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PROPOSED FISHERIES SERVICES FOR THE 2006/07 YEAR

Introduction

1. The following material comprises the submission of Te Ohu Kaimoana Trustee Ltd ("Te Ohu") on the 2006/07 year Fisheries Services proposals issued under cover of your circular letter dated 31 January 2006.
2. The submission is in two sections, comprised of –
 - Section 1: General comments on the three base documents, namely –
 - The 2005/08 Statement of Intent (Sol), as appropriate to the 2006/07 year proposals;
 - The document entitled *Context Document to Assist in the Consultation on the Proposed Fisheries Services for 2006/07*; and
 - The document entitled *Proposed Fisheries Services for 2009/07, Draft for Consultation*.
 - Section 2: Comments as appropriate on the 2006/07 research proposals contained in the document *Proposed Fisheries Research Services, Draft for Consultation*.

SECTION 1: General Comments

Management Approach

3. Te Ohu is pleased that it is now the expressed intent of the Ministry ("MFish") to move forward down a path of fisheries management that is objectives based for each fish species of fisheries areas. That is a path Te Ohu and its predecessor, the Treaty of Waitangi Fisheries Commission ("the Commission") has been urging MFish to follow for several years.
4. As a comment, that "common purpose" might be easier to achieve if there were fewer emotive statements from and campaigns by NGOs, statements and campaigns which too frequently ignore available science-based evidence and serve merely to annoy and distract many other parties with an interest in our fisheries. We would suggest the NGOs' efforts could be more profitably directed to the benefit of all.

Statement of Intent

5. *Customary Fishing*: Unlike MFish – see *Sol*, p.5 – Te Ohu does not regard customary fishing claims as having been resolved. While the two sets of Kaimoana Regulations do exist, as we and our predecessor have pointed out both sets of Regulations are defective in their processes and standards relating to the appointment of kaitiaki (disputes resolution processes) and the establishment of mataitai reserves.
6. Parliament has established Te Ohu and given it responsibility to advance the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations and do so in a manner that contributes to an enduring settlement. Accordingly, Te Ohu encourages MFish to work closely with Te Ohu to find solutions to a number of the problems relating to customary non-commercial fishing.
7. *Non-Extractive Use*: Again it is pleasing to see MFish (*Sol*, p.9) acknowledging that the Fisheries Act 1996 does not allow “non-extractive use” as a “use” component of fisheries management in New Zealand. Te Ohu though is somewhat alarmed at the MFish intent to *explore options to provide for non-extractive uses* (*Sol*, p.9) despite this lack of legal authority. To do so seems a misuse of voted funding.
8. *Compliance and Enforcement*: We note the reference to “effective compliance” (*Sol*, p.9) but still await evidence of performance. The comment on p.10 *The widespread and isolated nature of much fishing activity means that rates of detection of fisheries offences are typically low* appears to far more accurately reflect the true position.
9. Similarly, the *Sol* at p.21 appears to indicate that MFish’s compliance and enforcement thinking still concentrates on those “in” the fishing system – commercial, recreational or customary - whereas there is increasing evidence that, for inshore fisheries in particular, the principal resource damage emanates from those “outside” the system – poachers, sham-amateurs and black-marketers.
10. *Roles*: We note that the *Sol* (p.10) defines various roles, including roles for tangata whenua and fisheries stakeholders. Those are interesting definitions, which appear to have been developed by bureaucrats for bureaucrats. Certainly Te Ohu staff cannot remember being consulted on the issue and reject such restricted definitions of the roles of Maori.
11. *Management Plans*: Te Ohu notes that the *Sol* at p.19 proposed the development of 2-3 *management plans in 2005/06 as a “proof of concept”* and for MFish to *seek approval for them as fisheries plans under s.11A of the Fisheries Act 1996*. Te Ohu enthusiastically endorsed this proposal but has yet to see either the proposed management plans or their s.11A approvals.
12. We also note the efforts of the Paua Industry in developing a fisheries management plan for PAU7. That work has been in progress since 2001 and is yet to be approved under relevant legislation. We note that any failure by MFish to continue their support of the plan development, including approval under s.11A, is likely to result in industry and other stakeholders losing all interest in any fisheries management plan initiatives that may be advanced by MFish in the future. This will also apply to the *proof of concept* plans that are currently being developed.

Context Document

13. *QMS Introductions*: On p.7 the inclusion of a further nearly 60 species in the QMS since 2001 is trumpeted. Regrettably, no comment is made from the “value for money”

viewpoint about these introductions. Te Ohu and its predecessor objected strenuously to many of the introductions as they did **not** give “value for money” and must again reiterate that point.

14. In our view some of the more recent QMS species introductions – deepwater crabs and sprats are classic examples – in fact detract from the value of the commercial fisheries and from the Fisheries Settlement.

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15. *Common pool resource problem:* Te Ohu has real difficulty understanding why the theoretical comments on p.9 about the *common pool resource problem* were included in the Context Document. There are so few commercially exploited species now outside the QMS as to render the insertion unnecessary and inappropriate in the New Zealand context.

16. *Input and output controls:* While Te Ohu in general agrees with the comments, we must point out that in a number of cases extant input controls work seriously against enforcing best practice in managed fisheries (p.11). Examples which come to mind are the bans on the use of air when taking rock lobster and paua commercially.¹ We would have preferred that situation to also have been acknowledged in the Context Document text.

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17. *Fisheries property rights – Context Document, p.12:* While in general Te Ohu agrees with the comments on pp.11-12, we would challenge the concept that common pool resources arguments apply under a property rights system, as is stated on p.12. We would concur though that the failure of the New Zealand system to adequately define recreational and customary rights, and the failure to fit such defined rights into the QMS, has seriously eroded the effectiveness of that system as a means of allocating access.

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18. As a result, New Zealand has no allocation system free of political or bureaucratic interference or imposed decision-making. To that extent the QMS can justifiably be termed a failure.

19. *Future development of fisheries rights – pp.12-13:* Again, while Te Ohu largely agrees with the development possibilities outlined, we do not believe these developments are feasible until after recreational and customary rights are designated in the same conditions as commercial rights.

20. *Managing for Outcomes (p.14):* Te Ohu points out that there appears to be a serious misconception in the thinking expressed under this heading, as it is stated that *the key purpose of fisheries management... is to establish constraints and incentives for fishers, which will operate to coordinate... their activities in ways that will achieve desirable social, economic and environmental outcomes.*

21. In our view and experience, while officials and politicians may be interested in such outcomes, commercial fishers very seldom can afford to be. So much effort now has to be directed at achieving even a minimal level of profit from commercial fishing that all non-essentials not directly associated with financial survival are completely ignored. The concern about the “Outcomes” approach promulgated in the document leads on to some very important questions which we feel need to be asked, and answered, before too much effort is put into outcomes work. Those questions include the following –

- Does New Zealand really want a commercial fishing industry?

¹ We note the intention of MFish to review the use of UBA in 2006. See IPP relating to *Proposals to Amend Aspects of the Amateur Fishing Regulations.*

- If so, of what size, in which waters and on what species?

22. We see this basic questioning as particularly important when –

- There is still no Oceans policy and no Oceans use priorities;
- There is still no adequate policy on marine protected areas and marine reserves;
- Government policy still aims to place at least 10% of coastal waters in marine protected areas and/or marine reserves;
- Government policy strongly supports underwater oil and gas exploration and development, despite the cost to other marine resources, including fisheries resources;
- NGOs are intent on promoting “no trawling”, “look, don’t touch” approaches to the marine environment and unscientific views on the states of this country’s fish stocks;
- There are increasing numbers of mataitai and s.186A closures which further limit inshore commercial fishing options.

23. We feel that, unless there is a clear, unequivocal expression of support for commercial fishing and equally clear statements on “what, when, where and how”, the pressure on commercial and other users will continue to distract them from the needed debates.

24. Te Ohu and its predecessor have pressed for many years for an “outcomes” – type approach to the management of New Zealand’s fisheries. We are certainly prepared to work with all sensible parties in achieving that objective but warn that the path onwards will be difficult. Too many alternate agendas exist to make the path a smooth one.

Contributing Outcome #1 (pp.31-35):

25. *Impacts:* Te Ohu urges that MFish staff are cautious in their support of those non-fishery resource users of the marine environment - such as the oil industry, mineral industry and shore land developers – whose activities cause long-term damage to fisheries habitat. In our view, the tougher the performance standards such prospective despoilers must meet, the better.

26. In this context we are particularly concerned with the tactic, frequently used by oil exploration and development interests, in which they claim their activities, are “for the national benefit” and so should take precedence over all other uses. That tactic, of course, completely ignores the fact that its proponents are undertaking the activity in the hope of making a profit, any “public good” outcome being incidental and not of concern to them. It also asserts that by virtue of the greater “public good” other uses should be excluded and displaced with no compensation offset the loss.

27. *Improve environmental performance of fisheries:* Agreed, but we reiterate, do not be misled by emotive noises from NGOs, particularly where such noises fly directly in the face of or completely ignore known science-based data.

28. *Specifying limits on fishing activity: Achieving compliance with standards:* The important thing to realize is that a balance needs to be maintained between the ideals for the environment – obviously the extreme is no fishing – and what is affordable and achievable while still allowing fishers to operate. Te Ohu considers MFish is already seriously at risk of overweighting the scales towards the “no fishing” extreme.

Contributing Outcome #2 (pp.36-42):

29. *Recognising the nature of value:* The text does suggest that MFish has now recognized, as Te Ohu has frequently pointed out, that the Fisheries Act is a use statute and consciously does not cater for non extractive “uses” of fisheries resources.

30. We are therefore more than a little concerned to see that MFish proposes further work in the next 3 years *to realize value from.....non-extractive uses. In our view such work would be beyond the legal mandate of MFish under the Fisheries Act and could expose MFish to legal challenge.*

31. *Realising best value:* Unlike MFish, we would be inclined to classify the ACE and quota trading markets as “imperfect” rather than developing. The problems with both markets are similar – incomplete information, particularly for small players; domination by a very limited number of large players; and minimal product for sale. Essentially, for some years now the only ACE product available during the year has been that issued by Te Ohu, while quota sales have largely been limited to those by fishers getting out of business.

32. As MFish has admitted elsewhere in this document though, only the commercial sector can adequately assess value to it of ACE and quota. The present trading mechanisms are the best the commercial sector have been able to achieve over the 20 years life of the QMS and most commercial fishers would be the first to admit they are not perfect.

33. Our point is that such skewed markets cannot accurately indicate the true market value of ACE and quota to the commercial sector, while there are no adequate measures of value for either the recreational or customary sectors. That being the case, we find some difficulty in understanding why MFish, which admits it has even less information, would want to waste taxpayer funds on *maintaining and developing systems that can facilitate investment and trading of access rights within the commercial sector*, particularly when all previous attempts by the sector to inform MFish on costs and values have been studiously ignored.

34. *Specifying limits;* This needs to proceed rapidly rather than being spread over the 3 years as is suggested. Without the development of standards there can be no determination of trigger points as to where action is needed. We wish to be involved in the development of standards.

35. *Achieving compliance with access standards:* It is almost a truism that fisheries compliance activity is only effective when the bulk of users comply voluntarily. For voluntary compliance to be optimal, users need to be informed of rules, accept them and acknowledge the rules are beneficial, timely and allow scope for innovation. That is not the position now in either the commercial or non-commercial sectors and until it is, little progress will be made.

36. Te Ohu considers that the work program for the next 3 years should also examine incentives as this will better motivate fishers to comply. Te Ohu would suggest that intensive efforts be made by MFish to meet these requirements, in addition to the items listed in the work programme on pp.38-39.

37. *Realising best value:* While it is due to a lack of political will, rather than perhaps any unwillingness by MFish, 20 years since the QMS commenced in October 1986 we still, in the words of this document, *have no mechanism for stakeholders to adjust levels of access to fisheries resources across sectors*. The lack of progress on this issue over such a lengthy time inevitably has meant user sectors have completely lost interest. We would

expect that the shared fisheries access and allocations framework will address this. Te Ohu is committed to strong participation on this so that settlement outcomes are not compromised.

38. We want to get a positive expression of both parts of the settlement operating in a mutually supportive manner. Te Ohu has been directed by Parliament to assist the Crown to achieve this. We are concerned that current implementation could result in one part of the settlement being at the expense of the other. We have particular concerns that the systems for the establishment of mataitai operates in an ad hoc manner without adequate consideration at a system level of their broader impact. In appendix 1 we have provided our initial thinking on a range of issues relating to the customary fishing regulations and relevant MFish process and policy standards.

Contributing Outcome #3(pp.42-46):

39. *Tangata whenua etc engagement:* Te Ohu applauds the Ministry's proposals to promote Maori and other stakeholder involvement in fisheries management. We would caution though that our experience suggests such participation will only be effective if the participants are informed, that is, know what the science means; are aware of the physical, statutory and other legislative constraints; know something of the practicalities of fishing; and so on. Without this sort of informed participants we have found all discussions on fisheries management become sterile, with only the informed party (or parties) participating. The Ministry should always work with Te Ohu given our ongoing dealings with Iwi. In part this is because of our kaitiaki role for the settlement which includes both ongoing fisheries management and governance of our subsidiaries as well as our current focus on the allocation and transfer of settlement assets to iwi.

40. Te Ohu's predecessor made intensive efforts to increase the numbers of Maori who could satisfactorily participate but for various reasons those numbers have diminished over time. Similarly, the numbers of informed people in the commercial sector have also diminished a reduction which has already had a significant effect on the industry's capacity for producing fisheries plans.

41. Te Ohu endorses the work programme proposals on pp.44-45, but suggests the initial stress be on the *building stakeholder capacity* item. With respect to governance, mandate etc, Te Ohu expects that MFish will require the same standards from other groups as those that are required of Iwi under the MFA. In that regard given the statutory role of the 57 iwi set out in the MFA and the acknowledgement of MFish that it will advance the settlement Te Ohu expects that MFish will be looking to support those recognised under MFA including work advancing customary fishing. In this regard we would expect the Ministry to inform and involve iwi including using them as the base for forums.

42. *Objectives-based management:* While the programme proposals on p.45 seem reasonable, Te Ohu would request that the one entitled *Establishing transparent links between all management interventions, services and fisheries management objectives* be preceded by a zero base exercise. We are convinced that a number of the activities now undertaken by MFish are unnecessary and detract from optimal fisheries management in this country. It may well be that some further legislative amendment will be necessary following such a zero base exercise.

Proposed Fisheries Services for 2006/07

43. Te Ohu is not really in a position to comment on the nuts and bolts of expenditure under the Item headings. As can be seen from our comments above on the Context

Document though, we feel that a shift in emphasis – without an overall increase in expenditure – is warranted in a number of cases.

44. We would also repeat our earlier warning. MFish is seriously at risk of killing the goose which lays the golden eggs with its level of costs imposed on the commercial industry.

45. Te Ohu strongly endorses the SeaFIC submission regarding Proposed Fisheries Services for 2006/07

SECTION 2: Proposed Fisheries Research Services for 2006/07

Introduction:

45. There are a large number of project proposals under a variety of headings in the Appendix to the 2006/07 Services document, relating to research proposals. In the following material Te Ohu has commented only on those projects with which it has some concerns. It can be assumed by MFish that if no comments are made on a proposal, the project is acceptable to Te Ohu.

Antarctic Projects:

46. Te Ohu is not in a position to comment on any of these proposals.

Deepwater Fisheries:

47. *ORH2006/02:* We note the caveat on undertaking a MEC assessment.

48. We are concerned though that once again there is no proposal for work on the ORH7A fishery. That fishery has been effectively closed to all activity since year 2000. In our view the Crown cannot just keep on ignoring its responsibilities to ascertain if the closure has achieved its objective of stock restoration. Six years is quite long enough to prove whether or not closure of stressed ORH fisheries is a valid management tool and the Crown needs now to ascertain if the closure in 2000 has achieved its nominated purpose.

49. *OBS2006/02:* We disagree with the cost allocation proposals (p.51) for this project. The commercial industry in general should bear **no** costs for ORH work outside the EEZ – costs involved should be directly recovered from those who fish such locations. For those ORH and OEO fishstocks where sub-area limits apply, we consider costs should be allotted to the relevant sub-areas, rather than to the stocks as a whole.

Hoki and Middle Depth Fisheries:

50. *HOK2006/02:* We are surprised that there is no objective in the 2006 proposal relating to HAK or LIN work. This has been a traditional part of the Chatham Rise survey – as noted in the project *Rationale* – and we can see little reason to discontinue the practice.

51. Te Ohu proposes that this project be extended to include an objective relating to either HAK or LIN.

52. *MID2006/04:* In our view costs of this project should be attributed only to the target fisheries involved, to avoid double-counting. This would mean omitting FRO, GSH, GSP, LDO and probably SWA stocks from the cost allocation calculations.

Inshore Finfish and Eel Fisheries:

53. *FLA2006/02*: There is no clear rationale for this project. The CELR data will be patchy at best, because of the long-term use of the FLA code, and the results could be misleading. We would suggest a better approach might be to seek the assistance of a few processing plants to analyse their records and see what data is available, plus talk to South-East Inshore Fisheries Management Co Ltd, before deciding if a full-scale project is worthwhile.

Shellfish Fisheries:

54. *SCI2006/02*: Te Ohu does not support this project at this time. In our view, until a satisfactory means of assessing SCI abundance is available the project should be delayed. The photographic survey system is recognized as being considerably less than optimal, although used for SCI 1 and 2 stocks, but that does not mean we should continue to expand the use of an expensive, sub-optimal system.

55. We would also question the practicality of tagging SCI in depths of 300-500m, as required by objective 2.

56. To us, spending \$500,000 - \$1 million on such a doubtful project in a relatively small fishery is a ridiculous proposal.

57. *SCI2006/03*: This project also has a serious feasibility question over it. Objective 3 in particular implies the need to keep SCI alive to allow adequate laboratory work. While not flatly rejecting the proposal, as we can see the value of the data sought, Te Ohu suggests further thought be given to practicality before the project is allowed to proceed.

Non-Commercial Fisheries:

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58. *AKI2006/01, REC2006/01*: These projects appear to repeat considerable parts of the activities to be undertaken. Te Ohu suggests thought be given to combining the two projects.

59. *EEL2006/04, /05*: We support this project but we would like to see the project extended to encompass customary estimates and a commitment to do this work across all eel QMAs.

60. *REC2006/07*: It is quite unclear from the proposal text if this project is supposed to be a national survey, a methodology trial, a local survey or what. Te Ohu considers the project extremely doubtful and probably unnecessary, bearing in mind that the long completed Soundings survey work covered the same ground.

61. If the project is to proceed though, it needs to be carried out on a national basis to consistent standards across regions to produce any useful data.

62. *SCA2006/03*: We support the project but would expect that if no strong correlation can be shown between abundance surveys of commercial and non commercial areas, that annual pre-season abundance surveys will be required for the non commercial beds.

63. Note that much of the material in the project *Rationale* relates to the commercial SCA fisheries and is inappropriate to include in the *Rationale* for a non-commercial fishery proposal.

Aquatic Environment Projects:

64. *PRO 2006/01-07:* This whole suite of project proposals appears to repeat, or in some cases continue, work previously done under the Conservation Services Programme (“CSP”). It is more than a little distressing to find that the substantial cost sums foisted on the industry under the CSP over the years effectively have gone for naught with no credit for that expenditure allowed to the industry.
65. In addition, many of the proposals have a substantial Public Good component which has not been recognized in the cost allocation suggestions. Many of the projects also contain a considerable component of “nice to do” research and “research for the sake of research” - elements which used to be rife in fisheries research activities in the 1980s and early 1990s but which had since been weeded out.
66. Te Ohu would be extremely concerned if Maori were now being called on to pay again for work previously done but now deemed inept or insufficient; to pay twice – under both CSP and Fisheries - for the same work; or being called on to pay for Public Good activities.

Effects of fishing on population viability:

Characterise interactions:

Other bycatch issues:

67. *PRO2006/01:* This project appears to repeat CSP-contracted work by Manly et al. In addition, there is no indication it will provide information on population effects from other causes, as well as from fishing – an essential requirement for management and cost allocation.
68. If the project, as alleged on p.192, relates to “all trawl, longline and setnet fisheries”, why do the cost recovery proposals omit all inshore trawl and setnet target species except SNA?
69. *PRO2006/02:* As well as questioning the practicality and utility of this project, we would also question the cost allocation proposals. The same costing problems apply as for PRO2006/01.
70. *PRO2006/03:* Again we question the cost allocation proposals. The project is nominally directed at Hector's dolphin, that is, the South Island species, but the cost allocation proposals include a number of stocks which fall in the Maui dolphin areas.
71. *PRO2006/04:* We feel this proposal is half-baked. By concentrating solely on fisheries bird captures, skewed answers must result unless there are also available measures of the total numbers of birds by species in the area at the times of capture. There is no

indication these wider population data are available. Similar skewing will result from concentrating on warp strike data.

72. It is noted that the cost recovery proposals include highly migratory species, middle depth trawl species and deepwater trawl species only. No inshore trawl species and no setnet species are included. Why?
73. *PRO2006/05*: Again the proposal repeats work undertaken under the CSP. Te Ohu also notes that the proposal assumes that the New Zealand fur seal population is at risk. As DoC staff has been reporting for some years now that the seal population is growing at a compound rate of more than 5% pa, that assumption is patently untrue. In our view this whole project is unnecessary.
74. The cost recovery proposals display an appalling level of ignorance of commercial fishing by the proponents. The proposals need to be reworked.
75. *PRO2006/06*: Te Ohu needs to be satisfied that this proposal entirely replaces the identical CSP project. There is certainly no case for double charging.
76. We note that the previous agreement between DoC and the industry – that costs for the CSP project would be allotted in accordance with the numbers of mammals killed in each fishery in the last known preceding year i.e. 2004/05 for the 2006/07 year cost allocations – has been ignored. Why?

Benthic effects:

77. In light of the BPA proposals that are currently being consulted on this work should be put on hold until an outcome of those decisions.
78. *BEN2006/01*: In view of the data problems inherent in CELR forms – see notes under Objective 4, p.230 – what action is being taken to scrap those forms and replace them with something useful? For this proposal though, how will the lack of data from CELR forms be overcome?
79. We note it is proposed to recover costs of this project from all species involved in bottom-impacting target fishing activities, but the setnet species are omitted from the list, some pelagic species are included but not others and even some species classed as HMS. A rethink of the stocks involved is required.
80. *BEN2006/02 and BEN2006/03*: Exactly the same cost recovery questions apply as for *BEN2006/01*.
81. *BEN2006/05*: Past experience by Te Ohu with the use by MFish of risk assessment methodologies, for example, in the assessment of species for QMS introduction, gives us absolutely no confidence that any results which might flow from this project would be fairly and reasonably applied.
82. Te Ohu accordingly rejects this project, even with Crown funding. The longer-term risks from it are just too high.

83. *BEN2006/06*: This is purely a Public Good project in the “nice to know” category. If it is to proceed, it should be Crown funded.
84. *ENV2006/04 and /07*: Surely both of these proposals fall into the Public Good category. There is no recognized methodology, so experimentation is required. There is no surety of success or that any results which might be achieved will be applicable to fisheries management in this country, yet all fishstocks are being called on to pay.
85. *GBD2006/01, HAB2006/01 and 02*: Once again, these are Public Good projects whose results, if any, are unlikely ever to apply to industry or to the management of the commercial fisheries. If they are to proceed, they should be 100% Crown funded.

Pelagic:

86. *EMA2006/01*: Te Ohu questions why this work needs to be undertaken yet again. There are already several years of consecutive data, and as it trends that are being sought, more useful results are likely if the work is done every 2 or 3 years. We do not consider objectives 1 and 3 necessary for the 2006/07 year. Objectives 2 and 4 also would be better delayed for a year or so.
87. Reject proposal.
88. *JMA2006/02 and KAH2006/01*: While these may be desirable projects, what will be the position if the results indicate the present stock boundaries are unsatisfactory, as is the likely outcome?
89. In Te Ohu’s experience, changing stock boundaries for species established in the QMS is a fraught and costly process. MFish might as well accept that, even if these projects are successfully undertaken, it is highly unlikely quota holders for the various stocks will permit any boundary changes, so why undertake the projects?
90. Reject proposals.
91. *KAH2006/0 and KIN2006/022*: There are significant non-commercial components in the KAH and KIN fisheries, which is acknowledged in the texts of these proposals but not in the cost allocation sections. The Rules proportions should be applied.
92. *PEL2006/02*: Why is this project necessary now? Surely this work formed part of the catch data used in establishing TAC/TACC levels when the various species and their stocks were introduced into the QMS? If not, the levels set were defective and should be revisited.
93. Is this in fact the real purpose of the proposal, despite the nominated objectives?
94. *SHK2006/02*: Surely objective 2 forms part of New Zealand’s international obligations and should be funded by the Crown?
95. *STN2006/01 and TAG2006/02*: As for SHK2006/02 above

Rock Lobster:

96. CRA2006/02: This project is supported, but only if the data obtained is used in assessment processes or in a stock level predictive role.

Kia ora

Craig Lawson
General Manager Policy and Operations

APPENDIX 1

GENERAL ISSUES RELATING TO MATAITAI RESERVE PROCCES AND CONSULTATION

Our assessment of mataitai reserve applications leads us to make the following general comments about the assessment and approval process for mataitai reserves. These comments relate to the need for the Ministry of Fisheries to:

- provide baseline information to applicants
- provide standardised information to interested parties
- improve consultation
- more widely notify applications.

Baseline information

Te Ohu considers the Ministry of Fisheries should do more to ensure that applicants are provided with baseline information, either before or at the time of a mataitai reserve application being lodged.

It is evident that many applicants for mataitai reserves lack awareness of what fisheries management involves, including:

- the quota management system (QMS)
- the range of fisheries management tools
- fisheries management processes
- current management initiatives
- customary regulations and associated policies
- stock assessment information (including research and development)

- the roles and responsibilities of commercial entities (CSO's)
- the implications of their application on commercial interests, and
- management plans

In our view, this lack of awareness has resulted in poorly thought-out applications that have led to unnecessary conflict between stake holders. There are numerous examples amongst the applications lodged to date where these conflicts could easily have been avoided had the applicant had knowledge in these areas. The Ministry of Fisheries must accept some responsibility for this situation.

Te Ohu encourages the Ministry of Fisheries to engage Pouhononga and Poutakawaenga to work with prospective and actual applicants as soon as enquiries about mataitai reserves are made or applications lodged. Their role should be to ensure that applicants are provided with the information referred to above, and to provide support to applicants where it is appropriate for them to do so.

Te Ohu also encourages the Ministry of Fisheries to have the above discussions within the Iwi Forums that have been established around the country. At the same time the Ministry of Fisheries should be encouraging applicants to:

- take a coordinated approach to establishing mataitai reserves, therefore avoiding the ad hoc, and often ill informed, approach that is used presently – at least in some parts of the country
- work in with their Mandated Iwi Organisations when making an application for mataitai
- consult with neighboring iwi and hapu who might have an interest in the application
- consult with Te Ohu and AFL, and
- do as much discussion with these parties as possible before lodging applications.

Improving applicant awareness and understanding in all the above areas will go some way to improving the quality of applications and communications, and reducing conflicts.

Standardizing information

The amount and quality of information that is made available to the public at the time of a mataitai reserve application being notified is inadequate. This tends to result in more unnecessary conflicts as people assume the worst about what they do not know.

Applicants should make available the following information when an application is first notified in newspapers:

- Name and contact details
- Reasons for the application
- The special relationship that the applicant has with the area proposed as a mataitai reserve
- Why the applicants have chosen the area applied for, including why they think it is a size appropriate for management
- How the applicant proposes to manage the mataitai reserve. What, if any, bylaws are anticipated
- The expected impacts on commercial and non-commercial fishers. Is it intended to stop commercial fishing in the mataitai reserve, and if so why?

The Ministry of Fisheries should also make available information to the public about:

- the Crown’s obligations to Maori regarding commercial and non-commercial fishing
- what a mataitai reserve is
- what can and cannot be done in a mataitai reserve
- the bylaw making processes including when people can expect to be consulted
- what ongoing role the Minister will have in managing fisheries within the mataitai reserve.

We note that the Ministry of Fisheries makes available most of the above information at local community meetings. In the future Te Ohu would like to see the information distributed well in advance of local community meetings so interested parties are in a better position to engage at local community meetings.

Our experience is that many people who attend local community meetings know little if anything about mataitai reserves. Unfortunately this creates a situation where people spend most of their time at the meeting trying to understand what a mataitai reserve is and don’t get around to asking many questions about the specific application.

Te Ohu considers that standardizing the information that is made available to the public when applications are notified will lessen the amount of unnecessary conflicts between stakeholders, improve the quality of consultation and communications with those having an interest in an application, and ensure the public is in a better position to participate at local community meetings.

In our view Pouhononga and Poutakawaenga should be assisting applicants to make available the information referred to above as early as possible.

Consultation

The High Court provides us with their interpretation of consultation. Its interpretation is worth noting because it provides reference points to guide our understanding of what constitutes “consultation”. This is especially important when you consider some of the issues that we discuss shortly. The High Court has stated:²

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.

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.

We expect the Ministry of Fisheries consultation processes will be consistent with the standards set out by the High Court.

² Air New Zealand Ltd v Wellington International Airport Ltd, High Court Wellington Registry, CP 403/91. McGTehan J, 6 January 1992, p8.

Notifying Te Ohu of mataitai reserve applications

We are concerned that the Ministry of Fisheries does not consult us in relation to mataitai applications, despite Te Ohu Kai Moana's statutory responsibilities regarding maori fisheries, and the fact the organisation is a substantial quota owner for all fishstocks. We recommend that the Ministry of Fisheries notify and consult us in relation to all future mataitai applications.

Notifying Mandated Iwi Organisations

Te Ohu also suggests that Mandated Iwi Organisations (MIO's) who may have an interest in an area to which a mataitai reserve has been applied for should receive notification of that application directly. MIO's and other stakeholders should not have to scan news papers to obtain information. Pouhononga should be working with iwi to ensure they receive and understand mataitai reserve applications.

Notifying the Seafood Industry Council and commercial stakeholder organisations

Te Ohu considers the Ministry of Fisheries should notify the Seafood Industry Council (SeaFIC) of all mataitai reserve applications, especially given the advocacy role that SeaFIC has in relation to commercial fisheries in New Zealand.

Other commercial stakeholder organisations (CSO's) that may have an interest in stocks potentially affected by an application should also receive notification.³

Notifying applications and calling for submissions from the local community

Regulation 18 (1) sets out the requirements for notifying mataitai reserve applications, as follows.

No later than 20 working days after receipt of any application under regulation 17, the Minister must cause notice of the application to be published at least twice, with an interval of not less than 5 working days between each publication, in a newspaper circulating in the locality of the proposed mataitai reserve

Regulation 18(2) requires notices given in accordance with Regulation 18(1) to invite written submissions from the local community.

The notice must invite written submissions to be made by the local community, and allow a minimum of 20 working days for such submissions to be made.

In our view these regulations are important but insufficient because:

- (a) Persons who have a commercial interest in the fisheries affected by a proposed mataitai reserve, and who live outside the locality of the proposed mataitai reserve, do not receive notification; and
- (b) Persons who meet the definition of a local community member, but live outside the locality of the proposed mataitai reserve, do not receive notification.

We consider the regulations need to be corrected so that "all" persons who may be affected by a mataitai reserve application receive notice. Until such changes are able to be made we suggest the Ministry of Fisheries interprets Regulations 18(1) and 18(2) as being a minimum

³ See appendix 2 for a list of all commercial stakeholder organisations.

requirement that does not prevent wider circulation of notices in national newspapers and consults as we have set out above.

Consultation with industry

Regulation 19 (5) (b) requires applicants to -

invite written submissions about the fish stocks in the area specified in the application from persons who take fish, aquatic life, or seaweed or whose ability to take fish, aquatic life or seaweed or whose ownership interest in quota may be affected by the proposed mataitai reserve.

Regulation 19 (5) requires that notices –

Must be published in a newspaper circulating in the locality of the proposed mataitai reserve.

In our view Regulations 19(5) and 19(5) (b) are flawed, because:

- persons who have a commercial interest in the fisheries affected by a proposed mataitai reserve, and who live outside the locality of the proposed mataitai reserve, do not receive notification of the application.⁴
- persons who have a commercial interest in the fisheries affected by a proposed mataitai reserve, and who do not meet the “local community” definition, are technically prevented from being able to speak at local community meetings called in accordance with Regulation 19(2).
- persons who have a commercial interest in the fisheries affected by a proposed mataitai reserve are only able to make written submissions in relation to any application.
- there is no requirement for the applicants and the Ministry to meet formally with Industry.

Mataitai reserve applications need to be more widely notified in newspapers to ensure all persons having a commercial interest in fisheries affected by an application are aware of the application and are able to input and participate in the process, including speaking at meetings called in accordance with Regulation 19(2).

In our view the Ministry of Fisheries should interpret Regulations 19(5) and 19(5)(b) as minimum requirements which do not prevent –

- the Ministry of Fisheries directly notifying all quota owners, Te Ohu, SeaFIC and relevant CSO’s
- wider distribution of mataitai reserves notices
- allow people outside the local community to input and participate in local community meeting called in accordance with Regulation 19(2), and
- formal meetings between applicants and industry.

Te Ohu recommends the Ministry of Fisheries improves the process associated with mataitai reserve applications, as follows

⁴ The majority of PAU5D quota is owned outside of Southland. For example, Te Ohu and AFL own 49% of the PAU5D TACC and are based in Wgnt.

- Ensure that applicants are provided with baseline information, preferably before a mataitai reserve application is lodged
- Standardise the information that is made available to the public at the time of a mataitai reserve application being lodged
- Notify Te Ohu of all mataitai reserve applications
- Notify all Mandated Iwi Organisations (MIO's) who may have an interest in an area to which a mataitai reserve has been applied for
- Notify the Seafood Industry Council of all mataitai reserve applications
- Notify all Commercial Stakeholder Organisations (CSO's) operating in the area of a mataitai reserve application
- Ensure public notifications for mataitai reserve are more widely distributed.

The Prevent test and related issues

Regulation 20(1)(e)(ii) requires any mataitai reserve to not –

- (a) *Prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species; or*
- (b) *Prevent persons with a commercial fishing permit for a non-quota management species taking fish, aquatic life, or seaweed under their permit within the area for which that permit has been issued.*

The Ministry of Fisheries has developed policy to provide guidance on the process and factors to consider when assessing mataitai reserve applications. That policy is contained in a document entitled “*Process standards for assessing mataitai reserve applications*”. The main thrust of that policy as it relates to commercial fishing has been to clarify the “Prevent” test and the methodology and information needs that will be used to support any decisions.

The Ministry of Fisheries policies say a commercial fisher is prevented by the proposed mataitai if that fisher cannot catch his or her ACE within the remaining QMA in “that fishing year”.⁵ Commercial fishers are also prevented when fishers incur increased costs to a level that makes their operations economically unviable when fishing in the remainder of the QMA.⁶ Te Ohu agrees with this policy but we are concerned about the way that information will be used to make/inform decisions. For example:

⁵ Process standards for assessing mataitai reserve applications. p4, paragraph 2.4.13; p5, paragraph 3.1.20; p6, paragraph 3.1.23-24; p11, paragraphs 53-55.; pp16-17, paragraphs 10-12.

⁶ *ibid.* pp5-6, paragraph 3.3.1.22

- the current policy prevents any consideration of longer term impacts that may result from the establishment of a mataitai reserve. The policy does this by unnecessarily constraining the assessment to “that fishing year” or “that fishing season”. In our view, anything that can be directly connected to the mataitai reserve at the time of the assessment, and in relation to any year, is relevant and must be considered.⁷ A mataitai is not in place for only a year - there is no subsequent re-consideration after the initial decision. A mataitai becomes a measure that only the kaitiaki can request be altered.
- it is not clear which fishing year will be taken into account for the purposes of the assessment. Is it the year the application is lodged, or the year in which the application is assessed, or the year the application is approved? The recently approved Moremore application took 4 years to gain Ministerial approval. In that case the whole period was relevant.
- the policy needs to ensure the displaced fishing can be sustainably harvested from within the remaining QMS, not just “harvested” as it is worded currently.⁸ Te Ohu is concerned at the prospect that increased pressure on the remaining QMA could lead to a subsequent reduction in the TACC.
- the policy suggests that the extent of additional costs is only relevant when it affects “most or the majority” of fishers. In our view this interpretation goes beyond what is required at Regulation 20(1) (e) (ii) by interpreting the word “persons” to be “most or the majority”. In our view “persons” simply means more than one person.
- there is no policy on how agreed catch limits are to be adjusted within a mataitai reserve. How different is the process to the current system? How will the mataitai reserve influence decisions?
- there is no policy on how to measure the ability of the remaining QMA to absorb displaced quota.⁹
- there is no policy on how new stocks entering the QMS will be dealt with. We note that some of these stocks may not be of importance to customary non-commercial fishers.

Te Ohu recommends that the Ministry of Fisheries refrain from making any decisions on mataitai reserve applications until there has been a review of the Ministry of Fisheries standards and process policies relating to mataitai reserves, including a comprehensive review of the “Prevent” test and the full range of impacts.

⁷ Ibid. p4, paragraph 2.4.13; p5, paragraph 2.4.18. An assessment cannot predetermine possible future changes to TACCs, as these changes may be due to several factors, such as species’ biological characteristics and dispersion of fishing effort.

⁸ Ibid. p 4, paragraph 2.4.13; p5, paragraph 3.1.20; p6, paragraph 3.1.23-24; p11, paragraphs 53-55.; pp16-17, paragraphs 10-12.

⁹ Ibid p6; See also p9, paragraph 48 - steps in decision path.

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