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CONSULTATION ON THE PROPOSED NEW INITIATIVES FOR 2004/05

Introduction

1. This submission is made in response to your letter dated 10 March 2004. In this letter you invited the New Zealand Seafood Industry Council (“SeaFIC”) to provide comments on the proposals contained in the documents attached to your letter.
2. Before we comment on the specific proposals, we need to raise the question about the efficacy and purpose of this consultation round. If MFish has already received Budget approval, why are we being consulted on a fait accompli?
3. We came to this conclusion for the following reasons. We are being consulted on 6 initiatives that had been considered by the Budget Ministers. These proposals appear to be the survivors from a much longer list which is included as Attachment 2. (This list raises several related issues which will be addressed below). We presume that having passed the scrutiny of Budget Ministers means de facto Budget approval, and the inclusion of the Crown expenditure to these initiatives into Vote: Fisheries. So all that remains is the “consultation” with industry.
4. It is difficult to avoid the conclusion that MFish has already decided to proceed with all of these and that the consultation is occurring simply to allow the Ministry to tick the “consultation” box.
5. Attachment 2 also raises a number of questions that we would like answered. The cover letter does not provide any information what criteria were used to assess the relative merits of the 10 initiatives in that attachment. It seems to us that some of the “rejects” are far more meritorious than those selected to proceed. For example, the need to initiate the “Poaching and black market enforcement” and “Customary fisheries research” would appear to be pretty acute.

6. And finally, MFish explicitly recognized that it allowed only a short timeframe for written submissions and then attempted to justify it by a statement that “the shorter timeframe reflects the fact that prior consultation has already been undertaken on the majority of Ministry services for 2004/05 and the proposed new initiatives represent a small increase in that level”.

7. That is fallacious reasoning. While many of the Ministry services for 2004/05 have indeed been already consulted on, **these** initiatives were **not** part of that consultation and, more importantly, the test for adequate consultation has nothing to do with the costs. Costs are irrelevant; even if these initiatives resulted in a **large decrease** in the level of MFish services, a proper consultation must allow sufficient time (as set out in the leading case on consultation¹).

Implementation of MFish Treaty Strategy

8. SeaFIC endorses Te Ohu Kai Moana comments on this initiative. As TOKM is the appropriate agency to make informed comments, we shall not look at the specifics of this initiative and we shall limit our comments to some general observations.

9. We question the timing of this initiative. The key theme running through this initiative is that Maori do not understand the fisheries management processes, lack the necessary knowledge to engage with MFish on fisheries management etc. We fail to see how spending \$12 million over the next three years will solve this problem. There is no coherency between this initiative and other MFish initiatives. For example, how do Regional forums (sic) fit into the “New Fisheries Management” model?

10. We have difficulty envisioning how a regional forum could provide effective input and participation in fisheries management when those very fisheries management processes are incomplete (e.g. fisheries plans).

11. It appears that this is yet another illustration of the deficiency in MFish’s internal business management systems. One business group is proposing to do something which is by definition predicated on the existence of components that are the responsibility of another group, and then either disregarding or not realizing the fact that the components are not completed. It might have been better for MFish to wait with this initiative until after the proposed “Corporate Infrastructure Projects” fixed up the internal business management communication systems.

12. Given the recent reports in the media about “fish scams” and abuse of customary Maori fishing rights (for example the Dominion Post of 27 March 2004) we would suggest that until the relevant fisheries management components have actually been developed, some of this funding would be much better spent on carrying out a review of customary fishing.

Health and Safety

13. On 16 March 2004 SeaFIC requested in accordance with section 12 of the Official Information Act official information on what proportion of incidents where the fisheries officers

¹ *Wellington International Airport Ltd v. Air NZ*, Court of Appeal [1993] 1 NZLR 671.

in patrol vehicles were exposed to aggressive and threatening environment is attributed to the commercial fishing sector.

14. We requested this information by 26 March to allow us to respond to this new initiative on an informed basis. In our opinion MFish should not have had any difficulties in responding to us within this time frame. We assumed that as the summary table of costs (Attachment 1) has the breakdown between the full cost of this initiative and the amount to be cost recovered from the industry, MFish must have already carried out an analysis of incidents in order to attribute the costs accordingly.

As of 31 March we have not received the required information.

15. MFish (Head office) states that this communications upgrade is necessary to provide essential support and backup for field officers working in remote locations in an aggressive and threatening environment. First of all, we would stipulate that the health and safety of employees is the responsibility of the employer and the cost should be met solely by the employer, regardless who causes the danger to the employees. (To the best of our knowledge, New Zealand Police has not tried to cost recover equipment upgrades from the criminal classes).

16. Secondly, in addition to having had radios in their vehicles for a number of years, all fishery officers now carry cell phones and the coverage for these is now quite extensive.

17. And thirdly, and most importantly, according to numerous public statements by MFish staff, the health and safety concerns are caused by the activities of black marketers and poachers, not the commercial fishing industry.

18. SeaFIC submits that the Crown meets the full costs of this initiative.

Marine Recreational Fishing

19. SeaFIC supports this proposal. We look forward to the availability of accurate data on recreational catch in stock assessment processes instead of the current reliance by MFish on inaccurate and out of date averages.

Serious Offences Unit

20. SeaFIC has serious concerns about this initiative. The activities of the SOU are opaque at the best and we have no idea how the unit's effort is spread between detecting commercial and non-commercial offences. For example, what percentage of the effort went into Operation Pacman which, going by statements made by MFish staff to the media, was a rather extensive operation?

21. We submit that the current practice of recovering the costs of **detecting** offences by commercial fishing from the putative offenders is seriously flawed. Is there any intrinsic reason why is the commercial fishing industry subjected to a regime that is totally out of step with the procedures and practices of the justice system? Alleged offenders do not fund the investigative activities of the detectives (even the Serious Fraud Office is Crown funded).

22. We submit that MFish should follow the procedures of the justice system where the award of costs (if not fully or partially met by the Crown) is made only against those that have been prosecuted and found guilty.

Corporate Infrastructure

23. We submit that the consultation on these projects is inadequate. We have not been given sufficient information about what these projects might be, nor have we been given the slightest indication of what portion of their cost MFish plans to recover from the industry. It would appear that MFish does not seem to have a clear idea, since the best it could do was to state that “some portion of the costs of these projects will be subject to cost recovery”.

24. We note that purpose of these projects is to remedy deficiencies in the Ministry’s internal business management systems and to improve the effectiveness of external communication.

25. We fail to see how MFish came to the conclusion that these projects could be cost recovered. It is our understanding that the State Sector Act requires government departments to carry out their activities efficiently and effectively within their Crown funding without seeking external funding boosts. In our opinion, fixing up the deficiencies in MFish systems is the responsibility of MFish, no one else.

26. It may be possible that MFish only meant that the partial cost recovery from the industry would be applied towards the costs of systems to “meet the provisions contained in the formal agreement between the Ministry and the commercial seafood industry for dealing with under and over recovery of cost recovery levies”. However, we would not agree with such interpretation. It has been our explicit understanding that those provisions fall into areas that are not cost recovered.

Sincerely yours

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