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File Q108AR

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Tena koe Paul,

STATEMENT OF INTENT: 2007-08 FISHING YEAR

INTRODUCTION

1. This submission is made in response to your letter dated 10 January 2007, inviting Te Ohu Kai Moana Trustee Ltd (Te Ohu) to provide comments on the proposals contained in the document entitled *Consultation on the Fisheries Services Proposed for 2007/08*.
2. Te Ohu is a statutory body established under s.31 of the Maori Fisheries Act 2004. The purpose of Te Ohu 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
 - (c) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement

SUBMISSION SCOPE

4. Much of the text appearing in the Context and Fisheries Services documents is a repeat from last year. We therefore suggest the Ministry re-read Te Ohu's submission on the 2006 SOI as many of the comments made then are still relevant now (*Appendix 1*). Some additional comments have been made in this submission.
5. As part of the SOI process we would normally comment on the proposed Required Research Services. But given the process changes adopted by the Ministry in the last RCC round, we decided it was more appropriate to comment then (*Appendix 2*). We have therefore not provided any additional comments on this section.

PROPOSED FISHERIES SERVICES TO BE PROVIDED IN 2007-2008

6. Between 1999 and 2006 the Ministry has spent in excess of \$588m on the delivery of fisheries management services. Over this period the costs have increased by approximately 33% or \$28.8m, and staffing levels have shifted from 308 to 413 in 2006 (*see Table 1*). We are concerned with the increase in spending since 1999 and the lack of discernable benefits to Maori and stake

holders generally. Our expectation is the Ministry will improve its delivery and performance to stake holders in the future.

	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Plan
	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Total output expenditure	60,547	66,640	71,502	70,661	68,524	76,265	84,716	89,441
Total planned industry contribution	30,006	30,832	33,267	33,735	33,800	34,068	33,955	32,516
Actual costs to be recovered	30,006	30,832	31,694	33,185	8,987	27,433	32,331	32,516

(Table)

7. A disturbing aspect of this and the previous SOIs is the diminishing amount of information that the Ministry is providing stake holders on various projects, particularly those covered under “Fisheries Services” in general. It has become virtually impossible to comment and in some instances, as will be highlighted shortly, only two or three paragraphs have been provided to justify increased expenditure in excess of a million dollars. The Ministry must direct its attention towards ensuring adequate information is made available, to the extent that stake holders are able to make properly informed decisions.
8. The High Court provides us with a definition of consultation.¹

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.
9. The High Court has also noted that consultation should be a reality, not a charade. Although there are no universal legal requirements as to form, the Court found that essential elements of 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, and*
 - *genuine consideration to that advice, including an open mind and willingness to change.*
10. Our expectation is the Ministry will adhere to the Court’s standards when consulting with stake holders.

¹ Air New Zealand Ltd v Wellington International Airport Ltd, High Court Wellington Registry, CP 403/91. McGTehan J, 6 January 1992, p8.

Fisheries Operations – p.14

11. The last two bullet points under the headings Description and Objectives relate to biodiversity matters and should be transferred to the Biodiversity portions of the document (pp.12,21 or 22). This action would have two beneficial results.
 - a) It would remove the risk of the industry and Maori being incorrectly charged for biodiversity matters; and,
 - b) It would result in a more accurate representation of the true costs of the Biodiversity Strategy.

Utilisation and Sustainability – pp14-15

12. While provision is made under this heading for costs of implementing the Government's MPA Strategy, no provision appears to have been made for either adjusting that Strategy in light of the industry proposals for Benthic Protection Areas (put forward in mid-2006) involving substantive areas of NZ waters to be closed to commercial fishing, or for assisting in the implementation of those industry proposals. If the Ministry is going to support this industry initiative they should make the appropriate corrections to the SOI.

Deed of Settlement Implemented – pp. 16-17

13. The proposals under this heading largely comply with Te Ohu's urgings in recent years. However, we feel compelled to comment on two specific issues.
14. Firstly, there is a lack of any reference to a review of the Ministry's process and information policies concerning mataitai reserves. Te Ohu provided detailed information on this subject in last years SOI, and had numerous discussions with the Ministry on solutions to overcome many of the problems that were and continue to be experienced by Iwi. We are still waiting for the Ministry to produce a series of policies that reflect those discussions.
15. Secondly, we continue to be concerned about the way in which the Ministry consults with Iwi. In our view, the Ministry will have far greater success in delivering on its Treaty obligations if the relationships with Maori are built primarily (not necessarily exclusively) with Mandated or Recognised Iwi Organisations (MIOs and RIOs). Our observations and discussions with MIOs and RIOs suggest the Ministry often puts greater attention on hapu and whanau relationships. In turn, this leads to undermining of the work being undertaken by MIOs and RIOs, and division within Iwi.

Statutory Decision Processes Administered – p.18

16. The 6 months timescale that the Ministry allows itself under Performance Indicator 2 seems unduly generous and must impose considerable costs and concerns on applicants. We believe a much shorter timescale should be applied.

Non-Commercial Fisheries Compliance – p.25

17. Somewhat unexpectedly, there is a substantial reduction of \$549,000 in the sum proposed for non-commercial fisheries compliance work. But no reasons are given as to why the budget is proposed to be reduced. In the absence of any good rationale we cannot support a reduction in this budget.

Poaching and Black Market Activities Deterred – p.27

18. Exactly the same situation as for non-commercial fisheries compliance on p.25 – a substantial reduction (\$691,000) is proposed in the funding for these important areas, despite the known level of offending and the acknowledged risks to fisheries resources from the illegal activities. Te Ohu

in particular has actively sought for increased Ministry action over poaching and black market activities in recent years, and has applauded the increases in attention now given to these problems up to now.

PROPOSED ADDITIONAL FISHERIES SERVICES FOR 2007-08

Fisheries enforcement services-maritime patrol team – p.32

19. Te Ohu was told by Ministry officials on the Paua Compliance Working Group that the costs associated with the new Project Protector vessels would be met by the Crown. We are now told that industry is expected to contribute 50% or \$1.8m of the operating costs of Project Protector.
20. The justification provided for this project is that not all risks of fisheries sustainability can be monitored from land or from minor sea patrol capability. The specific fisheries risks that are to be addressed as part of this initiative relate to dumping, area misreporting and misreporting generally, incursion into the EZ of non-NZ flagged vessels, and obligations in international waters.
21. In total there are 3 paragraphs provided to justify an overall budget of \$3.6m, of which \$1.8m is to be recovered from Industry. There is absolutely no rationale provided to show how or why the costs are to be apportioned on a 50/50 basis between the Crown and Industry. Nor is there any detail on how the Industry costs will be apportioned amongst the various fisheries. It's interesting to note that the specific fisheries risks referred to above will not apply to all stocks. For example, inshore fisheries like Paua, Rock Lobster, Cockle, Seaweed, and Surf Clam fisheries. Therefore any costs should not be attributed to these stocks.
22. Moving beyond the next year or two there is also the question of whether the Ministry expects the industry to provide ongoing funding for Project Protector. What will happen in situations where it can be shown the risks are very low for any particular fishery?
23. Te Ohu strongly rejects this project in its current form. We do however encourage more dialogue between the Ministry and industry on this matter to resolve the cost recovery implications.

Additional funding for research – p.33

24. Te Ohu does not support the Ministry increasing industry research costs as no detailed information is provided as to:
 - What the additional research is and for?
 - Why it is necessary?
 - Does the value and size of the fisheries concerned justify that research?
25. We do however support the Crown contribution increasing so that more information can be collected on the level of non commercial catches. For many years now Te Ohu and Industry have voiced our concerns about the lack of such information.

Transformation of Reporting and Recordkeeping Frameworks – p.33

26. Te Ohu is cautiously supportive of developing a new system that provides more efficient methods of collection, storage and dissemination leading to increased efficiency in processing information. We also support initiatives that result in reduced costs to stake holders and the Crown. We would suggest though that this project not be given a priority and that consultation takes place with stakeholders to define the reporting and data needs and the reporting and data capture systems to be implemented.

Noho ora mai

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Senior Fisheries Management Advisor

Appendix 1

Appendix 2