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## **CONSULTATION ON THE PROPOSED NEW INITIATIVES FOR 2004/05**

### **1. INTRODUCTION**

This is the response by the Commission to your consultation invitation of 10 March 2004 (“the document”) on new initiatives by the Ministry proposed for funding for the 2004/05 year.

Please note that the response reflects only the views of the Commission as the consultative time provided did not allow time for the Commission to circulate the proposals to Iwi and seek their views. That lack of time is particularly serious in the light of Initiative No.1 – Implementation of MFish Treaty Strategy. We can only trust that the Ministry itself has discharged its consultative responsibility under section 12 (1)(b) of the Fisheries Act 1996 direct with all Iwi. Not to have done so would be a considerable dereliction of the Ministry’s duties under that section.

### **2. GENERAL COMMENTS**

#### ***True Consultation or Veneer?***

The Commission is intrigued that the Ministry is seeking consultation with interested parties at this late stage when the document clearly states in paragraph 1 that the new initiative bids have already been submitted for the 2004 Budget process.

The obvious inference is that any input from interested parties now is a waste of time and that we are dealing with a *fait accompli* – that any decisionmaking on an initiative proceeding or otherwise will be made in the Budget context, no matter what consulted parties’ responses might say. We trust that this implication is not accurate. This response has been prepared on the assumption that a true consultative process is actually involved, but we certainly have our doubts.

#### ***Priority of Initiatives***

The Commission strongly disagrees with the priority accorded certain of the initiatives proposed for the 2004/05 year and of those deferred and noted in Attachment 2 to the document. In particular, we consider the deferred item *Poaching and blackmarket enforcement* as being of considerably higher priority than any of the 2004/05 year Initiatives 2-5.

The Commission would strongly support the removal of those Initiatives, and their replacement by the *Poaching and blackmarket enforcement* item, on two grounds -

- By MFish's own admission, poaching and blackmarket activities are seriously depleting natural stocks of, particularly, rock lobster and paua right around the coast; and
- The loss to legitimate operators and the Nation from poaching and blackmarket activities is significant. Illegal harvest levels for rock lobster have been estimated by MFish at well over 400mt greenweight per annum and for paua at over 900mt greenweight per annum. At conservative market values of \$30/kg and \$50/kg respectively, the national loss is well over \$50 million.

Considerable sums are already being spent by the industry on enhancing natural paua stocks. That expenditure almost certainly will be wasted unless poaching activity is brought under control. In addition, both paua and rock lobster stocks are being imperilled by illegal activities such as the taking of undersized animals of both species and of berried female rock lobsters. Again, unless such illegal activities are brought under control, all MFish will continue to do is preside over the demise of those iconic fisheries, so failing in its duties under the Fisheries Act.

Recovery of even a proportion of the losses for only these two species through effective enforcement would produce far greater returns than any spending on marginal items like recreational fisheries, Health and Safety for Fisheries Officers, Corporate Infrastructure and the like.

#### ***Ability to Pay***

You will be aware that the seafood industry has been hard hit by the rapid escalation in the \$NZ against the \$US. You will also be aware that the bulk of international trade in seafoods is conducted in US currency which accentuates the problem. The industry cannot cope with additional, non-productive costs imposed by the Crown. If, as it alleges, the Ministry's aim is to have a viable commercial fishing industry as part of the fisheries management scene the Ministry should be seeking to minimise its charges to industry for the 2004/05 year, not increase them.

### **3. 2004/05 YEAR INITIATIVES FOR CONSULTATION**

The following comments on the Initiatives proposed by the Ministry for the 2004/05 year are made subject to the view expressed above, that *Poaching and blackmarket enforcement* should take precedence over Initiatives 2-5.

#### **Initiative 1: Implementation of MFish Treaty Strategy**

The Commission inevitably must support this proposal in principle, as we have been pressing the Ministry for a lengthy time to progress this matter. Our wholehearted support cannot be given though as we have yet to see the completed Strategy.

Despite our basic support, there are a number of omissions from the Strategy drafts we have seen which need to be covered in the final version, namely –

1. *Maori Commercial Fishing* - No mention is made in the proposal about development of Maori capacity to participate in commercial fisheries processes. The Commission has pointed out on many occasions that the Crown's Treaty responsibilities are not bounded by or constrained to customary fisheries issues. Those responsibilities clearly extend also to commercial fisheries and their management. The proposal needs to be expanded accordingly.

2. *Lack of resources* – We are aware that funding for Treaty strategy development and other Maori customary fisheries programmes, such as the Customary Fisheries Research initiative, were included in the Ministry's funding for the current financial year. We are also aware that Ministry staff previously recruited for such initiatives, who had built relationships with tangata whenua, have since largely left MFish and that recruitment of replacements has been 'on hold' for at least 12 months. We note too that Attachment 2 to the document lists *Customary fisheries research* as a deferred subject for the 2004/05 year.

This suggests that funding designated for customary fisheries initiatives for the 2003/04 year may well have been applied to other purposes. That implication, and the removal of *Customary fisheries research* from the 2004/05 Initiatives list, places considerable doubt on the present proposal and gives little certainty that, even if the proposal is successful, effective action in the non-commercial (let alone the commercial) area will eventuate.

3. *Who to engage?* - On at least six occasions in the past 4-5 years Commission staff have supplied various Ministry officers with the Commission's list of approved Iwi, which list includes representative organisation names; their postal addresses, telephone and facsimile numbers; frequently a contact name and often an email address. In doing so we may even have breached the Privacy Act.

The Ministry's comment in dot point 6 of the document is both untrue and unacceptable.

4. *Lack of staff understanding* – Such an admission by a Crown agency is almost incomprehensible. In recent years the Commission has made a number of submissions on this subject which could have been circulated to Ministry staff to assist their understanding. Similarly, the Waitangi Tribunal has also commented at length on the Crown's Treaty obligations in various reports. Those Reports too could have been distributed to MFish staff. There is just no excuse for such a lack of understanding.

5. *Customary Fishing Regulations* – The problems with the Customary Fishing Regulations have been the subject of discussion between the Commission and the Ministry for a lengthy period now. The Commission's offer to assist in correcting the textual difficulties has also been accepted.

The Ministry itself though has yet to address two basic issues which mitigate against a wider adoption by Iwi of even the present defective Regulations. Those are –

- Failure to enforce the existing quite strict provisions of Regulation 27 of the Fisheries (Amateur Fishing) Regulations, including in the East Coast area; and

- Through that enforcement, and through liaison with the Iwi organisations noted under 3 above, clarify the incentives needed to encourage adoption of the Regulations.

We do endorse the comment in the last sentence of page 2 of the document attachment though. That has to be a common objective.

### **Initiative 2: Health and Safety - Compliance Field Communications**

The Commission finds this proposal somewhat unusual. Vehicles equipped with radios have been a part of Fisheries Officers' equipment for many years, as have the base stations servicing that mobile equipment. We would have expected any systems and equipment used, including any base stations, to have been upgraded periodically as part of the normal Ministry capital re-equipment programme to ensure staff employed are effective.

To see an upgrade programme being promoted as a New Initiative on Health and Safety grounds and then designated as being 100% recoverable from the industry has to be an abuse of the Cost Recovery principles.

From the publicity the Ministry has generated in recent times it appears that any Health and Safety issues have been largely generated from poachers, black marketers and non-commercial fisher sources. Accordingly, while the Commission does not object to the upgrade *per se* if it is required, we do seriously challenge that the initiative costs can be attributed wholly to the commercial fishing industry.

In our view the costs are directly attributable to the Crown as a employment cost. At very best only a small proportion can be attributed to the commercial fishery in terms of section 262 (b) of the Act and the cost recovery Rules.

### **Initiative 3: Improved Information on Marine Recreational Fishing**

As Commission representatives (and all other participants in the stock assessment processes) have been pressing for years for greater accuracy in recreational catch data to be available to those processes, the Commission must support this proposal in principle.

However, our support is not unconditional. The proposal effectively is an admission that the large sums spent by the Crown on "required service" research on recreational fisheries, including the national and regional surveys conducted over the last 10 years, were wasted. Even the Ministry now refuses to use the 1996 and 2001 national recreational survey results as valid assessments in their own rights in stock assessments and Ministerial advice – an average of the two results has to be used.

Policy formation for recreational fishing and amateur marine fisheries commenced with the release of the *Soundings* document in August 2000. Other discussion and consultation documents have followed but **no** clear policy has ever been announced at Ministerial or Crown Agency level. Even for MFish 3½ years in an inordinately long time. Availability of the long-overdue policies in these areas might have endeared this proposal to the Commission more.

Probably the only saving grace from our viewpoint is that the Initiative cost falls to the Crown and the taxpayer, as do the wastages on research to date. We cannot be convinced, however, that the latest Initiative is a good use of taxpayer funding and support it only to the extent of improved stock assessment data as a possible outcome.

#### **Initiative 4: Serious Offences Unit**

No evidence has been adduced of any substantive increase in fraud which would justify either the priority accorded by the Ministry to this proposal or the manpower sought under it. In fact there is little evidence that the SOU in any way justifies its cost. In the Commission's view the sums already dedicated to the SOU's operations and those involved in this Initiative would be far better spent on addressing rampant abuse of recreational fishing limits and poaching and blackmarketing abuses.

While paragraph 1 of the Schedule to the Fisheries (Cost Recovery) Rules 2001 Order directs that 100% of the costs of *monitoring and offence detection of commercial fishing* activities are to be borne by the commercial industry, 100% of SOU costs cannot be attributable to the industry as the SOU also becomes involved in non-commercial fishing offences.

As such, while the Commission is currently forced to accept the commercial portion of the cost allocation proposal associated with the Initiative, we are strongly of the view that the Rules' Schedule is both inaccurate and unfair to commercial operators and requires amendment. Establishment of a Review Group to consider the Rules and their Schedule has already been delayed since before Christmas 2003 and is well overdue. That review must proceed as a matter of urgency to overcome this, and other, unfairnesses.

We are also of the view that it should be Ministry policy to seek to recover, as part of any costs award under normal judicial process, the costs incurred in detecting and successfully prosecuting an offence including relevant SOU costs. Such a policy would ease the burden on both the Crown and the industry.

The Commission does not support this Initiative.

#### **Initiative 5: Corporate Infrastructure Projects**

We note that the Ministry has proposed costs associated with this Initiative be recovered across all outputs, that is, be only partly recovered from the industry. Based on the data in the Ministry's 2003/08 Statement of Intent though, the industry share of the Initiative cost could reach 45%, an uncomfortable feeling.

We note too that the Initiative is promoted, in part, to *meet the provisions contained in the formal agreement between the Ministry and the commercial seafood industry for dealing with under and over recovery of cost recovery levies*. We sincerely trust that is not the case as there was clear agreement between the parties that the areas of problem all fell into areas which were not subject to cost recovery.

It is also clear that the *external communications* improvements sought are primarily directed at non-commercial fisheries areas. Most commercial operators, including the Commission, already suffer from a surfeit of poorly directed MFish communications and are not looking for more.

Overall the proposals appear to fall largely into the “efficiency and effectiveness” category which would seem to place them rather more to the Crown’s account than elsewhere.

Initiative not supported until it is much more clearly defined and the associated costs by sector explained.

Kia ora

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for Chief Executive Officer