

**APPROVED STATEMENT OF
PROCEDURE FOR
THE RESOLUTION OF DISPUTES**

**UNDER PART VII OF THE
FISHERIES ACT 1996**

June 1998

INTRODUCTION

Part VII of the Fisheries Act 1996 contains provisions which relate to the resolution of disputes about the effects that one fishing activity might have on the fishing activities of others. Section 115 of the Fisheries Act 1996 imposes a requirement on the Minister of Fisheries to publicly notify the availability of an approved statement of procedure for the resolution of such disputes. This document sets out the statement of procedure, which was developed in accordance with section 115 of the Act, and approved by the Minister of Fisheries on 25 June 1998.

CONTENTS OF THE APPROVED STATEMENT OF PROCEDURE

Section 116 of the Fisheries Act 1996 requires that the procedure for the resolution of disputes shall provide for:

- a) a process by which any interested party may identify a dispute to which this part (Part VII) of the Act applies; and
- b) a process and guidelines to determine whether the dispute relates to a matter that significantly affects the fishing activities of one or more persons; and
- c) input and participation by tangata whenua having a non-commercial interest in the fisheries resources concerned, having particular regard to Kaitiakitanga; and
- d) opportunities for parties to negotiate, take collective action (if appropriate) and resolve disputes; and
- e) the outcome of any resolution process to be forwarded to the Minister.

The Minister's approved statement of procedure for the resolution of disputes consists of four steps, with each step in turn involving specific actions to be undertaken by the parties to the dispute to give effect to the matters in (a) to (e) above. The format for the procedure involves provision of an introduction to each of the steps, followed by a description of the actions associated with them and a brief explanation of what they are intended to achieve.

Step 1: Production and Distribution of Dispute Summary Report

A dispute resolution procedure must provide a process allowing people who have a fishing interest provided for or authorised under the Act, to identify what in their view is a conflict situation, and to bring this to the attention of the other party(s) whose fishing activities are perceived to be responsible for this situation.

1.1 Compilation of dispute summary

The party identifying the dispute compiles a summary of the dispute describing:

- the nature of the perceived conflict situation;
- the nature of the fishing activities of the parties involved;
- efforts which have been made to date to resolve the particular situation prior to it reaching a point where the parties appear to be in dispute.

1.2 Dispute summary referred to other party(s) and tangata whenua

The dispute summary should be referred in the first instance to those fishers perceived to be responsible for effects causing the apparent conflict. This should be accompanied by an invitation to meet and discuss the situation which is causing concern, if such a meeting has not already been held. The summary should also be referred to iwi organisations in the locality of the dispute, with a request that these organisations in turn forward it on to the tangata whenua whose interests are most closely associated with the particular dispute. Tangata whenua who receive the summary would be asked to make contact with the parties to the dispute and would also be invited to attend their initial meeting.

1.3 Initial meeting convened by the party which identified the dispute

Invitations to attend this meeting would be extended to those believed to be responsible for the adverse effects; and to tangata whenua who have indicated they have an interest in the dispute. The parties may also wish to extend an invitation to the Ministry of Fisheries. The purpose of the meeting would be to discuss the dispute summary, and in so doing, to assess whether there is in fact a conflict situation. If the parties and tangata whenua conclude that it does appear that there may be a conflict between fishing activities, the meeting should also determine whether there is any prospect of finding a way to resolve their disagreements and how this might be done.

Other matters to be covered in this initial discussion include:

- identification of the key issues associated with the dispute;
- other parties who may have an interest in its resolution; and
- any fisheries management proposals under consideration which recognise and may potentially resolve the dispute.

The parties and tangata whenua would also need to determine the means by which they will compile the initial assessment report, which is the next step in the process.

Step 2: Production and Distribution of Initial Assessment Report

Where, in step 1 above, the parties and tangata whenua decide that the dispute may need to be resolved by following this procedure, an initial assessment will be needed as to whether the dispute is about the effects of fishing, and does not involve issues associated with ensuring sustainability or with the effects of fishing authorised under Part IX of the Act which relates to taiapure and customary fishing.

An assessment must also be made as to whether the dispute relates to a matter which *significantly* affects the fishing activities of one or more persons.

2.1 Assessment as to whether Part VII appears applicable

This assessment will seek to establish whether the issues in dispute are such that they may need to be dealt with under this dispute resolution procedure because:

- there are clearly issues which are in contention between the parties; and/or
- the issues appear not to be associated with ensuring sustainability or the effects of fishing authorised under Part IX of the Act; and/or
- the dispute is about the effects of fishing activities on the fishing interests of another person or persons.

There will be situations where it is not apparent at this initial stage whether issues in dispute are solely associated with sustainability considerations, with fishing authorised under Part IX, or with the effects of fishing. If there is doubt, or if it is apparent that there is a mix of issues associated with more than one part of the Act, the parties to the dispute and tangata whenua may decide to proceed to deal with the dispute in accordance with the statement of procedure.

This is on the basis that as further information is obtained and issues are considered in more detail, it will be possible to confirm whether they should be dealt with by way of sustainability, Part VII—Dispute Resolution, or Part IX—Taiapure Local Fisheries and Customary Fishing processes.

2.2 Assessment of interaction between fishing activities

Before determining the significance of a dispute, some confirmation should be sought as to the likelihood that the fishing activity under dispute has the potential to affect the fishing activities of the other party(s). This requires an assessment of the fishing type, areas fished, the intensity both of fishing activity claimed to be affected and of the activity claimed to be responsible for effects, and of catch/effort rates of these activities.

2.3 Assessment as to whether effects may be significant

The dispute summary and discussion at the initial meeting of the parties and tangata whenua will provide an initial indication as to the magnitude of the dispute. This should be expressed in terms of the number of fishers/parties/stakeholders potentially affected in some way, and the quantities of catches and/or size of the area associated with the dispute.

In assessing whether effects which are in dispute may be significant, the parties should also have regard to the following factors:

- the intensity of the effect;
- the duration of the effect;
- whether the effect is reversible;
- catch/effort measures within the locality of the dispute and comparable localities elsewhere;
- capability of affected party to retain rights of access/expectations of catch by fishing elsewhere;
- likely outcomes if dispute left unresolved;
- stakeholder views, including the parties to the dispute and members of any Fisheries Liaison or Advisory Committee whose region includes the locality of a dispute, on the relative significance of effects.

Other matters that might also be relevant include:

- whether the fishing activities are authorised by the Fisheries Act;
- the extent to which illegal fishing activities may be responsible for the effects in dispute;
- cultural differences in values and perceptions;
- how and when the effects could be verified or quantified;
- gaps in available information, and its interpretation;
- whether some or all of the effects are due to activities outside the scope of the Fisheries Act (eg: land-based discharges).

2.4 Initial assessment report provided to Minister of Fisheries and other parties who may have an interest in the dispute

The initial assessment report should end with an agreed conclusion arrived at by the parties and tangata whenua (if they have chosen to assist in its compilation), as to whether the dispute should proceed to be dealt with by way of the negotiation process which is the next stage in this procedure.

The assessment should be forwarded to the Minister of Fisheries so that he/she is aware that the dispute procedure has been invoked. This is because the Minister may ultimately be required to make a determination as to how the dispute should be resolved.

The assessment should also be forwarded to other parties who may have an interest in the dispute so that they have an opportunity to confirm their interest and to participate in the negotiation process.

Step 3: Negotiation Process

If the parties to a dispute determine in the conclusion to the initial assessment that the issues are such that further efforts should be made to achieve a resolution, the next step is to do so by following a process of their choosing which is appropriate in terms of both the significance of the dispute and the circumstances of the parties.

3.1 Meeting of the parties to the dispute to determine how to negotiate, take collective action, and seek to achieve a resolution

A meeting involving all of the parties who have been identified as potentially having an interest in the dispute, including tangata whenua, should be held to decide which kind of process best suits the particular dispute and their circumstances. This decision is likely to be influenced by the assessment of the scale and significance of a dispute.

Process options include—conferences, advisory groups, problem-solving meetings, consultation, direct negotiation, assisted dialogue, consensual process, facilitated workshop, mediation.

This is also an appropriate time for parties to the dispute to seek information from the Ministry on the statutory context in which the dispute exists, and on both the statutory and non-statutory measures which could be available as the means to resolve the dispute.

Information requirements which will be relevant to the issues needing to be resolved should also be identified at this meeting. Where some such information is held by the Ministry, this can be made available on request by the parties.

3.2 Options provided for tangata whenua with non-commercial interests who are parties to the dispute to participate in ways which accommodate their preferred approach to dispute resolution

Tangata whenua who have registered their interest in a dispute may be prepared to participate in the process which has been agreed on to resolve the dispute in the same way as the other parties.

However, in some circumstances, they may prefer that alternative arrangements are made for their participation, involving the following options:

- receiving all information and written communications;
- being invited to comment on all material direct to other parties, or any independent facilitator;
- private consultation with other parties, or any independent facilitator;
- being invited to meetings;
- one or more representatives attending these meetings;
- the opportunity to speak at these meetings;
- the opportunity to provide written reports for meetings;
- having a hui or other forum at a marae with representatives of other parties, to hear and/or discuss issues;
- the opportunity to write a section of any report arising from a group process resolving the dispute.

3.3 Parties negotiate, take collective action, and attempt to achieve resolution using the process they have selected

How this may be done will depend on the nature of the process selected.

One aspect which the parties may need to determine before commencing negotiations is who might assume responsibility for facilitating this process. This is in terms of arranging and running meetings, keeping a record of discussions, and generally overseeing and supporting efforts by the parties to achieve a resolution of the dispute. The parties may also wish to determine a desirable time frame for completing negotiations, or to review whether worthwhile progress is being made.

Step 4: Preparation of Outcome Report

As part of the dispute resolution procedure, the Minister of Fisheries must be advised of the outcome of the process. This applies particularly where the parties fail to reach a voluntary agreement at the conclusion of their discussions, and where implementing some of the measures recommended in the outcome may require action by MFish and Ministerial approval.

The Minister also needs to be made aware of the outcome if there has been no agreement reached. This relates to the provisions of section 117 which apply to the appointment of a Fisheries Dispute Commissioner on the Minister's own motion, or at the request of any party to the dispute.

4.1 Report on outcome of dispute resolution process compiled

Parties should jointly compile a report on the outcome of the process.

This should provide:

- a description of the nature of the dispute, including how Part VII applies;
- a description of the parties involved;
- an outline of the process which has been followed;
- recommendations on actions which should be taken to resolve the dispute;
- if recommendations include voluntary arrangements, an agreement signed by representatives of the parties;
- an indication of areas of both agreement and disagreement, if no full resolution has been achieved.

Recommended actions may include putting forward proposals for consideration in the review of sustainability controls, and/or processes associated with Part IX—Taiapure Local Fisheries and Customary Fishing. Actions may also include matters covered by statutes other than the Fisheries Act, which would fall to other agencies to consider. These will need to be brought to the attention of the relevant agencies.

4.2 Outcome report forwarded to Minister of Fisheries

The party(s) responsible for compiling the outcome report should forward it to the Minister of Fisheries.