

**AMENDMENT TO THE FISHERIES (KAIMOANA  
CUSTOMARY FISHING) REGULATIONS 1998**

**Final Advice Paper**

**and**

**Summary of Recommendations**

**27 June 2008**

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# AMENDMENT TO THE FISHERIES (KAIMOANA CUSTOMARY FISHING) REGULATIONS 1998

## FINAL ADVICE

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### EXECUTIVE SUMMARY

- 1 The Ministry of Fisheries (MFish) recommends that you agree to amend the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the Kaimoana Regulations), to include fisheries resources taken from fresh water in the North and Chatham Islands.
- 2 Customary rights were altered by the provisions of the 1992 Fisheries Deed of Settlement for those fisheries resources subject to the Fisheries Act 1996 (the Fisheries Act). Customary non-commercial fishing rights can only be exercised through regulations made under section 186 of the Fisheries Act. Fisheries resources subject to the Fisheries Act include many species of fisheries resources taken in fresh water.
- 3 Section 10(c) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act) imposes an active obligation on the Minister of Fisheries (the Minister) to recommend regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance. Consistent with the 1992 Fisheries Deed of Settlement, the Minister has an obligation to develop and recommend regulations where the Minister is aware of the need for such regulations.
- 4 The Kaimoana Regulations and the Fisheries (South Island Customary Fishing) Regulations 1999 (the South Island Regulations) are designed to allow tangata whenua to manage customary non-commercial fishing of fisheries resources in their area. The South Island Regulations encompass fisheries resources taken from fresh water that are subject to the Fisheries Act. Customary fishing in fresh water by tangata whenua in the North and Chatham Islands can be conducted for the limited purposes of hui or tangi under the provisions of regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 (the Amateur Fishing Regulations). That is, tangata whenua can only practice limited aspects of customary gathering and cannot undertake management functions over aquatic life in fresh water.
- 5 MFish considers that regulations 27 and 27A of the Amateur Fishing Regulations do not adequately recognise and provide for customary food gathering to the extent required by sections 10(b) and (c) of the Settlement Act. They were intended to operate as an interim mechanism to allow for some aspects of customary non-commercial fishing rights until regulations consistent with the Settlement Act were made.
- 6 This proposal will assist in discharging the Crown's duties under section 10 of the Settlement Act. It will also assist tangata whenua to better contribute to the sustainable management of New Zealand fisheries by providing for them the ability to manage customary fishing access in fresh water and will further provide opportunities to enable the use of customary management tools.

- 7 On 7 August 2007 (S8133 refers) you agreed to MFish undertaking consultation on the proposed amendment, and to seek the views from tangata whenua. The consultation period lasted for three months, and MFish received 15 submissions. The majority of submitters support the amendment.

## THE ISSUE

- 8 Non-commercial customary rights were altered for those fisheries resources subject to the Fisheries Act 1996 (the Fisheries Act). These rights can only be exercised through regulations made under section 186 of the Fisheries Act. Fisheries resources subject to the Fisheries Act include many species taken in fresh water.
- 9 Section 10(c) of the Settlement Act imposes an active obligation on the Minister of Fisheries (the Minister) to recommend regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance. Consistent with the 1992 Fisheries Deed of Settlement, MFish considers that the Minister has an obligation to develop and recommend regulations where the Minister is aware of the need for such regulations.
- 10 The Kaimoana Regulations specifically prevent tangata whenua in the North and Chatham Islands from managing customary fishing for fresh water fisheries resources that are subject to the Fisheries Act. In accordance with, and following the passage of the Settlement Act, MFish intended to promulgate one set of customary fishing regulations for the entire country. The regulations would have allowed tangata whenua to exercise customary management of fisheries resources in their rohe, whether this was in marine or fresh water environments. South Island iwi accepted that fresh water fisheries were included in the 1992 Fisheries Deed of Settlement and the Settlement Act. However, some North Island iwi challenged the application of the Settlement Act to fresh water.
- 11 The primary focus of the High Court case taken by some North Island iwi (Te Arawa and others) was on whether the Fisheries Deed of Settlement and section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, settled all claims by Māori in respect of commercial freshwater fishing rights. Te Arawa and others also requested that the Kaimoana Regulations not apply to freshwater while the issue was before the courts. The Crown agreed to this approach.
- 12 With no judgment available from the High Court, Cabinet agreed in January 1998, that the Minister of Fisheries direct officials to proceed with the finalisation of consultation on the draft customary fishing regulations for the North Island and the Chatham Islands leaving aside the issue of whether the regulations should apply to fisheries resources taken from fresh water. The Kaimoana Regulations came into force on 1 February 1999.
- 13 In December 2000 the High Court ruled that section 9 of the Settlement Act settled all claims by Māori in respect of commercial freshwater fishing rights as well as saltwater claims. The High Court<sup>1</sup> confirmed the Crown's view that fresh water fisheries subject to the Fisheries Act were explicitly included in the 1992 Fisheries

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<sup>1</sup> Te Arawa Māori Trust Board and Te Kotahitanga o Te Arawa Trust Board v The Attorney-General High Court CP448-CO/99, CP395/93, CP27/95, M1514/94, M734/95, CP171/97, CP122-SW99.

Deed of Settlement and the Settlement Act. The High Court considered that the only fishing interests not covered by sections 9 and 10 of the Settlement Act were non-commercial fishing interests over species that are not subject to the Fisheries Act.

- 14 Since the High Court's decision, the Kaimoana Regulations have not been amended to apply to fisheries resources taken from fresh water. The exclusion of fresh water fisheries resources from these regulations means that iwi/hapū in the North and Chatham Islands are only able to practice customary gathering of fisheries resources in fresh water under regulations 27 and 27A of the Amateur Fishing Regulations.

#### *Regulations 27 and 27A of the Amateur Regulations*

- 15 Regulations 27 and 27A provide interim provisions for Maori to take fish, aquatic life and seaweed (which includes fresh water fisheries). Until such time as the customary fishing regulations (in any part of the country) are implemented by tangata whenua:
- a) regulation 27A allows customary authorisations to be issued by a Maori committee, marae committee or kaitiaki/tangata tiaki for the purposes of hui or tangi. The granting of authorisations must be made in accordance with certain requirements as set out in regulation 27A; and
  - b) regulation 27 allows the chief executive of MFish to delegate, in writing, to a Maori committee or marae committee or kaitiaki of tangata whenua, the authority to approve the taking of fish, aquatic life, or seaweed for a traditional non-commercial fishing use (excluding hui or tangi) also approved by the chief executive. The granting of such authorisations must be made in accordance with conditions approved by the chief executive of MFish.
- 16 The 1992 Fisheries Deed of Settlement provided for regulations 27 and 27A as an interim mechanism to provide for customary non-commercial fishing rights until regulations consistent with section 10 of the Settlement Act were in use by tangata whenua. However, MFish considers that regulations 27 and 27A do not adequately recognise and provide for management of customary food gathering to the extent required by sections 10(b) and (c) of the Settlement Act.

#### *Kaimoana Regulations*

- 17 If the Kaimoana Regulations are amended to extend into fresh water, tangata whenua will be able to appoint Tangata Kaitiaki, who in turn will be able to:
- i) authorise customary fishing;
  - ii) take part in planning for customary management;
  - iii) apply for the establishment of mātaihai reserves; and
  - iv) recommend mātaihai reserve by-laws;
- in the fresh water environment as well as the marine.
- 18 Tangata whenua have the option to either appoint Tangata Kaitiaki under the Kaimoana Regulations or continue with regulations 27 and 27A. Once tangata whenua have appointed Tangata Kaitiaki under the Kaimoana Regulations the provisions for regulations 27 and 27A will no longer be available in their rohe. This is

consistent with the relationship between the Kaimoana Regulations and regulations 27 and 27A for marine areas in the North and Chatham Islands.

- 19 The proposal to amend the Kaimoana Regulations will allow tangata whenua to exercise customary management of fisheries resources in the same way as is done for the marine environment in the North and Chatham Islands.

## **SUMMARY OF OPTIONS**

### ***INITIAL PROPOSAL***

- 20 The IPP proposed the following options:
- a) *Option one* – status quo (no action);
  - b) *Option two* – amend the Kaimoana Regulations so that they apply to fresh water fisheries resources subject to the Fisheries Act 1996.

### ***RECOMMENDATION***

- 21 MFish recommends that you agree to recommend the amendment of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 so that they apply to fresh water fisheries resources of the North and Chatham Islands that are subject to the Fisheries Act 1996.

## **CONSULTATION**

- 22 MFish sent a letter outlining the proposed amendment (this letter is considered as the Initial Position Paper) and a Regulatory Impact Statement (RIS) to over 600 individuals and organisations identified in MFish's Contacts Management System (CMS). The database includes contacts for various marae, hapu and iwi throughout the country. The CMS centralises all stakeholder contact details, profiling them and capturing their areas of interest to accurately place them within a particular fishery / sector. This information allowed MFish to identify key stakeholders with an interest in customary fishing. MFish also met with seven iwi regional forums to discuss the proposed amendment.
- 23 The letter and RIS outlined that the customary fishing regulations (i.e. both the Kaimoana Regulations and the South Island Regulations and the content of the two regulations and the effect of the proposed amendment).

## **SUBMISSIONS RECEIVED**

- 24 Submissions were received from:
- Cameron & Margaret Hunter
  - Eel Enhancement Co Ltd (EECo)
  - 'Hokianga Accord' per Raniera TeiTinga (Sonny) Tau
  - Mahia Maori Committee
  - Mai I nga Kuri a Whareki ki Tihirau Regional Fisheries Forum (oral submission)

- Ngati Awa Fisheries Authority
- Ngati Mutunga O Wharekauri, Chatham Islands
- Ngati Pahauwera Section 30 Representatives, Wairoa
- Pt Hereheretau B2L2 Blk Trust (Whakaki Lake Trust), Wairoa
- Putere Marae Committee, Wairoa
- Te Ika a Maui Incorporated Society (Freshwater Fisheries Forum)
- Te Kupenga Whiturauroa a Maui (Regional Kaitiaki Fisheries Forum)
- Te Runanga o Ngati Manawa
- New Zealand Seafood Industry Council (SeaFIC)
- Waikato Raupatu Trustee Company Limited (Waikato-Tainui)

## **MFISH DISCUSSION**

### **OVERVIEW**

- 25 Most submitters support the amendment to the Kaimoana Regulations, as this will better recognise and provide for the management of customary food gathering in fresh water across the North and Chatham Islands as required by the 1992 Fisheries Deed of Settlement and section 10 of the Settlement Act. Further, the amendment is consistent with the intent of the customary fishing regulations as first proposed in the mid-1990s. The customary fishing regulations drafted at that time were intended to apply nationally to all waters from the mountains to the sea, and encompass all fisheries resources subject to the Fisheries Act.
- 26 Some submitters correctly observe that the present ability for tangata whenua to authorise customary fishing activities in the fresh water environment of the North and Chatham Islands is constrained to the use of regulation 27 and 27A of the Amateur Fishing Regulations. The present use of these provisions is limited to the taking of aquatic life for the purposes of traditional hui and tangi. Further, the use of these provisions was intended as an interim measure prior to the uptake of the Kaimoana Regulations by tangata whenua.
- 27 The main issues raised by submitters fall into three broad areas:
- a) *What the Kaimoana Regulations do in practice* – understanding that the legislative basis for the management of fresh water fisheries resources is quite distinct from the rights associated with ownership and access to land;
  - b) *Alternative approaches to implementing laws for customary management practices* – a desire to explore alternative approaches to managing fresh water fisheries resources as a result of possible elements of future Treaty Settlements with the Crown;
  - c) *Implementation issues* – the likely efforts required to implement the Kaimoana Regulations in fresh water based on the experiences of tangata whenua with

their implementation in the marine environment, as well as awareness that resolving boundary issues as they relate to fresh water may be problematic.

### **WHAT THE KAIMOANA REGULATIONS DO IN PRACTICE**

- 28 The Settlement Act was passed to give effect to the settlement of claims relating to Maori fishing rights. The Settlement Act seeks to make better provision for Maori non-commercial traditional and customary fishing rights and interests; and, to make better provision for Maori participation in the management and conservation of New Zealand's fisheries. The settlement was made in the context of the vast array of species managed under fisheries legislation.
- 29 The making of the Kaimoana Regulations is part of the Crown's settlement obligation to Maori for non-commercial fishing as provided for under section 10 of the Settlement Act. These regulations recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mātaimai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade.
- 30 Fisheries legislation sets out the general rules to ensure sustainability of fisheries resources over appropriate geographic scales. In parallel, the use of the Kaimoana Regulations enables Maori to define in law their area of authority for the purposes of managing certain fishing activities. Accordingly, tangata whenua may seek to better recognise and provide for specific customary fishing practices within their rohe.
- 31 A few submitters did not distinguish between the rights associated with being a 'land-owner' from the rules governing the use of fisheries resources. One submitter considers that because a person is a private landowner any fisheries resources on that land belong to the landowner. Another submitter was not convinced that MFish had access rights to their property nor the fisheries resources within its boundaries.
- 32 The rights of a land owner do not extend to fisheries resources that may happen to occupy waterways within the land-holders property, particularly where such species are found in a wild state. Similarly, a person does not have an automatic right to undertake fishing activities as they please by virtue of being a land-owner, or where the person owns the bed of the waterway in question. Nor does a person have any right to establish mātaimai automatically just because they can demonstrate that they own private property.
- 33 The Kaimoana Regulations do not enable a person to gain access to private property to carry out fishing activities by virtue of holding an authorisation to undertake fishing for customary purposes within that area. Permission to access a person's property in order to get to a certain waterway is a separate matter. In this respect, land-owners, including tangata whenua, still exert an indirect control over the use of fisheries resources within such waters by providing permission for access.
- 34 Accordingly, people owning or having an interest in the land or bed of a waterway can still influence the level of access to water for the purpose of undertaking fishing activities. The framework and legal measures applying to managing fisheries resources are quite distinct, and extend to all fisheries waters, but there is still an

opportunity for both land owners and Tangata Kaitiaki to work together to consider the best use of fisheries resources in certain areas.

- 35 Further, it is important to also recognise that section 199 and 200 of the Fisheries Act provides the power for a fishery officer to enter or pass across any land in the course of enforcement and administration of the Fisheries Act. Such access may in fact be quite beneficial to a land owner where fisheries resources are being taken illegally from waters on their property.

### **ALTERNATIVE APPROACHES TO IMPLEMENTING LAWS FOR CUSTOMARY MANAGEMENT PRACTICES**

- 36 One submitter does not support the amendment on the basis that it is currently negotiating a Treaty Settlement that seeks to include consideration of the best way of managing fresh water fisheries resources within their area. They have indicated a desire to see all species of fisheries resources encompassed within one overarching framework, including those currently managed outside of the Fisheries Act such as whitebait. Whitebait was managed under fisheries legislation up until 1991, before being transferred to the administration of the Department of Conservation under the Conservation Act 1987. This amendment is only applicable to fisheries resources that are subject to the Fisheries Act.
- 37 The submitter also suggests that they wish to see their own regulations developed as a result of negotiations that will encompass elements of use other than the customary non-commercial fishery. MFish notes that the statutory framework for the administration of commercial fisheries encompasses a range of tools that can be applied to attain the objectives for various interests in a stock or area. The framework for generic controls for commercial fisheries is efficiently applied without reference to a particular local area.
- 38 An industry submitter also suggests that the Kaimoana Regulations could be improved if the powers for these regulations extended across all fisheries resources, including whitebait and sports fish. MFish acknowledges that better encompassing the full range of fisheries resources within the powers of both sets of customary regulations would have its advantages, but this is not able to be resolved as a result of the current proposal to amend the Kaimoana Regulations. Both the Department of Conservation and MFish have jurisdiction over fresh water fisheries management albeit for different and, in some situations, conflicting purposes. This issue is currently being addressed through a jurisdictional review between the two departments.
- 39 A further concern expressed by the submitter involved in Treaty negotiations is whether the provisions of the current regulations are flexible enough to ensure that Tangata Kaitiaki can be appointed by a process suitable to the iwi in question.
- 40 MFish believes that the basic elements of Tangata Kaitiaki appointments in the amended Kaimoana Regulations (regulations 5-10) will be sufficiently broad to enable tangata whenua to notify their Tangata Kaitiaki nominations, to resolve any disputes arising from the notifications, and for the Minister to confirm any subsequent appointments.

- 41 These steps in the process allow for the reasonable expectation that the Tangata Kaitiaki nominations made are appropriate, that the dispute resolution process is fair to affected parties, and that the Minister can confirm Tangata Kaitiaki appointments with some confidence that these steps have been satisfactorily taken. Consequently, MFish does not agree with the view that the proposed amendment should not be advanced on this basis.
- 42 The extension of the Kaimoana Regulations to fresh water does not preclude the establishment of separate regulations under section 186 of the Fisheries Act to meet the needs of specific iwi as part of an individual Treaty settlement.
- 43 More generally, MFish observes that the application of a generic set of customary fishing regulations across the country have enabled a common understanding of the nature and extent of those rights for tangata whenua. Extending the Kaimoana Regulations across the fresh water environment in the North and Chatham Islands, consistent with what is already in place in the South Island, and the original intent of having a national approach, will achieve this outcome. This still provides for tangata whenua to implement the customary fishing regulations in the way that best expresses their kaitiakitanga within their respective rohe. The consistent nature of the regulatory framework provides a suitable degree of administrative efficiency and understanding for tangata whenua and the Crown.

## **IMPLEMENTATION ISSUES**

### **IMPROVEMENTS TO ASPECTS OF CUSTOMARY REGULATIONS**

- 44 Submissions from industry bodies are concerned that elements of the Kaimoana Regulations will be used by some tangata whenua without realisation of the full range of other fisheries management tools available within fisheries legislation that might better address underlying concerns. Similarly, there is a concern that tools like mātaítai might be applied in an ad hoc way without sufficient consideration to the cumulative impacts on other fishery interests, or the fishery itself.
- 45 MFish considers that these concerns are able to be overcome where Commercial Stakeholder Organisations, other industry groups and other stakeholders (which include Maori) take some further initiative to engage with tangata whenua. MFish, through Kahui Pou Hononga (Customary Relationship Unit), Pou Takawaenga (Extension Services) and Inshore Fisheries Teams, continue to work with iwi and hapū to make them aware of their customary fishing rights. Although MFish assist in the development of customary fishing applications, it is up to iwi and hapū to decide what customary management tools suit them and which ones they will implement.
- 46 Such a task in itself will be made easier with the delineation of a rohe for the purposes of implementing the Kaimoana Regulations, and the identification of Tangata Kaitiaki for the area in question. Similarly, tangata whenua may be quite open to hearing the views of industry members in evaluating the best way to address issues over a number of geographic scales. MFish's Treaty Strategy consultation is looking at planning processes to encourage iwi to integrate their customary and commercial objectives.
- 47 The Minister of Fisheries makes the decision on whether cumulative or individual impacts of mātaítai will prevent quota fishers or unreasonably prevent recreational fishers and non-quota fishers taking catch. The Minister must turn down the mātaítai

application if the effect is to prevent fishers from taking catch in the Quota Management Area or Fisheries Management Area.

- 48 The Kaimoana Regulations is an expression of the Crown's statutory obligation to Maori through the Settlement Act. There is an active duty on the Crown to act in a manner that is consistent with the provisions of that Act. One of which is to recommend regulations to recognise and provide for customary food gathering and the special relationship between tangata whenua and places of customary food gathering importance. Any concerns raised by industry can and are being addressed through wider MFish engagement process, policy development or the provision of the Kaimoana Regulations.

### **ADVICE AND ASSISTANCE**

- 49 Some submitters observe that the Crown should compensate for the resources required and spent to undertake the administrative functions of being a Tangata Kaitiaki under the Kaimoana Regulations. MFish considers that tangata whenua may choose to implement the Kaimoana Regulations in their rohe in order to secure the benefits of their use. Similarly, the Tangata Kaitiaki role can be shared among an appropriate number of tangata whenua so that the administrative tasks are not overly burdensome.
- 50 MFish acknowledges that tangata whenua need to make a reasonable resource commitment to the application of the Kaimoana Regulations for their rohe, both in terms of establishment, and subsequent administration. This is currently occurring in the marine environment and if the Kaimoana Regulations are extended into fresh water the same process will need to be followed. However, a reasonable commitment of resources is to be expected as certain responsibilities accompany the exercise of such rights.
- 51 MFish undertakes a variety of activities that are of assistance to tangata whenua in better facilitating their use of fisheries resources for customary fishing purposes. An example in terms of applying the customary fishing regulations is MFish's coverage of the direct costs associated with advertising of proposed Tangata Kaitiaki and the respective rohe moana.
- 52 More generally, MFish provides technical information, provides for the input and participation of Tangata Kaitiaki and tangata whenua in fisheries management processes, and the development and/or maintenance of relationships between tangata whenua, other interests, and agencies of the Crown. Such activities serve to support the Tangata Kaitiaki in their role of administering the use of the customary fishing regulations.
- 53 Furthermore, MFish has developed, in conjunction with the Seafood Industry Training Organisation, a unit standard ('Kai One') that Tangata Kaitiaki can complete towards a national certificate in customary fisheries management. This standard has been developed as part of New Zealand's national qualifications framework. The programme is designed to help Tangata Kaitiaki understand the legal requirements of their role. Another unit standard ('Kai Two') is being developed to further assist Tangata Kaitiaki in their appreciation of broader fisheries management principles and tools. This initiative further illustrates the ways in which MFish can provide effective

and efficient support for tangata whenua when considering use of the customary fishing regulations to minimise the costs of exercising their rights.

- 54 MFish also employs staff who regularly engage with tangata whenua to discuss the statutory tools available to manage fisheries, and more specifically, provide information on the requirements of the legislation for the exercise of customary fishing rights. Most of this activity falls within the Fisheries Operations and Compliance Groups, although Policy and Science Group staff do provide their expertise as appropriate. There has been an increasingly significant commitment from MFish to this activity in recent years as part of the Deed of Settlement Implementation Programme. The resources available at present can be effectively and efficiently used in both marine and fresh water environments. Some tangata whenua groups who made submissions querying how MFish could assist them in the implementation of customary regulations may not have made use of such technical resources to date.
- 55 MFish observes that, since the early 2000s, Tangata Tiaki in the South Island have defined the areas over which the South Island Regulations apply in terms of the spectrum of fisheries resources in both fresh water and marine environments. MFish acknowledges that resolving some of these issues within the fresh water environment in the North Island may be more complex. However, the experiences in the marine environment to date should serve to inform tangata whenua about some of the generic issues to be worked through within their own or adjacent hapu and iwi as the Kaimoana Regulations are applied to fresh water areas of the North and Chatham Islands. Further, tangata whenua can assist themselves through recognition of the best and most effective use of the technical assistance that MFish can offer.

### ***DECISIONS AFFECTING COMMERCIAL USE OF FISHERIES RESOURCES***

- 56 A few submitters suggest that compensation should be made available where access to fisheries resources is affected. Section 308 of the Fisheries Act provides that the Crown shall not be liable for compensation for a wide range of regulatory measures. In the case of the establishment of mātaimai, where commercial access is affected, regulation 23(1)(e)(i) of the Kaimoana Regulations recognises the rights of quota share holders and limits the extent to which the establishment of a mātaimai reserve can affect these rights.
- 57 However, it is also relevant to note that regulation 23(1)(e) provides a high threshold for that effect to be of consequence. Commercial rights are exercised at the level of the Quota Management Area (QMA). Commercial fishers can access their Individual Transferable Quota take anywhere in that area. The provision of regulation 23(1)(e) requires the Minister to decline a mātaimai reserve if fishers are prevented from taking their quota in the QMA. Also no mātaimai can be approved if it prevents commercial fishing occurring. It is unlikely the Kaimoana Regulations would have impacts that would require compensation.
- 58 Commercial fishers may still take the relevant stocks of interest from the remainder of the broader administrative area for that species. The inability to take such species from the particular area the subject of a proposed mātaimai does not necessarily prevent that type of fishing from occurring at the broader administrative area. The criteria contained in the Kaimoana Regulations pertaining to the effects on

commercial fishers themselves in practice determine the nature and extent of mātaihai that can be established with a Quota or Fisheries Management Area.

- 59 An industry submitter expressed disappointment in there having been no apparent progress in implementing the findings and conclusions of the 2006 working group (representatives from MFish, SeaFIC and Te Ohu Kai Moana). At your direction, the working group held a series of meetings through 2006 and 2007 to discuss the interpretation of the South Island Regulations and the Kaimoana Regulations. The working group reached agreement on interpretation of these regulations in most areas. On 28 September 2007 MFish briefed you on these issues (S8208 refers).
- 60 MFish is encouraging prospective applicants to consult with their mandatory iwi authorities and known affected commercial fishers prior to finalising applications and to take account of expected effects on their own commercial fishing rights. MFish is also obliged to follow the requirements set out in the customary fishing regulations, while willing to consider further consultation with the affected commercial fishers as and when necessary to ensure advice papers include the best available information on fishing operations within the proposed mātaihai reserves.
- 61 MFish considers that concerns about local access can be mitigated through assessment of the appropriate mix of fisheries management controls that might address underlying issues at a larger geographic scale. On-going engagement between fishery interests and MFish may help determine the nature of the issues to be addressed, and the best tools available to resolve them.

## **ASSESSMENT OF MANAGEMENT OPTIONS**

### ***OPTION 1 – STATUS QUO***

#### ***IMPACT***

- 62 The current situation whereby the Kaimoana Regulations do not extend to fisheries resources taken in fresh water has limited the expression of customary rights secured under the Settlement Act. The Crown is obliged to make regulations for customary fishing purposes under section 10 of the Settlement Act. Tangata whenua have had to exercise those rights under the limited circumstances provided by regulation 27 and 27A of the Amateur Fishing Regulations – i.e. traditional hui and tangi. This disadvantages tangata whenua in the North and Chatham Islands, when the South Island Regulations provide an ability to use fisheries resources for a wider range of customary purposes in the South Island aquatic environment.
- 63 MFish is increasingly aware that the provisions for customary fishing under regulations 27 and 27A of the Amateur Fishing Regulations are not adequately recognising the aspirations of tangata whenua to manage customary fishing activities within their respective areas. Further, there are a variety of tools within the Kaimoana Regulations that would help meet this outcome. Regulation 27 and 27A will continue in force until such time that tangata whenua elect to implement the Kaimoana Regulations over their geographic area of responsibility. Once tangata whenua have implemented the Kaimoana Regulations they will not be able to use regulations 27 and 27A. There are no plans to formally monitor or evaluate the on-going use of the Amateur Fishing Regulations other than maintenance of contacts between MFish staff and hapu and iwi involved in administering the use of these authorisations.

## COSTS

- 64 Retaining the status quo will disappoint several hapu and iwi who wish to look to a future where they can be actively involved in the use and management of fresh water fisheries resources within their area. There is no longer any reason of consequence to delay the extension of the Kaimoana Regulations to the fresh water environment of the North and Chatham Islands.
- 65 The on-going use of the existing mechanisms for authorising customary usage for traditional hui and tangi is not effectively monitored, or integrated at a broader stock level for the purposes of ensuring sustainability. This situation is counter-productive as the cumulative impacts of fishing at a local scale need to be better considered at a stock level, which in turn will better inform local management practices by tangata whenua. In addition, the existing mechanisms are less likely to enhance the sharing of information about fisheries management practices employed by Tangata Kaitiaki.
- 66 There are relatively few species found in fresh water that are of particular customary significance for the purpose of harvest. Accordingly, the risks of maintaining the status quo are proportional to the species of interest from a customary harvest perspective. In addition, the key species of interest are also harvested for recreational and commercial fishing purposes (e.g. eels). There are few controls on recreational harvest for the wider range of fresh water species, such that a customary authorisation would then be required.
- 67 If the status quo is to be retained, then MFish will need to ensure that it continues to work with tangata whenua to ensure that customary harvest is undertaken within the constraints of regulation 27 and 27A of the Amateur Fishing Regulations. This may be facilitated through the use of iwi regional forums that have been established to provide for dialogue between MFish and tangata whenua.
- 68 The current management arrangements for customary fishing practices do not adequately capture the nature and extent of the fisheries resources taken for these purposes, in order that Tangata Kaitiaki and tangata whenua, and MFish more generally, can use this information to guide management decisions at a variety of levels. At a local and regional level, Tangata Kaitiaki may need to rely on their own communications about fisheries resource use and appropriate strategies to sustain fisheries resources for such purposes.
- 69 Further, the biological range of most fisheries resources is likely to extend over a wider area than the area of responsibility for the Tangata Kaitiaki. Consequently, Tangata Kaitiaki will need to consider the local impact on their authorisation activities on both other users within the local area, as well as those from further afield. Consideration could include the impact on, or of, different management strategies that may be in place in adjacent areas. MFish can assist in facilitating communications between Tangata Kaitiaki to achieve a greater awareness of how the fisheries resource in question is being used, but this activity is relatively inefficient and costly and of generally short term benefit. Such efforts may need to be repeated with any adjustments in the Tangata Kaitiaki for the local area.

## **BENEFITS**

- 70 Retaining the status quo does not meet the statutory obligation to provide ability for tangata whenua to use fresh water fisheries resources for customary Maori purposes in accordance with the 1992 Fisheries Deed of Settlement and the Settlement Act.
- 71 MFish considers there is a need to focus on making constructive and positive changes that will better support the common aspirations of all fishery interests. The present arrangements for the limited expression of customary management practices in the North and Chatham Islands do not achieve the aspirations of tangata whenua to better manage customary fishing in fresh water.

## **OPTION 2 – AMENDING THE KAIMOANA REGULATIONS**

### **IMPACT**

- 72 A regulatory amendment that extends the coverage of the Kaimoana Regulations into the fresh waters of the North and Chatham Islands will provide the national consistency that was first sought following the passage of the Settlement Act. The customary fishing regulations will then apply to all waters throughout New Zealand. Tangata whenua of the North and Chatham Islands can then move towards the use of these regulations rather than using the existing defence provisions provided under the Amateur Fishing Regulations which do not provide for customary management.
- 73 Various hapu and iwi of the North and Chatham Islands wishing to take fisheries resources for customary purposes under amended Kaimoana Regulations will be able to utilise the full range of aquatic species administered under the Fisheries Act, other than a few that are presently administered under other legislation (e.g. Conservation Act 1987). Similarly, a common tool for the authorisation of customary fishing will then be available for those species that occupy both marine and fresh water environments at either different life-stages, or seasonally, or where a species distribution naturally occupies both aquatic environments in general. This will enable a more holistic and single approach to the management of customary fishing activity across the salinity gradient that one or more species may occupy to varying degrees. With the amendment being put in place the opportunities for customary management by tangata whenua will be further enhanced.
- 74 Tangata whenua will be able to develop management plans that are consistent with their own tikanga (ways) and implement these plans in a way that supports their customary aspirations.
- 75 Tangata whenua will be able to define their rohe moana through to their inland boundaries, as has been accomplished in the South Island. This will be a more comprehensive representation of the area of interest to the hapu or iwi in terms of the administration of customary fishing activities. Furthermore, this will facilitate the use of either fresh water or marine fisheries resources, at the discretion of tangata whenua, rather than the constraints of the regulatory framework over the last decade.
- 76 However, the lack of application of the Kaimoana Regulations over fresh water in the North and Chatham Islands is unlikely to have significantly affected the decisions of a Tangata Kaitiaki to the extent that he or she may have authorised harvesting activities for a species found in marine waters rather than fresh waters. This reflects the fact

that Tangata Kaitiaki and their associated rohe moana have yet to be gazetted over most marine areas of the North and Chatham Islands. Considerable progress has been made in some areas though, and implementation of the Kaimoana Regulations continues to be a priority for tangata whenua.

- 77 Most of the submissions recognise the value in amending the Kaimoana Regulations as proposed, and the level of awareness of the effect of the proposed amendment is considered reasonably high. Several hapu and iwi representatives are familiar with the current application of the Kaimoana Regulations to fisheries resources in the marine environment. The amendment in itself will not automatically change the way that customary access is provided, but will allow tangata whenua to move to the post-Settlement framework when they wish.
- 78 MFish will continue to inform tangata whenua about the use of customary fishing regulations and their operational application. Maintaining this dialogue will assist in ensuring that the customary use of fisheries resources is undertaken appropriately, and within the statutory framework provided for this purpose, regardless of whether fishing is conducted in marine or fresh water environments.
- 79 Amending the Kaimoana Regulations as proposed will not have a bearing on the use of the Te Arawa Lakes (Fisheries) Regulations 2006 once implemented. These latter regulations stem from the Te Arawa Lakes Settlement Act 2006, and reflect the specific recognition of fishing rights held by Te Arawa. Once a management plan has been approved in accordance with those regulations, any customary and recreational fishing activities within the Te Arawa Lakes area for included species administered under fisheries legislation can only be done in accordance with the authority provided by the provisions of the regulations.
- 80 Similarly, the proposed amendment does not affect the application of the Lake Taupo Fishery Regulations 2004, as they relate to the fishing of most indigenous species by people of Tuwharetoa descent. It would however affect non-indigenous species of fisheries resources administered under fisheries legislation (e.g. catfish, goldfish, or sailfin molly). Beyond this, Tuwharetoa has the ability to generally control access to the beds and waters of Lake Taupo and its tributaries, given recognition of their interests in the lake. In practice, Tuwharetoa has not exercised any right to restrict access to all people at this time.
- 81 The Foreshore and Seabed Act 2004 provides an ability to make customary rights orders that can apply to river mouths and within a limited distance up-river. Such orders may only impinge on the taking of the few species of fisheries resources that are not currently administered under fisheries legislation. No such customary rights orders are in effect.
- 82 A number of other iwi groups from the North Island have negotiated Treaty settlements with the Crown that identify the importance of particular species found in the fresh water environment (e.g. some Taranaki tribes and Ngati Awa), or their settlement area encompasses a geographic area that contains fresh water fisheries resources. The proposed amendment does not conflict with recognition of those values, and provides greater ability for tangata whenua to have a greater say in how such fisheries resources are used.

- 83 The Crown is presently in negotiations with Waikato-Tainui over the Waikato River. Waikato-Tainui have aspirations towards customary management practices within their rohe, and a holistic view of fisheries management. The proposed amendment is consistent with this general direction. The negotiations may provide the reassurance that other initiatives undertaken beyond the proposed amendment would further support the aims of Waikato-Tainui. These could include better coordination of a wider range of fisheries management issues between management agencies.

## **COSTS**

- 84 There are few initial costs. There is the normal government process in developing the regulatory amendment which is minor. Should the amendment be promulgated, MFish will update its information material relating to customary fishing authorisations, and inform tangata whenua of the change through hui and other iwi regional forums, in addition to informing submitters directly.
- 85 MFish has dedicated staff involved with administration of the customary fishing regulations and the associated procedures used in reaching decisions on their application. Resource levels for these functions have increased in recent years. MFish is able to absorb the work commitment associated with the use of the Kaimoana Regulations in the fresh water environment of the North and Chatham Islands. Any additional workload would not significantly differ from that expected if various hapu and iwi all elected to pursue Tangata Kaitiaki nominations and rohe moana notifications along the coast at a similar time. In reality, some hapu and iwi will be better placed than others to elect to use the amended regulations. Some tangata whenua representatives will be focusing on other priorities outside of the fisheries portfolio. Accordingly, MFish does not envisage that it will require additional resources as the workload will be on-going over a sustained period rather than increased interest over a shorter time period.

## **BENEFITS**

- 86 The benefits of amending the Kaimoana Regulations extend beyond the most obvious advantage for tangata whenua seeking to access fresh water fisheries resources of the North and Chatham Islands as an expression of their customary fishing practices.
- 87 The amendment will achieve the intent of the original initiative of the mid-1990s to deliver on the Crown's obligation to Maori in the Settlement Act. In broad terms, that obligation serves to recognise and provide for customary management practices when taking fisheries resources from all fisheries waters of New Zealand.
- 88 If the amendment is implemented, tangata whenua throughout the country will have a consistent regulatory framework for customary fishing purposes from the mountains to the sea, as they have had in the South Island since 1999. The only exception to this will be for those areas where separate Treaty Settlement processes have provided comparable outcomes (e.g. Te Arawa Lakes), or where some species are primarily managed under other legislation (i.e. sports fish, whitebait, noxious or unwanted organisms) for the present time.

89 The amendment further enhances the ability of tangata whenua and MFish to provide for input and participation in fisheries management discussions affecting a range of fishery interests.

## STATUTORY CONSIDERATIONS

90 Section 10(c) of the Settlement Act imparts an active obligation on the Minister to recommend regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance. Consistent with the 1992 Fisheries Deed of Settlement, MFish considers that the Minister has an obligation to develop and recommend regulations where the Minister is aware of the need for such regulations.

91 The Kaimoana Regulations specifically prevent tangata whenua in the North and Chatham Islands from managing customary fishing of fisheries resources taken in fresh water. Under the Settlement Act, MFish intended to promulgate one set of customary fishing regulations for the entire country. The regulations would allow tangata whenua to exercise customary management of all fisheries resources in their rohe. However, several North Island iwi challenged the application of the Settlement Act to fresh water in the High Court, though South Island iwi accepted that fresh water fisheries were included in the Fisheries Deed of Settlement and the Settlement Act.

92 Accordingly, the government made two sets of regulations, the Kaimoana Regulations for the North Island and Chatham Islands, and the South Island Regulations for the South Island. Subsequently, in December 2000, the High Court<sup>2</sup> confirmed the Crown's view that the Settlement Act encompasses customary fishing rights in respect of fresh water fisheries resources managed under the Fisheries Act. The only fishing interests not covered by the Settlement Act were non-commercial fishing interests over species that are not subject to fisheries legislation.

93 Since the High Court's decision, the Kaimoana Regulations have not been amended to apply to fisheries resources taken from fresh water. The exclusion of the taking of fisheries resources from fresh water in these regulations means that iwi/hapū in the North and Chatham Islands are only able to practice customary gathering of aquatic life in fresh water under regulations 27 and 27A of the Amateur Fishing Regulations.

94 Regulations 27 and 27A provide a defence for the taking of fish for traditional hui or tangi. MFish considers that the ability of tangata whenua to exercise customary management is not provided for in regulations 27 and 27A nor does it recognise the special relationship between tangata whenua and those places which are of customary food gathering importance – as required by section 10(b) and (c) of the Settlement Act.

95 The proposal to amend the Kaimoana Regulations will allow tangata whenua in the North and Chatham Islands to exercise customary management of fisheries resources in the same way as it is for the marine environment in these areas, and more generally as provided across all aquatic environments in South Island fisheries waters.

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<sup>2</sup> Te Arawa Māori Trust Board and Te Kotahitanga o Te Arawa Trust Board v The Attorney-General High Court CP448-CO/99, CP395/93, CP27/95, M1514/94, M734/95, CP171/97, CP122-SW99.

## RECOMMENDATION

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96 MFish recommends that you:

- a) **Agree** to amend the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the Kaimoana Regulations), to include fisheries resources taken from fresh water in the North and Chatham Islands.

**Volume 2**  
**Final Advice Paper**  
**Summary of Submissions**

**27 June 2008**

## SUMMARY OF SUBMISSIONS

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1 MFish received submissions from:

- Cameron & Margaret Hunter
- Eel Enhancement Co Ltd (EECo)
- ‘Hokianga Accord’ per Raniera TeiTinga (Sonny) Tau
- Mahia Maori Committee
- Mai I nga Kuri a Wharei ki Tihirau Regional Fisheries Forum (oral submission)
- Ngati Awa Fisheries Authority
- Ngati Mutunga O Wharekauri, Chatham Islands
- Ngati Pahauwera Section 30 Representatives, via Wairoa
- Pt Hereheretau B2L2 Blk Trust (Whakaki Lake Trust), via Wairoa
- Putere Marae, via Wairoa
- Te Ika a Maui Incorporated Society, Freshwater Fisheries Forum (extract from Hi Ika<sup>3</sup>)
- Te Kupenga Whiturauroa a Maui (Regional Kaitiaki Fisheries Forum)
- Te Runanga o Ngati Manawa
- New Zealand Seafood Industry Council (SeaFIC)
- Waikato Raupatu Trustee Company Limited (Waikato-Tainui)

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<sup>3</sup> Page 9 Hi Ika (Ministry of Fisheries Customary Management publication) December 2007

## ***Support for proposed amendment***

- 2 Te Runanga o Ngati Manawa supports the proposed amendment. Ngati Manawa is a central North Island tribe whose interests in fisheries are purely in fresh water. Ngati Manawa requested the amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (Kaimoana Regulations) on 27 February 2007.
- 3 Putere Marae supports the proposed amendment provided that the amendment does not interfere with current and future ownership of Lake Rotonui a Ha. The submission outlined the governance role of the trustees of Putere Marae and the role of the Tangata Kaitiaki and considered that the two roles and responsibilities would not in any way work contrary to each other. Putere Marae also states that the Tangata Kaitiaki should be accountable to the Trustees of the marae. Putere Marae provided descriptions of the area that the amended regulations would apply to, what life forms are in those areas (mainly Lake Rotonui a Ha), and the importance of protecting tuna as a customary food source.
- 4 At their forum meeting on 3 September 2007 Mai i nga Kuri a Wharei ki Tihirau Regional Fisheries Forum<sup>4</sup> verbally supported the proposed amendment provided that it has no impact on the iwi's fisheries rights under the Conservation Act.
- 5 Te Ika a Maui Incorporated Society (Freshwater Fisheries Forum) supported the proposed amendment at their forum meeting on 11 September 2007.
- 6 Ngati Mutunga o Wharekauri Iwi Trust supports the proposed amendment to the Kaimoana Regulations on the understanding that the amendment will allow the Iwi Trust to fully participate in the management of customary fisheries including fresh water fisheries.
- 7 Mahia Maori Committee supports the amendment to include fresh water as part of their management of fisheries resources under the Kaimoana Regulations. The Committee considers that this amendment will assist them in their future planning processes for the hapu and Tangata Kaitiaki.
- 8 Te Kupenga Whitirauroa a Maui Regional Kaitiaki Fisheries Forum would support the proposed amendment if the recommendations raised in its submission were addressed.
- 9 The New Zealand Seafood Industry Council (SeaFIC) supports the proposed amendment as it considers it desirable to have consistent management measures to provide for customary fishing throughout New Zealand. SeaFIC states that regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 were supposed to be an interim measure to provide for customary fishing and industry supports phasing these interim measures out as soon as possible. SeaFIC also considers that the current provisions under regulations 27 and 27A do not require reporting and it is important for sustainability to have all fisheries sectors reporting.

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<sup>4</sup> This forum involves 10 iwi and hapu groups – Ngaiterangi, Te Arawa, Ngati Ranginui, Ngati Pukenga, Ngati Awa, Whakatohea, Ngaitai, Te Whanau a Maruhaeremuri, Waitaha and Ngati Rangitihī – and covers the area from Bowentown in the western Bay of Plenty through to Whangaparaoa and Tihirau in the east.

- 10 The Hokianga Accord supports the proposed amendment noting that there is a requirement in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act) for the Minister to make regulations to recognise and provide for customary food gathering. The Hokianga Accord also noted that the regulations will only apply to species subject to the Fisheries Act 1996 and that it did not include fresh water species governed by other legislation such as the Conservation Act.
- 11 The Hokianga Accord outlined that the proposed amendment would increase the awareness of the natural environment surrounding fresh water systems and considered this a positive step to encouraging more sustainable use of adjacent land. The proposed amendment would also provide for wider use rather than what is currently available under regulations 27 and 27A which specify that kaimoana taken using a customary authorisation is to be consumed at a special function.
- 12 The submission also stated that developing management plans for fresh waterways presents an opportunity for local communities, both tangata whenua and non-Maori, to work constructively together. The Hokianga Accord considers that by registering the management plans with government and other agencies reinforces the need to consider what is being fed into fresh water systems.
- 13 The Hokianga Accord also states that, by amending the Kaimoana Regulations, Tangata Kaitiaki would be able to issue customary authorisations to relocate (which for the relocation of for example, elvers, requires a special permit), repopulate or replant surrounding fresh water areas. The amendment would also provide local management committees the ability to make bylaws that apply equally to all individuals and the ability to prohibit commercial fishing.
- 14 Eel Enhancement Co Ltd (EECo) would accept the proposed amendment on the proviso that certain processes and improvements to the implementation of the Kaimoana Regulations were given effect (discussed further in next section). EECo are open to and supportive of initiatives to optimise the eel fishery in the North Island and remains confident that the commercial fishery sector is an important component of and contributor to the fishery and fishery resources. EECo notes the actual and significant interest of customary fishers in fisheries resource management. EECo agrees that regulation 27 is imperfect as it is ad hoc, contains no reporting requirements and it would be better to have consistent regulations across New Zealand.
- 15 EECo supports the amendment provided that MFish at all times recognises:
  - (a) the importance of the existing allocation to and contribution from the industry;
  - (b) that the existing commercial entitlements also include an important customary settlement share; and
  - (c) the importance of fostering a fisheries partnership approach, rather than a re-allocative approach, in implementing any new initiatives.

### ***Oppose the proposed amendment***

- 16 Waikato Raupatu Trustee Company Limited (Waikato-Tainui) opposes the proposed amendment on the grounds that it may prejudice the outcome of their settlement

negotiations. Waikato-Tainui is currently in negotiations with the Crown over their historical Treaty of Waitangi claims in regards to the Waikato River.

- 17 Waikato-Tainui is seeking the development of its own fresh water regulations as a redress component of the River claim. Waikato-Tainui consider that its own regulations would apply from the Waikato River mouth to Lake Karapiro, and will be more integrated than the current customary fishing regulations as it should include species currently not administered by the Fisheries Act 1996. Waikato-Tainui also considers that the regulations will not be restricted to the customary non-commercial fishery and that the appointment process of Tangata Kaitiaki will be moulded and developed to suit Waikato-Tainui. Waikato-Tainui anticipates that the Waikato-Tainui Deed of Settlement will be finalised by end of June 2008.
- 18 Pt Hereheretau B2L2 Blk Trust (Whakaki Lake Trust) considers that, as owners of Lake Whakaki, MFish has no access rights to enter the property and therefore the current regulations do not apply. The Whakaki Trust considers that the proposed amendment interferes or contravenes the Maori Land Court order that empowered the Trustees of the Whakaki Trust to carry out their duty of governance over the property and its resources within the boundaries.
- 19 The submission states that the Whakaki Lake Trust has managed the resources inclusive of waterways, habitat, fish and bird life under management policies they have developed without the assistance from any government agencies. The Trust considers that they have been proactive in the protection, enhancement and sustainability of the lake and its fresh water fisheries and have no wish to adopt any policies that are not compatible with their own management strategies.
- 20 The submission further states that since only non-commercial fishing can take place on the lake, no commercial, recreational or customary quota allocations are applicable. The Trust considers that any fishing done on the lake is 100% customary of which there is no provision for in the Ministry of Fisheries' regulations or strategies.

## ***Other issues***

- 21 SeaFIC considers that the following outcomes would be expected from the proper implementation of the customary regulations:
  - (a) mātaihai reserve applications made in full knowledge of the full extent of Maori rights (customary and commercial) and the range of tools available (including measures developed directly through negotiations with commercial fisheries rights holders);
  - (b) the location and extent of mātaihai reserves planned on a regional basis (Quota Management Areas or Fisheries Management Area);
  - (c) mātaihai reserve applications made after consultation with industry interests (e.g. Commercial Stakeholder Organisations and Mandated Iwi Organisations);
  - (d) future management measures for mātaihai reserves set out with as much certainty as possible early in the planning/application process; and

- (e) statutory tests are interpreted correctly and are applied in a rigorous and defensible manner.
- 22 SeaFIC has reservations / concerns regarding the MFish process in implementing mātaimai reserves and issues of legal interpretation. SeaFIC is disappointed that no progress has been made on implementing the findings and conclusions of a working group, including the preparation of a revised policy and process standards and a guide for applicants.
- 23 SeaFIC would like to see the MFish processes around mātaimai and implementation of the customary regulations improved prior to the extension of the Kaimoana Regulations to fresh water fisheries.
- 24 EECO considers that the Kaimoana Regulations are flawed and that priority should be given to improve certain aspects of the regulations. EECO states that the following aspects should be given consideration by MFish:
- (a) mātaimai applications are made in full knowledge of the extent of Maori fishing rights (customary and commercial) and the range of tools available for exercising those rights, including measures developed directly through negotiation with commercial fisheries rights holders;
  - (b) the location and extent of mātaimai are rationally planned on a regional (Quota Management Area or Fisheries Management Area) basis;
  - (c) mātaimai applications are made following consultation with industry interests, i.e. Commercial Stakeholder Organisations and Mandated Iwi Organisations;
  - (d) future management measures in mātaimai reserves are set out with as much certainty as possible as early as possible in the planning and application process;
  - (e) all statutory tests are interpreted correctly and applied in a rigorous and defensible manner; and
  - (f) MFish to take a non-partisan approach to administering the regulations e.g. not to facilitate mātaimai establishment since it must adjudicate on any balancing process between commercial and customary interests.
- 25 EECO also considers that by primarily focusing on customary and enhancement outcomes, the commercial operators will be excluded. EECO requests that MFish should clarify how its National Fisheries Outcomes will be assessed and measured to allow commercial fishers to have investment confidence, participate, consider and contribute to alternative plans. EECO requests that MFish should fully consider ways to facilitate enhancement of waterways as part of the implementation of new customary regulations.
- 26 EECO states that there should be an extension of the types of species covered by the customary fishing regulations. The on-going exclusion of sports fish and whitebait is considered a “cop out” and inconsistent with the marine system where bylaws can be made across all forms of fishing. EECO also requests that the fresh water iwi boundaries will need to be made clearer.

- 27 The Hokianga Accord considers that MFish will need to devote more resources to ensure that the requirement to have particular regard to kaitiakitanga is given full effect. The Hokianga Accord also has the following reservations about the current customary management tools:
- (a) lack of MFish support given to Tangata Kaitiaki implementing customary management tools;
  - (b) the process for approving mātaihai reserves could be misconstrued as tangata whenua conceding authority over the fresh water environment in exchange for guardianship over certain areas;
  - (c) there is a risk that mātaihai reserves will displace commercial fishing for eels increasing the impacts in other areas;
  - (d) there is a lack of clarity in the boundary between MFish and Department of Conservation (DOC) roles, especially the role of:
    - i. DOC, once a mātaihai reserve is approved;
    - ii. MFish, in establishing and maintaining customary area management plans; and,
    - iii. MFish, in assisting tangata whenua to develop links with other agencies.
- 28 Te Kupenga Whitirauoa a Maui (Te Kupenga) considers that, if the Kaimoana Regulations are amended, MFish will need to look at compensating Tangata Kaitiaki for their time, phone calls and other activities associated with administering customary authorisations.
- 29 Te Kupenga also suggests that prior to appointing Tangata Kaitiaki and setting boundaries, discussions between the affected marae and hapu will need to take place. If this process is not followed then there will be a considerable amount of time wasted at the dispute resolution process stage. Te Kupenga would like to see MFish financing and providing facilitators for these hui. Te Kupenga would also like to see MFish providing on-going advice and assistance to marae and hapu over these matters.
- 30 Te Kupenga states that the management of a fresh water fishery in one river could be the responsibility of many marae and hapu. Te Kupenga considers that the development of a river/lake management strategy or plan will guide the Tangata Kaitiaki, marae and hapu activities around the management of their river or lake. This plan would require all participants to collectively develop objectives, management measures, implementation plan and monitoring to manage the fishery. Te Kupenga considers that this approach would be preferred as they recognise that fresh water fisheries are mobile and have highly migratory life cycles. Te Kupenga would prefer that MFish provide funding to the iwi regional forums to undertake a customary tools strategy in the fresh water environment.
- 31 As with other submissions, Te Kupenga notes the customary regulations would only apply to species defined in the Fisheries Act 1996. Therefore whitebait will be excluded and clarity over what species can be fished under the regulations will be required. Te Kupenga recommends that training for Tangata Kaitiaki regarding fresh water species be included in current Tangata Kaitiaki training.

- 32 Te Kupenga recommends that MFish increase its liaison with other government agencies, local and territorial authorities and non-government organisations who manage the environment, fresh water habitats and other fresh water species.
- 33 Te Kupenga notes that extending the Kaimoana Regulations into fresh water will place extra demands on MFish. Areas of concern are:
- (a) current levels of compliance in marine waters are not optimal and additional funding for more fisheries officers and honorary fisheries officers will be required;
  - (b) training packages (Kai One) will need further development and refinement to assist Tangata Kaitiaki to understand fresh water fisheries management; and
  - (c) additional information, services and assistance from the MFish Fisheries Operations group will be required.
- 34 Te Kupenga considers that the recent developments in fresh water fisheries management have required iwi regional forums to delay other customary fisheries issues. Te Kupenga offers in their submission to be a pilot study to investigate incorporating fresh water issues into existing forum business and to investigate establishing a new forum to focus on fresh water issues. Te Kupenga recommends that MFish should fund this pilot study and also provide more funding for iwi regional forums to incorporate fresh water issues. The Hokianga Accord supports the recommendations of Te Kupenga.
- 35 Te Runanga o Ngati Awa's submission outlines the provisions in the Fisheries Protocol issued to them as redress to their historical Treaty settlement. Ngati Awa states that their relationship with fresh water fisheries has developed over generations and that Te Runanga o Ngati Awa work with their people to give effect to rangatiratanga, kaitiakitanga and manaakitanga and many other inherited duties that have accumulated over time. Te Runanga o Ngati Awa considers that their existing use and access rights should be recognised and provided for as they impact on future management of the fresh water fishery.
- 36 Cameron and Margaret Hunter's submission was unclear whether it was in support or it opposed the proposed amendment. The submission provides a range of suggestions about steps that could be taken if the amendment is to be proceeded with. The submission details the Hunter's views of international law, what kaitiakitanga means, and interpretation of customary authority, private land and poaching, and a perspective on the process of obtaining a mātaihai. The Hunters' consider that Ngai Tahu is in a strong position to offer advice on the merits of fresh water regulations, even though in the submitters' view, Ngai Tahu is yet to promulgate them.
- 37 The Hunters' state that in order to properly administer the Kaimoana Regulations Tangata Kaitiaki should be reimbursed for their time and resources. The submission goes on to state that the Ministry should take time to correct some of the problems faced implementing the Kaimoana Regulations including the language used for some terms. The Hunters' outline various other methods of assisting with the implementation of Kaimoana Regulations.