOP about the seafood industry. The presentation highlighted examples of the industry's activities, and the resulting economic and social contribution that the industry has made, particularly to New Zealand's regional coastal communities.

Te Ohu Kai Moana does not intend to repeat that information, but refers to the documentation provided by SeaFIC at the time, and also to SeaFIC's written submission. Nevertheless we do wish to emphasise that Maori, through Te Ohu Kai Moana, are key 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.

In relation to these interests, Te Ohu Kai Moana's responsibilities include:

- stewardship of Maori assets
- allocation of assets to Maori
- leasing quota
- developing new Maori Fisheries legislation
- input into fisheries policy and management issues
- training and development.

Alongside rights and interests to commercial fisheries, Maori also have traditional non-commercial interests in fisheries. Te Ohu Kai Moana's approach has been consistent, that is to seek to integrate commercial and non-commercial fishing interests and develop and manage fisheries to minimise any conflicts. In the event that this is not possible, however, Te Ohu Kai Moana has always argued that non-commercial interests take first priority, within sustainable harvest constraints, over other interests. In this context, Maori commercial interests would take second priority.

3.0 The Treaty of Waitangi

Maori already had rights to use and manage resources for a full range of uses at the time the Treaty of Waitangi was signed. These included the right to harvest natural resources for sustenance, ceremonial and trading purposes (equivalent to commercial uses in today's economy). The term Maori "customary" rights implies this full range of uses.

¹ Te Ohu Kai Moana, (2000) Strategic Plan 2000 – 2001, p8

Clearly, Te Ohu Kai Moana has a fundamental concern with protecting and enhancing the rights of Maori secured and guaranteed by Te Tiriti o Waitangi: “te tino rangatiratanga...o ratou wenua o ratou kainga me o ratou taonga katoa”, or the “full and undisturbed possession of their lands and estates fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession”.

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.

Through the Treaty of Waitangi, Maori have a special relationship with the Crown. Part of the relationship involves a duty by decision-makers to undertake active protection of the 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 and other oceans resources such as petroleum.

Article 2 of the Treaty also guarantees Maori the right to manage resources in accordance with their own values and tikanga.

While the Treaty of Waitangi affirms Maori rights and values, the rights of indigenous peoples have also been acknowledged internationally through conventions and agreements to which New Zealand is a party. These include the Convention on Biological Diversity, in which Article 8 (j) states:

Each contracting party shall, as far as possible and appropriate:

Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application, with the approval and involvement of the holders of knowledge, innovations and practices and encourage equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

On the matter of innovation, it should be noted that the Waitangi Tribunal has found that Maori were major developers of resources in western terms before 1840, at a time when custom reigned.² There is nothing in Maori tradition which dicatates that those practices handed down should not be developed to suit the circumstances – as long as they are practised within sustainable limits.

Te Ohu Kai Moana works to enhance Maori rights and values in relation to all aspects of fisheries and the marine environment. To varying degrees, some existing laws provide for Maori rights and the relationship between Maori and the environment, along with Maori management practices. These include the Resource Management Act 1991, the Conservation Act (1987), Maori Fisheries Act (1989), the Treaty of

² Waitangi Tribunal “Muriwhenua Fishing Report” 1988, p 238.

Waitangi (Fisheries Claims) Settlement Act (1992) and the Fisheries (Kai Moana Customary Fishing) Regulations (1998). However these provisions, taken together, do not represent a comprehensive and consistent approach to Maori values and rights. In addition, Maori continue to express concern that where provisions exist in legislation, recognition by decision-makers is patchy and in many cases inadequate.

Te Ohu Kai Moana notes that the Government has identified as one of its key goals the need to uphold the principles of the Treaty of Waitangi. We also understand that Ministers are committed to ensuring that both the process to develop an Oceans Policy and the content of the policy are consistent with the provisions of the Treaty. Te Ohu Kai Moana would expect an Oceans Policy to provide for Maori values and rights to be treated consistently across all decisions, both in law, and its implementation.

In the remainder of this submission, Te Ohu Kai Moana provides an overview of:

- the Maori values and principles that underpin Maori resource management
- answers to the questions posed by the MACOP
- a proposed vision, goals and principles to shape the content of the policy

Te Ohu Kai Moana also proposes that Maori, alongside the Crown, should be key players and directly participate in the development of stages 2 and 3 of the policy.

4.0 He Matapuna

The exercise on which the MACOP has embarked involves asking New Zealanders about their vision, values, goals and principles for managing our oceans. Maori have a well established set of values that govern relationships between people, and between people and the natural world.

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 concepts and rules that guide the way these relationships are handled. These include:

- Mauri
- Kaitiakitanga
- Tapu
- Noa
- Rahui
- Mana
- Whanaungatanga
- Rangatiratanga
- Manaakitanga
- Koha
- Utu

In providing the MACOP with a brief explanation of these concepts, Te Ohu Kai Moana would like to emphasise that together these concepts contain spiritual and

physical elements which are interdependent, and compartmentalisation is artificial. Nevertheless some form of explanation is necessary for the purposes of this submission.

Everything in the natural world possess mauri, a “special power possessed by Io 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.”³

Mauri is protected by kaitiaki. Kaitiakitanga is a 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 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”⁴

The set of principles and practices that is used to maintain mauri is called tikanga. The attention paid to tikanga ensures that harmony with the universe is maintained. Observation of tikanga became the practice of kaitiaki.⁵

Mana can be described as the enduring, indestructible power of the gods. In modern times mana has taken on various meanings:

- **Mana atua:** the sacred power of the gods.
- **Mana tupuna:** this power or authority handed down from generation to generation. Those who inherit mana must carry out the various rituals and duties to maintain this power.
- **Mana whenua:** the power associated with the possession of lands: it is also the power associated with the ability of the land to produce ... by the power of mana mauri, all things have the potential for growth and development towards maturity. There is another aspect to the power of land: a person who possesses land has the power to produce a livelihood for family and tribe and every effort is made to protect those rights.
- **Mana tangata:** the power acquired by an individual according to his or her ability and effort to develop skills and to gain knowledge in particular areas.⁶

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 implies a duty to care for others, in the knowledge that at some time, others will care for you.

³ Barlow, Cleve (1991) “Tikanga Whakaaro: Key concepts in Maori culture”, Oxford, p 83

⁴ Te Puni Kokiri (1993) “Mauriora Ki Te Ao: An Introduction to Environment and Resource Management Planning”, p10.

⁵ Te Puni Kokiri, as above

⁶ Barlow, Cleve: pp 61-62

If I share with you the bounty of my fish or my eel or kumara crop, then I affirm that sense of us all being part of one another. The return need not be immediate. There is simply faith that one day that which one has contributed will be returned.⁷

The concepts of koha (gift) and utu (reciprocity) are closely related. All three are about building and maintaining relationships in a balanced way.

Whanaungatanga is the process through which Maori, through their kinship ties, meet their obligations toward each other and to the natural world. It is “the basic cement that holds things Maori together”.⁸

Human action is regulated through the concepts of tapu and noa. Tapu loosely means “sacred” or “set apart under ritual restriction”. It is a “state of being deriving from close contact with beings or forces from the spiritual realm...Noa, the other half of the pair is a state of being which is removed from close contact with spiritual beings or forces and hence free from ritual restriction.”⁹

Rahui is a temporary form of restriction. It can be used to preserve the mauri of natural resources such as birds or fish. Rahui equates to the concepts of “conservation” and “protection” – however it is something that is applied on a temporary basis to enable resources to recover and be utilised. A rahui may be placed on an area in which someone has died, or where the potential of a resource is being obstructed.

Maori adopted this approach and principles 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. Permanent preservation without utilisation was not and still is not a feature of Maori resource management.

Maori continue to advocate this sustainable utilisation approach to marine management, based on a responsible environmental ethic and adaptive management.

5.0 Questions posed by the MACOP

During their consultation process, the MACOP has posed a series of questions to Maori and the public of New Zealand. Drawing on the values and principles outlined above as well as feedback obtained since the consultation process commenced, Te Ohu Kai Moana has developed the following responses to the questions, based upon the kinds of issues that Maori might be expected to raise.

⁷ Ritchie, James (1992): “Becoming Bi-cultural”, p 75

⁸ Ritchie, James, as above, p 67

⁹ Metge, Joan (1995): “New Growth from Old: the Whanau in the Modern World”, VUP, p 85

What do you value most about our oceans?

- The ocean is the realm of Tangaroa. It sustains us and is provided for us to act as kaitiaki for our future generations;
- The oceans shape our identity. This is apparent in the influence of the ocean in our tribal histories, including the history of our migration to Aotearoa;
- The ability for us to maintain our relationship with Tangaroa is crucial – not only in terms of our livelihood, but also in terms of our culture. Our culture is maintained through direct and active involvement in the use of resources. Where we are unable to obtain resources that we value, the knowledge that we associate with them dies;
- The maintenance of that relationship is equivalent to the concept of sustainable use (that can continue as we all learn to work within limits that Maori have learned over many generations in Aotearoa);
- There is also a principle of reciprocity - its not just what the Ocean can do for you, equally it is what can you do for the Oceans - the oceans must be cared for and nurtured like a garden - Te Maara a Tangaroa. In practice, this means working with the cycles of nature, for example, recognising what can be taken and what should be left for us to use in future;
- To maintain the integrity of the fisheries settlement, it is critical that any management system allows Maori to continue to use the fisheries assets that have been returned to us, and those the Crown has promised to deliver.

How does your lifestyle benefit from your own use/enjoyment of our ocean?

- As noted above, the maintenance of our identity and culture depends upon our ability to access the resources of the sea. Kai moana – food that is used for subsistence, ceremonial and commercial purposes - forms a central part of the Maori way of life;
- That is not to say that Maori are restricted to the use of “bone fish-hooks”. We have every right to develop our practices to suit the circumstances – as long as they are carried out within sustainable limits;
- In today's economy, trading includes commercial fishing, which provides a basis for Iwi and hapu to support their people, and in doing so, strengthen tribal structures to address contemporary needs;
- The survival of Maori values and culture is dependent on ongoing access to the marine environment and its resources, both through non-commercial and commercial means. The ability of Maori to collect kai moana for cultural and sustenance purposes, as well as commercial activity, must be preserved.

How does your lifestyle benefit from other people's use of our ocean?

- The ocean is a source of employment and recreation; it is estimated that there are over 2000 Maori employed in the commercial fishing industry;
- Maori recognise that we, along with other New Zealanders, benefit indirectly from other uses of the oceans (e.g. cables for electricity). However in making decisions on what activities can take place in the oceans, the indirect benefits that accrue to

us must also be balanced against the direct effects on us of allowing such activities.

How does what you do affect the oceans now, and in the long term?

- Maori resource management practices have adapted in the knowledge that the taking of kai moana has an effect on the marine environment. That does not mean that kai moana should not be taken. Rather, the harvesting of resources must be carried out in such a way that their mauri is maintained. This principle applies equally to non-commercial and commercial harvest.

When and why should our oceans be used?

When and why should the oceans be conserved?

Which uses of the ocean are acceptable or unacceptable to you?

- Our oceans are there for all to use, but as kaitiaki not plunderers;
- To Maori, conservation means wise use, and does not mean that oceans should be “locked up” like a big aquarium;
- Maori do not appreciate single-minded preservationists telling us how to use our resource and trying to limit our customary use rights;
- The relegation and non-recognition of Maori practices - for example, rahui to have control and management within the marine environment - is not acceptable to Maori;
- Discharge of sewage is unacceptable as are other practices that endanger the domain of Tangaroa. Examples of other practices that we are concerned about include coastal subdivision, which increases pressure on our inshore waters and fisheries;
- It is possible to utilise the gifts of Tangaroa without endangering the sustainability of the resource – that is what kaitiakitanga is about.

If your values are in conflict with someone else's, in what circumstances are you prepared to make compromises?

- The exercise of all rights must be within sustainable limits – there will be a need to constrain use accordingly;
- Article Two Treaty rights have precedence over other rights and interests;
- Tino rangatiratanga means that Iwi/hapu must have a substantive input into management of the resource. However, Maori have not and do not seek to deny others access to the oceans;
- Both kawanatanga and rangatiratanga contain a duty to ensure the sustainability of marine resources. This means that we all have an interest in sustaining everything in the domain of Tangaroa;
- At the same time, the right of the Crown to exercise kawanatanga rests on the guarantee that it made to Maori in relation to rangatiratanga, including the values that go with it;
- Our view of what is sustainable may not always accord with the views of others. In some circumstances concerning our customary rights, we do not see the need to compromise with those who would force their view of the world onto us.

Who should make decisions about the oceans?

How should decisions be made?

- Iwi and hapu have a unique relationship with the Crown through the Treaty of Waitangi. There needs to remain an ability for the Crown and Maori to set the overall principles and priorities for managing the marine environment;
- Article Two of the Treaty guaranteed that tino rangatiratanga would be maintained. Consequently Iwi/hapu should always have an important role in deciding how our oceans are used, especially the inshore waters;
- Decision-making should be made at the level of the community affected, but must also be consistent with the biological scale of the resources being utilised;
- Maori are concerned to ensure that any person or body to whom decision-making power is delegated (as part of kawanatanga) is empowered to interact with Iwi/hapu in a partnership role. For example, you can expect that Maori would oppose any expansion of the role of local authorities without an associated expansion in their duties to act in partnership with Iwi/hapu in accordance with the principles of the Treaty of Waitangi;
- Decisions must be made in a transparent process and outcomes must be consistent with the Treaty of Waitangi. Agreements reached by applying that principled approach will be more durable.

Should the interests of future generations be considered?

- Of course the interests of future generations should be considered – that is also what kaitiakitanga is about; this is not a modern concept.

What might the oceans be like in 20 years? in 50 years?

- We would wish the realm of Tangaroa to be in such a state that we can continue to maintain our interaction with it and thus maintain and strengthen our people and culture.

Te Ohu Kai Moana attended most of the hui held by the MACOP. Many of the above concerns were expressed. In our view, they can be summarised in the following key messages:

- Te Ao Maori and the Maori world view need to be taken seriously
- Maori rights are a priority – we are not just another interest group
- the Crown needs to ensure that Maori rights under the Treaty of Waitangi are recognised, including the rights of Iwi/hapu to practice their tikanga
- Iwi/hapu want a greater role in management
- everything in the environment is related so we need a more holistic approach to management
- relationships between Iwi/hapu, and central/local government agencies are variable and need to be improved.

6.0 Te Ohu Kai Moana's vision for our oceans

Te Ohu Kai Moana's vision for the oceans is:

Sustainable development: growth that builds economic, social and cultural strength while maintaining healthy ecosystems.

Te Ohu Kai Moana believes that at the broadest level, all New Zealanders would aspire to this goal. However, in achieving the goal, the following kinds of questions will need to be addressed:

- What obligations and duties should apply to all New Zealanders?
- Upon what basis will the relationship between ecological, social and economic concerns or interests be managed?
- How will differences in philosophies and culture be reconciled?
- Whose particular interests should have priority where interests conflict or overlap?
- How should the effects of allocation decisions on Maori and other rights be managed?
- How should decision-making be approached in the absence of good information?
- Who should pay for information and in what circumstances?
- How can we best ensure that in monitoring the effects of our activities on the marine environment, the results are used to enable us to adapt what we do as new information comes to light?

As noted, Te Ohu Kai Moana's interest in Oceans Policy relates to Maori commercial and non-commercial fishing rights. We believe that Maori involvement in the seafood industry can make a major contribution to the ability of Iwi/hapu to exercise their responsibilities towards their members, and to the environment. We also believe that maintenance of Maori fishing rights is essential if Iwi/hapu are to maintain the knowledge and tikanga associated with marine resources. The challenge for Te Ohu Kai Moana, and for Maori, is to ensure that:

- management of both non-commercial and commercial fisheries is consistent with Maori values, and aspirations for the future;
- fisheries can be managed in an integrated way;
- the ability of Maori to exercise their rights is accorded priority against other uses and interests in the marine environment.

Te Ohu Kai Moana believes that Maori will be better placed to meet these challenges and achieve the vision if the following goals, duties and principles are central to the Oceans Policy.

Te Ohu Kai Moana agrees with the MACOP's description of the Oceans Policy's vision, goals and principles as a "tahuhu" for all marine management. We therefore strongly recommend that the Government make no decisions on other related reviews (including the review of aquaculture, recreational fishing rights and the Marine Reserves Act) until the tahuhu is in place.

Goal: To maintain the relationship between Maori and Tangaroa
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As noted in the answers to the MACOP's questions (section 5), Maori identity and culture is dependent upon Maori being able to maintain their relationship with all elements of the environment including Tangaroa. This relationship has a spiritual aspect which is manifest in kinship links to all beings, and to the gods.

Maori have always argued that environmental sustainability comes first, and that their relationship with Tangaroa (and other elements of the environment) incorporates sustainability. Te Ohu Kai Moana believes that Maori must be able to define sustainability in accordance with their tikanga, and that the Treaty of Waitangi provides for them to do so.

The following duties and principles must be incorporated in the Oceans Policy framework to ensure that Maori are able to maintain their unique relationship with Tangaroa.

Duties and principles:

➤ ***Recognise Maori rights to fisheries and oceans.***

Te Ohu Kai Moana understands that the Government, in developing an Oceans Policy, is not intending to renegotiate those rights that have been secured by Treaty settlements, specifically those enshrined in the Treaty of Waitangi (Fisheries Claims) Settlement Act. However, a number of other reform processes (relevant to aquaculture, recreational fishing rights and the Marine Reserves Act) will further define rights and responsibilities held in the marine environment. Each of these has the potential to erode the fisheries settlement.

As Te Ohu Kai Moana has already emphasised, the Treaty of Waitangi (Fisheries Claims) Settlement Act (1992) gives Maori fishing rights priority. However not all decision-makers whose decisions can have an effect on these rights are explicitly required to have regard to the settlement. For example the Resource Management Act 1991 makes no mention of the settlement, and neither does the Marine Reserves Act 1971. This situation needs to be rectified in the Oceans Policy and associated reforms.

In addition Maori have other rights associated with the marine environment including the foreshore, seabed and minerals (amongst others) that still remain to be appropriately recognised by the Crown. Thus an important principle that must be acknowledged is the need to ensure that neither Oceans Policy nor subsequent decision-makers acting under its ambit:

- prejudice the settlement of outstanding claims
- erode or prevent the full implementation of existing and future settlements.

These issues highlight the need for the first stage of the Oceans Policy to be completed before decisions on related marine reviews are made.

➤ *In the allocation of new rights to use the oceans, avoid, remedy or mitigate the effects of this use on Maori and other rights/consent holders*

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 are:

- where environmental sustainability is under threat (here Article 1 must prevail over Article 2)
- where any proposed displacement of Maori rights is recognised, and compensation provided (Article 2 rights are appropriately recognised).

Te Ohu Kai Moana does not believe that any management or allocation system should lock us into an inflexible process. Policy must allow for dynamic change but in a principled way that promotes respect and doesn't malign people's rights and interests.

There is potential, over time, for new allocation decisions to be made. These could include:

- allocation of fish stocks
- allocation of rights to space (including the establishment of marine reserves where they are not necessary for sustainability purposes).

These decisions will always have the potential to affect existing rights/ consents.

Iwi have always maintained that in restoring a right, new grievances should not be created. Te Ohu Kai Moana proposes that to maintain the integrity of existing rights (and any Treaty settlements), any displacement should recognise the degree of displacement and provide appropriate compensation.

For example, Te Ohu Kai Moana does not agree with the proposition that ITQ holders have no spatial rights to those areas in which their catch is targeted. If that were the case, their rights of access would have no basis. The issue is - what effect does a new allocation have on the ability of ITQ holders to access their quota entitlement? The same question would apply to any other existing use.

A principled approach to the allocation of marine resources is required, in which:

- Maori rights are treated as a priority
- the effects of allocation on the rights of existing users are "avoided, remedied or mitigated".

Each statute should recognise rights granted under other statutes as having the equivalent of existing use rights.

Criteria, or a “test” for assessing the effects of decisions on existing rights, and providing appropriate remedies, would need to be developed.

Te Ohu Kai Moana considers that this approach should generally be used. Aside from the issue of sustainability, Maori must retain an ability to veto proposals that would effectively extinguish their non-commercial fishing rights.

➤ ***Meet partnership responsibilities – recognise the Treaty of Waitangi and its principles, and work with Iwi/hapu through appropriate representatives***

Both local and central government must make more strenuous efforts to work with the properly mandated representatives of hapu and Iwi. Over a decade, Te Ohu Kai Moana has gone to unprecedented lengths to identify Iwi and their representative organisations. Seventy eight Iwi have been recognised and the organisations representing almost all of those Iwi mandated. Te Ohu Kai Moana strongly recommends that all central government agencies and local government should, in the first instance, always contact the mandated Iwi organisation on all natural resource matters. That organisation will refer matters on where appropriate. Te Ohu Kai Moana will make available our list of mandated Iwi organisations.

By working with Iwi/hapu, decision-makers can ensure that they have the correct information about the implications for Maori of any decisions they make. This should apply in the case of policy developed at a local, regional, or national level, and also to policy on New Zealand’s interests at an international level. In some cases, Iwi/hapu may need to be resourced to work with decision-makers.

The challenges facing Iwi in decision-making process has been demonstrated during the Oceans Policy consultation process, which coincided with consultation on the Local Government Reform. In many cases, the same individuals were trying to cover these different consultation processes at the same time. Unless Iwi/hapu are adequately resourced to participate – whether working in co-operation with agencies or stakeholders, the level of interaction necessary for effective decision-making may well suffer (see also the principle: “*Encourage participation by all parties*”).

➤ ***Duty to recognise and provide for the relationship of Maori and their traditions with their ancestral lands, water, sites, wahi tapu and other taonga***

This duty on decision-makers is already enshrined in the Resource Management Act 1991. In general, it has been applied to land-based resources and recognises that the relationship exists regardless of land ownership. In referring to Maori tradition, it also gives weight to Maori values and management practices. While the relationship and related practices are exercised at a local tribal level, the Treaty of Waitangi gives them national significance.

The relationship is equally relevant in the marine environment, and should guide all decision-making. It should extend to all statutes and in practice, greater focus should be given to the duty in the marine context under the Resource Management Act 1991.

➤ ***Duty to support kaitiakitanga - recognition and support for the role of Iwi/hapu in the management of our oceans***

There are many instances where management responsibility, for the reasons already outlined, should rest primarily with Iwi/hapu. This principle has already been applied in some instances (for example in relation to provision for the appointment of tangata tiaki for customary fisheries) but is not recognised or implemented in a comprehensive way.

The same principle needs to apply in the case of decision-making within kawanatanga. Iwi/hapu expect any decision-maker to work in partnership with them. This will, in many cases, require that resources are provided to Iwi/hapu to allow them to meet the responsibilities that they must exercise in the interest of the wider community.

Goal: Healthy ecosystems

Duties and principles:

- ***Recognise that the land and the sea are related***
- ***Use a comprehensive geographical framework for decision-making, based on ecosystem characteristics, and recognising the relationship between the land and the sea***

Much concern has been expressed by Maori during the MACOP's consultation round about the effects of land use and discharges on the inshore waters and habitats that support customary and commercial fisheries. Greater recognition must be given to the effects of these uses, not only on the marine environment but also on marine users.

A comprehensive geographical framework for management would greatly assist decision-makers assess the cumulative effects of different activities in the same environment, and to manage them in an integrated way. The most appropriate scale for management needs to reflect the biological scale of the key resources that are the subject of decision. This is an ecosystems approach. Te Ohu Kai Moana is enthusiastic about work the Ministry for the Environment is doing to develop a "marine environment classification system", which could form the basis for a comprehensive framework. Information about the environment should be integrated within this framework.

As information is able to be built into such a framework, it would allow decisions to be considered in context, and their implications for the wider marine environment to be understood (see also the principle: "*Implement a comprehensive approach to risk management*").

Goal: Provide for utilisation within sustainable limits
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As Te Ohu Kai Moana notes in section 4 of this submission, Maori manage resources in a way that uses some, develops some and rests some, ensuring that the mauri of all resources is kept in balance. Maori continue to advocate this sustainable utilisation approach to resource management, based on a responsible environmental ethic and adaptive management.

Duties and principles:

➤ ***Recognise the presumption to allow utilisation of oceans resources within sustainable limits***

“Utilisation” includes a range of levels of activity including minimum take, development and enhancement. The Fisheries Act 1996 and the Resource Management Act 1991 contain a presumption to allow utilisation of renewable resources within sustainable limits.

New Zealand is also party to the United Nations Convention on the Law of the Sea (UNCLOS), which enables 200 nautical mile Exclusive Economic Zones (EEZs) to be brought within the jurisdiction of states. Various articles of UNCLOS provide opportunities for states to utilise marine resources for economic benefit, and obligations to protect them. The articles include:

- article 61, which imposes an obligation on member states to ensure that the living resources in their EEZs are not endangered by over-exploitation
- article 62, which requires states to promote optimum utilisation of the living resources of their EEZs¹⁰.

➤ ***Reflect our responsibility to mokopuna (grandchildren) by ensuring that we all have a continuing duty to minimise adverse effects***

All users (direct and indirect) have a responsibility to minimise their adverse effects on the environment, including the marine environment. This applies as much to land users who pollute inshore kai moana, as it does to anyone harvesting renewable resources or mining non-renewable resources. Over time, we should be looking to minimise our “footprint”.

➤ ***Use an effects-based approach to management***

In developing a philosophy for managing the marine environment we need to take an effects-based approach. This would mean that any activity that causes an impact on the environment should be subject to the requirement on users to minimise those impacts. No sector should have holidays at the expense of the environment. Good knowledge of marine ecosystems should support decisions on impacts and actions to

¹⁰ Parliamentary Commissioner for the Environment (1999) Setting a Course for a Sustainable Future; the Management of New Zealand’s Marine Environment, p25

mitigate them. This approach is consistent with Maori environmental management, and has been already adopted in key legislation such as the Resource Management Act 1991, and the Fisheries Act 1996.

➤ *Implement a comprehensive approach to risk assessment*

In Te Ohu Kai Moana's view, New Zealand still has some way to go to develop a comprehensive risk-based approach to management of the marine environment, including fisheries. In the absence of such a framework, many sustainability decisions under the Fisheries Act are made in an ad hoc fashion, and appear to be largely driven by political pressure to constrain fishing activity as much as possible, rather than any real and comprehensive risk assessment.

The development of a draft seamounts strategy is one example. In this case, the Ministry of Fisheries developed a strategy for protecting seamounts, however the strategy did not appear to have any clear objectives. A selection of seamounts was closed to certain types of fishing activity, but the decision was based on scanty information about remaining benthic communities. In addition, the strategy contained no apparent strategy to carry out research into the nature of those communities, or the effects of trawling upon them.

This example also illustrates that risk assessment needs to go hand in hand with a clear understanding of the scale of impact that is appropriate to the circumstances, as is the case on land. For example, on land, it is accepted that some areas can be completely modified to enable cities to grow, or farming to take place, while in other areas such as national parks or highly erosion prone areas, a more limited range of activities is appropriate.

In the seamount example, it is not clear how far the marine communities that exist upon the seamounts are unique. With the help of a research programme and a comprehensive geographical framework, it is possible that these communities will be found to be duplicated in many different areas. It is not clear from the strategy what the long term prospects for fishing around the seamounts would be should the effects be found to be reversible, or the benthic communities upon them to be relatively common.

The same risk assessment approach should apply in the case of all marine resources. The critical question is: what is an acceptable level of impact on the broader marine environment? Te Ohu Kai Moana considers that the overall marine system, including species' populations, must be maintained at a level that does not endanger their viability. We do not consider that complete protection is warranted where viability is not adversely affected. Rather, questions that need to be asked include: how abundant is a particular species? Is its population under threat? Has the population grown to a point that its relationship with other species and habitats is out of balance? These issues need to be addressed honestly, and not hidden behind unquestioned assumptions.