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MFISH TREATY STRATEGY PRE-CONSULTATION REPORT

Purpose

1 The Treaty Strategy Project has now reached a stage where the overall direction and approach has been endorsed by those MFish business group managers for whom the project has the greatest implications (Fisheries Management and Compliance). Other business group managers have also been briefed and an opportunity provided for their input. The Treaty Strategy project team is now seeking confirmation of the approach from the Executive Team, before the Ministry starts to engage more widely with MFish staff and externally with Maori.

2 This paper provides an overview of the work carried out to date by the Treaty Strategy project team and outlines the project team's thinking on how the Ministry could better deliver on its obligations under the fisheries settlement and the principles of the Treaty. The Treaty Strategy project has progressed through a number of stages, each of which is expanded on in the body of the paper. The paper is structured as follows:

- Obligations to Maori – an overview of MFish obligations arising from the fisheries settlement and the principles of the Treaty
- An assessment of the extent to which MFish is currently meeting its obligations to Maori
- Development of a Vision for the MFish Treaty Strategy
- Meeting our objectives – strategies and key initiatives to realise the Treaty Strategy Vision
- An annex outlining key dates for the finalisation of the Treaty Strategy and the approach for consultation on the strategy with Maori and stakeholders.

3 Work has been carried out by the Treaty Strategy project core group with valuable peer review from the Treaty Strategy reference group. To date there has been limited discussion with other MFish staff about the project, and background scoping information about the project provided to Maori. The final determination of the MFish Treaty Strategy will be dependent on the outcome of discussions with iwi and hapu externally, and further work internally.

Obligations to Maori

4 The first component of the Treaty Strategy Project involved analysis of the Crown's obligations arising from the fisheries settlement. These obligations are contained in or derive from the Maori Fisheries Act 1989, the 1992 Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1996 and the principles of the Treaty of Waitangi. Legal opinions and court judgements have also informed the analysis of those obligations.

5 The following documents have been developed outlining the Ministry of Fisheries' obligations arising from the fisheries settlement:

- A summary of the obligations arising from the Settlement Act in respect of commercial fishing rights
- A summary of the obligations arising from the Settlement Act in respect of non-commercial fishing rights including annexes covering relevant sections of the 1992 Deed of Settlement and the principles of the Treaty
- An overview paper covering all the obligations on the Ministry arising from the fisheries settlement, including obligations contained in the Maori Fisheries Act 1989 and the Fisheries Act 1996.

6 These documents focus on high level obligations rather than the more prescriptive and process oriented obligations contained in the customary fishing regulations, taiapure provisions and s186A and B provisions. An understanding of the high level obligations has underpinned the development of the Vision for the Ministry's Treaty Strategy. A comprehensive breakdown of the more prescriptive obligations contained in customary regulations and other provisions is being developed for the purpose of explicitly linking them to the services and functions required to deliver on those obligations.

Assessment of extent to which MFish is currently meeting obligations to Maori

7 The Ministry has complied with many of its explicit obligations under the Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 – for example, the obligation to make customary fishing regulations, and the obligation to transfer 20 percent of quota to TOKM on the introduction of new species into the quota management system. The Ministry has also applied the principles of the Treaty and the settlement to the way it manages non-QMS species prior to their introduction to the QMS. The Compliance group within the Ministry does an excellent job of protecting the fisheries taonga, not just on behalf of Maori but for all New Zealanders.

8 Where the Ministry's approach to meeting its obligations is found wanting is in the area of its overall relationship with Maori. Each of the outcomes or objectives contained within the Treaty Strategy Vision involves a greater or lesser degree of interaction with Maori groups, and unless those interactions are positive and meaningful then the Ministry will fail to achieve its "Vision" for delivering on its obligations to Maori and will not fully realise the potential of the 1992 fisheries settlement.

9 Current interaction between MFish and tangata whenua falls into three main categories: centralised consultation via mail on fisheries management issues; sporadic but focused interactions on implementation of customary regulations and other Part IX initiatives; and regular formal interaction between tangata whenua and the Compliance group over compliance issues. In addition the Compliance group manages a number of contracts with iwi organisations for the employment of

iwi liaison officers.

10 Most of the Ministry's key consultation obligations are carried out, or at least initiated, via mail. Examples include the bi-annual sustainability measures round and consultation on the recent fisheries reforms involving aquaculture and recreational fishing rights. The mailing list for these mailouts contains a combination of addresses of iwi and hapu representatives, marae and individuals. The list is reasonably comprehensive in terms of iwi addresses but far from complete in respect of hapu. Probably the key feature of MFish mailouts to tangata whenua is the negligible response that they engender. In many instances they set relationships back rather than further them and decisions end up being made with little or no direct input from tangata whenua.

11 There are a number of positions within MFish whose job involves meeting regularly with tangata whenua to discuss fisheries issues. These include regional fisheries managers based in the regional offices, five customary co-ordinators, a number of iwi liaison officers based in the Compliance group, and Fishery Officers employed under the customary compliance initiative.

12 The most meaningful and constructive relationships between MFish and tangata whenua occur at this level, kano ki te kano (face to face), and often aided by the links that particular staff members have with the groups concerned. While most staff are seeking to achieve positive relationships with tangata whenua, a lack of expertise in dealing with Maori or a lack of understanding of the issues raised by tangata whenua can result in unsatisfactory outcomes for both parties. In contrast, staff with expertise in liaison with Maori are under a large amount of pressure to respond to an increasing level of demand for information, support and hui on customary fisheries management.

13 The respective roles of staff members in these positions is unclear in many cases. Different individuals are operating in different ways, depending on the approach they choose to take in their dealings with tangata whenua, and the extent to which they are directed by their immediate line managers. While the individuals in these positions are doing their best to coordinate their activity and approach to interacting with tangata whenua in any given area, this is often achieved in spite of the wider Ministry rather than aided by it.

14 On the whole MFish does **not** do a good job of engaging with Maori. There are a range of reasons for this:

- Resources dedicated to engaging with Maori are spread across two business groups
- We don't coordinate our interactions across business groups
- We don't design our processes around the statutory requirement to engage with Maori
- We don't know who specifically we are supposed to be engaging with and what about
- We have limited people with the skills to engage with Maori
- There are limited performance measures associated with meeting our obligations to Maori
- Many MFish staff don't understand the nature and extent of our obligations to Maori, and as a result those obligations are not given the priority required by legislation and the principles of the Treaty
- Maori don't have the necessary background information and knowledge to engage with MFish on fisheries management
- Maori often don't have the necessary governance structures to engage effectively with MFish.

This situation is not sustainable.

15 The fundamental driver for the direction of the MFish Treaty Strategy must be the manner in which we engage with Maori – managing and coordinating the relationship between MFish and Maori in a way that ensures interactions are meaningful and productive. The manner in which we engage with Maori will influence the way we work internally, and the nature of any capacity building and training that may need to be delivered to Maori and to MFish staff.

16 The Government is placing a lot of emphasis on inter-agency cooperation and collaboration, both in terms of policy development and the manner in which “the Crown” consults, particularly with Maori. While the MFish Treaty Strategy project is focusing on the specific obligations arising from the fisheries settlement, consideration needs to be given to how the Ministry’s approach to engaging with Maori fits with that of other Government agencies – particularly those involved in resource management.

Vision

MFish Five Year Strategic Plan 1998-2003

17 The Ministry of Fisheries’ five year Strategic Plan provides a useful starting point for the defining of a “Vision” for the MFish Treaty Strategy. The Ministry’s vision for fisheries to the year 2010 includes *the Crown working with Maori to achieve sustainable fisheries* and the maintenance of a healthy aquatic ecosystem incorporating *customary Maori fisheries that contribute to the cultural health and well-being of iwi and hapu.*

18 One of the Ministry’s areas of core responsibility is meeting Treaty of Waitangi obligations. The Ministry’s Strategic Plan lists the following functions as deriving from this core responsibility:

- Involving Maori in fisheries management decision-making
- Delivering 20% of new quota to Maori
- Providing for and protecting customary fishing rights
- Recognising use and management practices of Maori.

19 The five year Strategic Plan lists three major goals (or Key Result Areas) for the Ministry. Goal 2 is as follows:

To develop a framework and manage processes that ensure the Crown delivers on its Article 2 obligations to Maori with respect to fisheries

Delivering on the Crown’s Article 2 obligations to Maori means:

- *Developing appropriate approaches to fisheries management with iwi and hapu;*
- *Developing policies and structures to enable Maori to exercise customary harvesting and management rights for fisheries resources; and*
- *Ensuring that the Crown delivers on its obligations in relation to quota allocation to iwi.*

20 The Ministry’s values and principles, as outlined in the Strategic Plan, makes reference to Treaty Partnership:

We will recognise the status of Maori as tangata whenua and will develop processes and practices that are consistent with:

- *The responsibilities of the Crown as a partner to the Treaty of Waitangi; and*

- *Our specific legal obligations under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1996.*

Such practices will become an accepted and integral part of all aspects of our activities, supported through our organisational culture; they will also underpin all of our values.

Treaty Strategy Vision

21 The Treaty Strategy project team has developed a draft Vision based on that outlined in MFish five year Strategic Plan and the analysis of our obligations under the Settlement Act and the principles of the Treaty. What is the relevance of the Vision? If the Ministry can achieve the outcomes described in the Vision on an ongoing basis then it will have succeeded in delivering on the Crown's obligations under the fisheries settlement. Conversely, if we do not achieve the outcomes in the Vision then we will have fallen short of delivering on our obligations. The draft Vision is as follows:

The Ministry of Fisheries actively delivering on its fisheries settlement and Treaty obligations by achieving the following objectives:

1. *MFish and tangata whenua working in partnership to provide for the utilisation of fisheries resources while ensuring sustainability*
2. *Tangata whenua managing customary fishing within their rohe moana*
3. *Maori actively participating in commercial fishing*
4. *Tangata whenua actively involved in wider fisheries management*
5. *MFish recognising and providing for use and management practices of Maori in the management of fisheries*
6. *Active protection of the fisheries taonga*

Meeting our objectives

22 The following section of the paper outlines the thinking of the Treaty Strategy project team on the strategy MFish should take to achieve each of the objectives outlined in the Treaty Strategy Vision. Services that MFish is currently required to provide in relation to each objective are listed, and suggested 'Key Initiatives' for achieving the strategy follow the discussion of each objective. While the lists of services and key initiatives may not be complete, they provide a useful starting point for ongoing discussion and development with iwi and hapu throughout the consultation process.

Objective 1: MFish and tangata whenua working in partnership to provide for the utilisation of fisheries resources while ensuring sustainability

Strategy

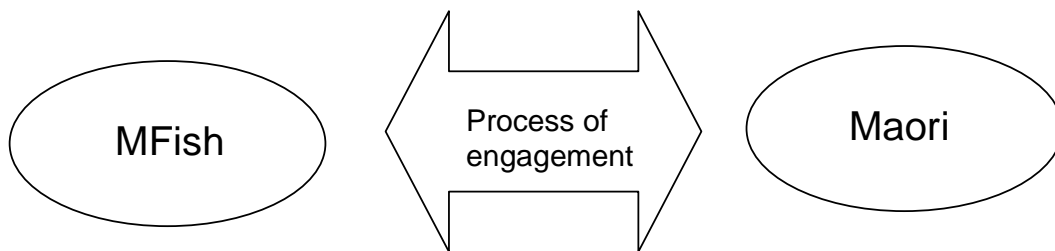
23 The Treaty Strategy Project Team has focused on this objective which deals with the overall relationship between the Ministry and tangata whenua. The approach that MFish takes to engaging with iwi and hapu lies at the heart of the Treaty Strategy project and has been identified as the

overriding limitation in the Ministry's current approach to meeting its obligations to Maori across all of the identified objectives. Initial consultation with iwi and hapu on the Treaty Strategy will focus on the relationship between MFish and tangata whenua and the ideas outlined below.

24 In addition to the development of strong partnership relationships between MFish and tangata whenua, achievement of this objective will require the development of appropriate policies and processes within MFish for the use, management and exchange of information between MFish and tangata whenua. Appropriate performance measures will also need to be developed to underpin the appropriate accountabilities within MFish for engaging with tangata whenua.

25 So how would strong relationships between MFish and Maori be established? Essentially there are three components to the relationship:

1. Maori, including the organisational structures of iwi and hapu, the role of kaitiaki, and the capacity of each of those groups to engage with MFish on fisheries management
2. The actual process of engagement by which the two groups interact
3. MFish, including its organisational structures and capacity for engagement with tangata whenua on fisheries settlement obligations and Treaty issues



Each component is discussed below.

Maori

26 The Ministry's obligations are mainly to tangata whenua, defined in respect of a particular area as the iwi or hapu who hold manawhenua over that area. There are close to 80 recognised iwi groups in New Zealand and at least several hundred hapu. The Ministry of Fisheries has a finite number of staff and resources, and does not have the capacity to engage face to face with iwi and hapu groups on an individual basis.

27 There are limits to the extent to which tangata whenua can be grouped together for the purpose of engagement with MFish. While TOKM currently represents Maori commercial fishing interests nationally they do not speak for individual iwi, and any suggestion that TOKM represents tangata whenua on customary fisheries issues has always been roundly rejected. Clearly there is a need to find some middle ground based on natural groupings of iwi and hapu that can be engaged with collectively.

28 Another rationale or basis for dealing with iwi and hapu collectively derives from the level at which fisheries are managed – on a QMA or FMA level. Given that the topic for engagement is fisheries management, with the need to discuss the management and allocation of entire fishstocks, there would be real advantages for both MFish and iwi and hapu in developing relationships that

can provide for collective input at that level.

29 A potential model for engagement between MFish and tangata whenua could be based around the establishment of regional groupings or forums made up of fisheries representatives of the iwi and hapu from a particular region. In some areas there are already groupings of iwi and hapu that form the basis of regional forums on fisheries issues. Critical to the success of such regional groupings will be the ability of MFish and iwi/hapu to get the right individuals around the table and to ensure that there is a feedback loop from regional forums out to the members of iwi and hapu and back again.

30 The aim of both MFish and iwi and hapu should be the establishment of focused relationships that can make real progress on fisheries management issues while maintaining a flow of information to each of the iwi and hapu in a region. It will be up to iwi and hapu to ensure that transparent links are made between the kaitiaki operating in a region and whatever grouping or forum might evolve for engagement with MFish on wider fisheries management – either through the direct participation of kaitiaki or via mandated representatives who can speak for and report back to kaitiaki.

31 Maori fishing interests are currently divided between iwi who have an involvement in commercial fisheries and who stand to be allocated a share of the commercial fisheries settlement quota and assets, and hapu who are more involved in the management of customary non-commercial fishing including the implementation of the customary fishing regulations. It is important that both TOKM and MFish develop strategies that will facilitate the integration of the two streams of Maori fisheries interests rather than creating further divisions in what is already an unnatural split between the commercial and non-commercial components of Maori fishing rights as provided for in legislation.

32 It is not proposed that MFish sets up a formal process requiring iwi and hapu to mandate representatives and then solely engages with those properly mandated individuals. Any accountability for determining regional arrangements and fisheries representatives must rest with iwi and hapu. The extent to which regional groupings or forums can be supported and resourced by MFish will depend on the extent to which effective regional arrangements can be established and formalised by iwi and hapu and MFish working together in an area.

33 How many regional groupings or forums would be required? At this stage the Treaty Strategy group envisages around a dozen forums would be required to incorporate regional groupings of iwi and hapu across the country. A lesser number of forums would result in each forum having to cover too large a geographical area, with all the associated logistical issues of getting to and from meetings, relationship issues between disparate Maori groups, and an increase in the breadth of fisheries issues that would need to be considered at each forum. Again, these are issues that will need to be thoroughly discussed and worked through with iwi and hapu in each region on an ongoing basis.

The Process of Engagement

34 If established in a region, forums made up of fisheries representatives of iwi and hapu would provide a mechanism for the input and participation of iwi and hapu in the following areas:

- Training and capacity building
- Fisheries management decisions including fisheries plans
- Common customary fisheries issues

- Forward planning, particularly in respect of determining MFish compliance and fisheries management priorities
- Input into fisheries reforms and other projects

35 Tangata whenua need to be provided not only with the opportunity to manage their own fishing activity, but with the opportunity to actively participate in wider fisheries management initiatives. Regional forums made up of the fisheries representatives of iwi and hapu would provide a physical means by which such participation could occur. Such forums would provide a focus for iwi and hapu groups to work together, hear each other's issues and to collectively engage with MFish about fisheries management issues in their region.

36 It is envisaged that the actual process of engagement on fisheries management issues would occur kano ki te kano (face to face) between the fisheries managers of iwi and hapu and the fisheries managers of MFish. Agendas would be set in advance and would make provision for items raised by both parties. One thing is certain – regional arrangements, whatever they might be, will take time to develop. They will evolve. They will likely be different in different regions and MFish must be flexible enough in its approach to accommodate these differences.

MFish

37 The Ministry will have two main responsibilities under the regional approach outlined above. Firstly, to provide dedicated staff for managing the relationship between the regional grouping of iwi and hapu and the Ministry, and secondly to ensure that Ministry processes are structured in such a way as to incorporate the necessary interaction with the regional grouping or forum. This will require a commitment to agreed operating procedures between MFish and any regional forum that might be established including such things as the number of meetings per year, location, and timeframes for the provision of material. It will also require appropriate performance measures for MFish staff who are responsible for an area of work that requires input from tangata whenua.

38 Each region would need to be serviced by a dedicated 'iwi liaison officer' within MFish. As the name suggests, the iwi liaison officer would be accountable for managing the interaction between all MFish business groups and the iwi and hapu in a region – ensuring that the right people attended meetings from MFish and facilitating the exchange of information at meetings.

39 Importantly, the iwi liaison officers would not be accountable for engaging with iwi and hapu on fisheries management, compliance or policy development issues or the incorporation of input from iwi and hapu into any advice or decisions – that role would rest entirely with the relevant individual or business group. The role of the iwi liaison officer is to provide the means whereby the relevant individuals within MFish can meaningfully engage with the mandated fisheries representatives of iwi and hapu in their area by facilitating the relationship between the two parties.

40 There is a risk in setting up a defined relationship management role between MFish and tangata whenua that the rest of the Ministry will wash its hands of the task of engaging with iwi and hapu groups. In the absence of supporting measures to ensure this does not happen, the iwi liaison officers will be left to carry the load on behalf of the Ministry, both in respect of issues and relationships – a situation akin to the status quo where those in de facto relationship management roles are fast burning out. Possible supporting measures to ensure this situation does not arise are as follows:

- Well defined job description for the iwi liaison officer positions
- Iwi liaison officers report to a separate ‘manager of iwi relationships’
- Well defined performance measures for MFish staff whose job requires engaging with tangata whenua
- Standards and specifications for, and monitoring of, the performance of MFish staff in relation to engagement with tangata whenua
- Fisheries management processes that accurately reflect the obligation to engage with tangata whenua
- Overarching operating protocols, between the MFish Executive and the rangatira or leaders on the Maori side, for the operation of any regional forum that becomes established.

41 A prerequisite to MFish and tangata whenua working together on fisheries management must be a shared understanding of the bigger picture – how fisheries are managed under current legislation, the role of the Ministry of Fisheries, and the role of tangata whenua in respect of fisheries management. As outlined above, resources will need to be focussed on training, education and capacity building in respect of wider fisheries management processes. Any training or capacity building initiatives should look to make possible use of TPK capacity building funding, and make linkages to any work being undertaken by TOKM and the Seafood Industry Training Organisation (SITO) in this regard.

MFish required services:

- Providing for the input of tangata whenua representatives into relevant MFish processes and decisions

Treaty Strategy Key Initiative – Build Strong Relationships

- Establish team of MFish iwi liaison officers who report to a dedicated manager of iwi relationships
- Involve iwi representatives in the employment of those positions
- Work with iwi and hapu towards the establishment of regional forums or groupings of iwi and hapu fisheries representatives, each serviced by an iwi liaison officer
- Develop protocols governing the operation of regional forums
- Build MFish capability:
 - Identify specialised skills and knowledge required within each MFish business group for engaging with Maori and delivering on fisheries settlement obligations and the principles of the Treaty
 - Develop training packages targeted at the needs of each MFish business group in respect of requirements for delivering on fisheries settlement and Treaty obligations
 - Recruit into business groups as required to meet any skills or knowledge deficit

Alternatives that were considered for delivering on Objective 1

42 In developing the concept of regional groupings or forums as a basis for MFish engagement with iwi and hapu the Treaty Strategy project team has continuously questioned whether or not there may be alternative ways of improving the interaction between MFish and tangata whenua. Given the nature of fisheries management and the multitude of iwi and hapu groups to whom the Ministry’s obligations apply, a regional approach to engaging with iwi and hapu seems the most viable option for the reasons outlined above.

43 Are there alternative ways for MFish to engage with iwi and hapu on a regional basis? An alternative to the concept of regional groupings serviced by an iwi liaison officer would be for individuals or business groups within MFish to engage with regional groupings directly. The main disadvantage of such an approach would be the difficulties it would pose for the regional groupings of iwi and hapu in having to deal with a range of individuals within MFish in an uncoordinated manner. In addition, many of the individuals who would be required to engage with iwi and hapu do not have the specialised skills necessary to engage effectively with Maori on their own.

44 Could the 'iwi liaison officer' role reside within the regional forum, rather than within MFish? While there may be a need for support or liaison positions within any regional forums that become established, such positions should not be confused with the need for a dedicated relationship management role within MFish. The Ministry needs to take ownership of its relationships with Maori – without such positions the drive for engagement with iwi and hapu will be lost. Iwi liaison officers will need to have a comprehensive understanding of the Ministry and the way it works. They will need to have direct access to MFish staff.

45 Another approach that was considered is to have specialised positions, who would be entirely responsible for delivering the input of tangata whenua from an area into the relevant MFish processes. MFish staff would present those individuals with the issue and material to be consulted on. The individual would then work with all the iwi and hapu groups in a region to determine their input and advice, write up that advice, and then present it back to the relevant people within MFish.

46 Such an approach is not considered viable for the following reasons:

- No accountability placed on the wider Ministry to actively front-up and engage with tangata whenua with the possibility that relationships could actually deteriorate rather than improve;
- Without regional forums there would be no formal mechanism for iwi and hapu fisheries representatives to engage with each other as well as MFish, and for that process to be resourced by MFish;
- Without regional forums it would not be possible to address issues of capacity building and education directly with iwi and hapu fisheries representatives
- The demands on the specialised positions would be extreme – depending on the number of iwi and hapu groups they serviced – with the danger that some groups would slip between the cracks.

47 The Treaty Strategy project team anticipates that there will be other options raised during the process of discussion and consultation on the MFish Treaty Strategy, both within the Ministry and externally with Maori. Different approaches may be required for different regions and the Ministry's final Treaty Strategy should be flexible enough to accommodate those different approaches. What is important is that the primary objective – meaningful and productive two way relationships between MFish and tangata whenua – is achieved. The more alternative ideas that are raised and considered the more likely it is that the final outcomes will be robust and accepted.

Objective 2: Tangata whenua managing customary fishing within their rohe moana

Strategy

48 Achieving this objective requires the implementation of the customary fishing regulations including the appointment of kaitiaki and the establishment of mataitai reserves. Kaitiaki are the fisheries managers of tangata whenua responsible for managing at a local level, informing hapu and iwi of management issues, and developing the internal fisheries policies of the groups they

represent. Kaitiaki will also be responsible for putting any management plans affecting customary fishing into effect.

49 Resources currently dedicated to implementing the regulations are dispersed across the Fisheries Management and Compliance business groups and report to numerous different managers within those groups spread across the country. In addition, the Ministry has Compliance contracts with iwi groups for the employment of the iwi liaison officers with a role in the implementation of the customary fishing regulations. There are limited linkages between the work of the contract positions and the Ministry's overall strategy for implementing the regulations.

50 For the reasons outlined above, the Treaty Strategy Project Team believes the implementation of the customary fishing regulations should be managed as a distinct project. A dedicated manager with the appropriate skills and knowledge needs to be accountable for implementing the regulations across the country. This role would include education and liaison work with tangata whenua on the development of kaitiaki notifications, the processing of those notifications, and the processing and consultation on mataitai reserve applications.

51 Administering the appointment of kaitiaki is a key statutory function arising from the customary fishing regulations. It involves intensive interaction with tangata whenua groups who are going through the notification process. Consideration should be given to the linkages between managing the kaitiaki appointments process and the wider relationship management role envisaged for iwi liaison officers.

52 Explaining how the regulations operate, and the links between the regulations and wider fisheries management at a high level, are inseparable components of working with tangata whenua on the appointment of kaitiaki. This role needs to be recognised as part of implementing the customary regulations and managed as part of the regulations implementation project. Training of kaitiaki is another essential function that would need to be carried out by MFish in order to ensure the necessary linkages with compliance and enforcement of the regulations.

MFish required services

- Education and liaison on customary regulations framework
- Kaitiaki appointments and other administrative functions
- Provision of information and assistance to kaitiaki
- Work in partnership with tangata whenua to consult the local community on any mataitai reserve proposal
- Report to Minister on mataitai reserve proposals following consultation
- Administer the establishment of bylaws for mataitai reserves
- Targeted compliance support and enforcement

Treaty Strategy Key Initiative – Implement customary fishing regulations

- Link kaitiaki appointments role to relationship management functions within MFish
- Manage implementation of the regulations (appointment of kaitiaki) as a distinct project located within iwi relationship management group within MFish and ensure necessary processes are adequately resourced
- Review dispute provisions within customary regulations
- Develop policy on provision of information and assistance to kaitiaki and ensure adequate resources are available to meet obligations in this regard

- Develop and deliver training package for kaitiaki

Objective 3: Maori actively participating in commercial fishing

Strategy

53 The Ministry's role in the achievement of objective 3, which is primarily the core objective of the Treaty of Waitangi Fisheries Commission, centres on the Crown's obligations arising from the commercial component of the fisheries settlement. These are the requirement to allocate 20 percent of quota to the Commission for new quota species on their introduction to the QMS, the Minister's role in reviewing any allocation model presented by the Commission, and the obligation to consult with Maori commercial interests on fisheries management issues that effect them. The Ministry needs to prepare itself for the possible changes that will occur to the make-up of the commercial sector following any allocation of commercial fisheries assets to iwi.

54 The introduction of 50 plus species into the QMS over the next four years is a significant step in the fulfilment of the Crown's obligations to Maori in respect of commercial fisheries. Consultation will need to be undertaken with TOKM, Maori commercial fishing interests, and tangata whenua throughout this process, particularly with regard to species of traditional importance to Maori such as eels and kina.

55 To the extent that Maori commercial fishing interests remain distinct from 'tangata whenua' the Ministry will need to ensure that it consults separately with those interests over all decisions or actions that might impact on them. This may or may not occur through the regional approach and would depend on the nature of any regional arrangements that are developed by iwi and hapu groups and MFish .

MFish Required services:

- Transfer 20 percent of quota for new species to TOKM on their introduction to the QMS
- Provide advice to Minister of Fisheries on any model for allocation of fisheries settlement assets presented to the Minister by TOKM
- Consultation on commercial fisheries management including the introduction of new species into the QMS

Treaty Strategy Key Initiative – Advise on Allocation

- Engage with tangata whenua and Maori commercial interests on introduction of new species into QMS, using regional approach if/when established
- Establish interagency project team, led by MFish, to provide advice to Minister of Fisheries on any proposal for the allocation of fisheries settlement assets presented to the Minister by TOKM

Objective 4: Tangata whenua actively involved in wider fisheries management

Strategy

56 Objective 4 will only be achieved if both the Ministry and tangata whenua commit themselves to meaningful engagement with each other on fisheries management issues. While the iwi liaison officer and regional forums approach provides a possible mechanism for the interaction to occur, little will be gained unless internal MFish policies and processes are altered to

accommodate that interaction.

57 Critical for the success of a regional forum based approach will be early engagement with iwi and hapu on the priorities for fisheries management in their region, and the work programme for the coming year. This will help avoid MFish having to consult on issues of which tangata whenua have no prior awareness or understanding. Consultation processes and timeframes will need to be geared around the forums, information will need to be appropriately targeted, and advice and information generated by regional forums will need to be appropriately treated.

58 In addition to the actual process of engagement, the capability of Ministry staff and of tangata whenua to engage in a meaningful way will need to be assessed and addressed through appropriate capacity building initiatives. Ministry staff will need a core understanding of the Ministry's obligations to tangata whenua in respect of fisheries management and the ability to communicate effectively with tangata whenua representatives. Tangata whenua will need to understand the fundamentals of the way MFish manages fisheries and the relationship between the tools in Part IX of the Fisheries Act and wider fisheries management processes.

59 Fisheries managers will be required to ensure the input and participation of tangata whenua is provided for in the development of fisheries advice, while the iwi liaison officer and regional forums approach will provide the mechanisms and facilitation for this to occur in a timely and meaningful manner avoiding groups talking past each other. MFish performance measures will need to incorporate the requirement for fisheries managers to actively engage with tangata whenua over relevant issues.

60 Fisheries Plans are set to become an integral component of fisheries management in New Zealand. One of the benefits of the regional forum approach is the context it provides for enabling iwi and hapu to either develop, or have input into the development of, a Fisheries Plan for their area. Without mandated iwi and hapu representatives it is difficult to envisage how the task of gaining meaningful input from iwi and hapu into Fisheries Plans might be achieved. The Ministry currently has difficulties identifying who represents tangata whenua to talk to on fisheries management – commercial and recreational stakeholders will encounter similar difficulties.

61 Regional forums could provide a focus for iwi and hapu fisheries representatives to develop plans or strategies that set out the objectives of the iwi and hapu for the fisheries in their region. Such plans would not necessarily need to constitute approved Fisheries Plans under the Fisheries Act 1996, but would provide a forward looking and proactive focus for iwi and hapu to articulate their medium to long term aspirations for their fisheries, rather than the usual consultation timeframes and submission deadlines imposed by MFish on specific issues. Such plans could be used to provide input into Fisheries Plans and into RMA planning processes.

MFish Required services:

- Provide for the input and participation of tangata whenua representatives on all fisheries management decisions and processes that impact on their non-commercial fishing interests
- Processing of taiapure applications

Treaty Strategy Key Initiative – Provide for Input and Participation

- Build tangata whenua capability:
 - Establish working group with TPK and TOKM to coordinate activities in this area
 - Develop and deliver training package on fisheries management for iwi and hapu

- fisheries representatives
 - Resource regional forum meetings (venue, food, koha) and meet the costs of forum participants if and when appropriate (e.g. transport costs)
 - Consider mechanisms for delivery of policy/administration functions within regional forums
- All fisheries management decisions that impact on the non-commercial fishing interests of tangata whenua to be consulted on in accordance with any regional forum protocols that may be developed by MFish and iwi and hapu
- Develop performance objectives and measures for MFish staff responsible for providing for the input and participation of tangata whenua into decisions.

Objective 5: MFish recognising and providing for use and management practices of Maori in the management of fisheries

Strategy

62 Regional forums provide a mechanism for MFish to consult with iwi and hapu on wider fisheries management. They also provide iwi and hapu with a forum for articulating their own views about what management measures may be required to manage fisheries in accordance with “kaitiakitanga”. As with objective 4 above, recognising and providing for the use and management practices of Maori will require an active commitment from MFish to engage with tangata whenua, and in particular, to use the product of that interaction in a positive and meaningful way.

63 Objective 5 will require the Ministry to develop policies on how traditional knowledge and customary fishing information will be incorporated within wider fisheries management processes. Relevant Ministry staff need to increase their understanding of Maori fisheries management practices, many of which closely mirror management techniques that are already widely utilised but under a different name (e.g. temporary closure and rahui) and perhaps with different justifications. Internal capacity will need to be increased in this area.

MFish Required services:

- Recognise and provide for use and management practices where appropriate via s186A&B, s186 and/or other regulatory mechanisms

Treaty Strategy Key Initiative – Recognise Use and Management Practices

- Ensure fisheries management capacity to provide for use and management practices of Maori where appropriate through the application of s186A&B, s186 and/or other regulatory mechanisms
- Sufficient weighting given to recognition of the use and management practices of Maori in any cost/benefit analysis or prioritisation exercise for the assessing MFish work programme

Objective 6: Active protection of the fisheries taonga

Strategy

64 This objective is focussed on the compliance and enforcement activities required to achieve effective fisheries management. While sound fisheries management policies and decisions are instrumental to protection of the fisheries taonga these are dealt with under objectives 4 and 5 above. In accordance with the wider justice framework in New Zealand, accountability for core

enforcement work must rest with the Compliance group of MFish. However, opportunities exist for MFish to look at how iwi and hapu groups might be able to be involved in enforcement activities in a manner consistent with the wider justice framework.

65 The appointment of kaitiaki for an area under the customary fishing regulations necessitates a close working relationship between the kaitiaki and Fishery Officers in that district. Kaitiaki are statutorily appointed fisheries managers within their gazetted areas and compliance and enforcement support for the customary authorisations and mataitai bylaws frameworks will be essential for effective management by kaitiaki, just as it is for rules and regulations set by MFish.

MFish Required services:

- Education and training on the requirements of fisheries legislation, including customary fishing regulations and regulation 27
- Engagement with tangata whenua on compliance work programme for their region

Treaty Strategy Key Initiative – Compliance Planning

- Provide for input of iwi and hapu representatives and kaitiaki into compliance work programme for their region via the regional forum approach
- Develop training package for kaitiaki and for tangata whenua on the requirements of fisheries legislation, including customary fishing regulations and regulation 27

ANNEX

Consultation strategy

High level feedback

2 It is proposed that the Treaty Strategy Project Team seeks high level feedback on the proposed Treaty Strategy direction prior to consulting widely with iwi and hapu nationally. Feedback will be sought from Te Puni Kokiri, Department of Conservation, Office of Treaty Settlements, Te Ohu Kai Moana and key experts identified from within Maoridom. These will be individuals with a degree of experience and expertise in the area of Crown/Maori relationships rather than representatives of particular iwi or Maori groups.

Involving MFish staff

3 While the Treaty Strategy project to date has involved a number of individuals from across the organisation via the Treaty Strategy Reference Group or via separate meetings with the Customary Implementation Group and Te Roopu Awatea, there has not been a lot of publicity or interaction about the project with the wider Ministry.

4 The Treaty Strategy project team proposes to conduct a round of visits to MFish regional and district offices to discuss the Treaty Strategy, seek input from staff, and initiate thinking within business groups as to what measures may need to be taken to fulfil the obligations and overall vision outlined by the Treaty Strategy.

Consultation with Maori

5 The manner in which MFish engages with Maori over the development of the MFish Treaty Strategy is as critical to the success of the Treaty Strategy project as any other factor. MFish must be clear as to who it wishes to engage with and what sort of input it is seeking. Already Maori expectations of the Treaty Strategy project are high. Unless the process of seeking input from Maori into the Treaty Strategy is well thought out and managed it will set relationships between MFish and Maori back rather than improve them.

6 As outlined above, initial thinking on how MFish engages with tangata whenua across the entire range of fisheries management issues has thrown up the idea of regional groupings or forums made up of fisheries representatives of the iwi and hapu from each region. The initial engagement with tangata whenua on the Treaty Strategy will provide a useful testing ground for the regional forums concept. The Treaty Strategy project team proposes that regional hui be organised to discuss the strategy, and in particular, ideas for establishing strong functional relationships between MFish staff and iwi and hapu representatives on a regional basis.

7 Allowing sufficient time and having the right MFish people involved in organising regional meetings to engage with iwi and hapu on the Treaty Strategy project will be critical for the success of these meetings. Depending on the nature of our existing relationships with tangata whenua in an area it may also be appropriate to consult with local Te Puni Kokiri offices on the setting up of regional meetings.

8 Sufficient time needs to be allowed for the organisation of regional hui on the Treaty Strategy in order to ensure a good turn out from tangata whenua, and to avoid last minute clashes with other consultation processes. Te Ohu Kai Moana are consulting on options for allocation of

fisheries settlement assets in February and March this year. Clear distinctions will need to be made for tangata whenua between the two consultation processes, although there will also be linkages between the two topics that can usefully be drawn out at hui – for example, the relationship between the commercial and non-commercial components of the fisheries settlement.