

Hui Report

Hokianga Accord Working Group

20 – 21 April 2006

Prepared by Trish Rea

22 May 2006

- Present:** Raniera T (Sonny) Tau (Ngapuhi), Graeme Morrell (Ngapuhi), Judah Heihei (Ngapuhi), Scott Macindoe (option4), Paul Haddon (Ngapuhi), Stephen Naera (Ngapuhi), Bruce Galloway (Mimiwhangata Guardians), Trish Rea (option4), Richard Baker (NZBGFC), Naida Glavish (Ngati Whatua), Rosemary Hauraki (Ngapuhi), Neha Hakaraia (Ngapuhi), Rawiri Wharemate (Ngati Rehua), Sonya Williams (Ngati Rehua), Robert Willoughby (Ngati Kuta), Bill Cooke (option4), Stuart Ryan (Hesketh Henry).
Friday additions: Jeff Romeril (NZBGFC), Matu Clendon (Ngati Kuta), Kim Walshe (Ackroyd Walshe).
- Duration:** 8 hours
- Venue:** 4 Almorah Place, Newmarket, Auckland
- Objectives:** Follow up letter from the Ministry of Fisheries dated 5th April 2006.
Confirm Hokianga Accord's view on the Shared Fisheries Policy project.
Establish trustees and management for the charitable trust.

Introduction

It was a bonus to get the Working Group or 'short line-out' as it is now known, together so soon after the Whitiara Hokianga Accord hui on the 6th and 7th of April. Judah Heihei opened the short lineout hui with a karakia. This was followed by a welcome from Scott Macindoe and the Auckland based team. More people would be arriving during the course of the evening and others the following day.

After Scott's summary of the agenda items Sonny gave a brief background outline of what had transpired prior to the last hui, in particular the letters from the Ministry denying the status of the Hokianga Accord as the mid-north iwi Forum. Mark Edwards, MFish Fisheries Policy manager, had confirmed the Hokianga Accord as the mid-north iwi Forum at the Whitiara hui earlier in the month.

Questions needed to be asked about the Ministry's tactics particularly the exchange of correspondence over the two days prior to the previous hui. Discussion centred on whether these questions should be framed so they are suitable to be asked in Parliament during question time. The hui needed to decide who to give the questions to, whether Hone Harawira was the appropriate person, or whether they should be given to Parekura Horomia to follow up.

Hone Harawira was the Te Tai Tokerau Member of Parliament. Parekura is the associate Minister of Fisheries, the Minister of Maori Affairs and the Minister responsible for Te Puni Kokiri. It seemed that Parekura was the best person to start conversations with regarding the Hokianga Accord.

From a conversation Sonny had recently with Parekura it seemed he was unaware about the difficulties facing Maori in the north or the Hokianga Accord.

Correspondence with Minister

Sonny had asked for a meeting with Parekura to discuss the Hokianga Accord's concerns. Information would be supplied to the Associate Fisheries Minister to support Sonny's korero.

The Accord needed to be clear about its objectives and what it wanted from the Associate Minister. A position statement or copy of the Kaupapa Whakahaere would be given to him. A statement of intent in regards to the ongoing issue of customary matters, the immediacy of dealing with the Shared Fisheries Policy project and MPA's would be beneficial. If necessary, a meeting with Jim Anderton, Fisheries Minister, would also be requested.

Scott Macindoe and Trish Rea committed to delivering this information for Sonny.

Correspondence with Ministry

A letter of complaint about the Ministry's obstructive behaviour needed to be initiated. Receiving important correspondence the night before Accord hui is unacceptable.

The Ministry's failure to address outstanding issues from the proportional allocation document needs to be highlighted. Stan Crothers and other MFish staff made this commitment at the July 2005 Whakamaharatanga hui of the Hokianga Accord¹.

The letter should be from the perspective of a rights holder with status rather than just a complaint about MFish inaction. It should include a statement of what the short lineout's intent was in regards to the Ministry's failure to fulfil its obligations. This would put the onus of responsibility back on the Ministry.

Stephen Naera and Scott Macindoe to draft this letter.

¹ http://option4.co.nz/Fisheries_Mgmt/fmmo70505.htm

Hokianga Accord Status

In respect of the status of the Hokianga Accord as the mid-north Forum, an OIA request should be sent to the Ministry asking what the Justice Department's criteria was for iwi Forums and who holds that information. The short lineout understands there are no criteria for Forum establishment. The OIA request would confirm its existence, either way. The key was, who held the responsibility for providing the capacity for tangata whenua to have meaningful "input and participation".

The Ministry has asserted in a letter dated April 5th letter that the Hokianga Accord was not an iwi Forum, Stan Crothers wrote²,

"I acknowledge your confirmation that the Hokianga Accord is the expression of the relationship between Maori and non-Maori non-commercial fishing interests in the mid North. It is not an iwi Forum between the Ministry and Iwi."

The issue of Ministry's obligation to Te Uri O Hau and Te Roroa hapu was their business and was not related to the iwi Forum. MFish are well aware Te Roroa have other issues to deal with right now. Talk about joining the Hokianga Accord would have to wait until they had more time.

In contrast, the previous Minister of Fisheries, David Benson-Pope had already acknowledged the Accord as an iwi Forum in a letter dated 12th August 2005³.

"I am heartened that you have agreed to commence work with the Ministry on the development of regional iwi forums for Tai Tokerau as a means to provide for the input and participation of iwi into fisheries processes. I have been advised that you have chosen to invite recreational fishers into your forum to ensure that iwi and recreational fishers will be able to work together to address shared concerns."

"While the resourcing for the forums was intended to provide a means to discharge the Crown's statutory duty to provide for the input and participation of iwi into sustainability processes, I understand and support your desire to work cooperatively with other stakeholders in the fishery to develop a shared understanding of each others values and objectives for the fishery and agreed solutions to achieve those objectives."

Input and Participation

The short lineout asked the Ministry for their interpretation of input and participation in regards to tangata whenua involvement in MFish processes. This request was made during the December hui. Their response arrived on April 21st and is attached as Appendix One.

It also needs to be made clear to the Minister and Associate Minister that the Hokianga Accord was committed to being involved in the Shared Fisheries Policy project and the

² http://option4.co.nz/Fish_Forums/halmf406.htm

³ http://option4.co.nz/Fish_Forums/images/halminr805.gif

Marine Protected Areas process (MPA). The Accord would not be held up by ongoing discussions with the Ministry regarding an MOU or focus purely on customary spatial tools.

Iwi Mana

The mana of Maori identity is in the iwi. Iwi involved in the Hokianga Accord should make a very clear iwi statement clarifying their total support for the Hokianga Accord. Ngapuhi, Ngati Whatua and Ngati Wai had to clarify their position, they were not just 'part of the mix' in the Forum, they held the mana of their iwi in the Accord.

Sonny Tau and Naida Glavish to start work on these statements. Sonny would talk with Ngati Wai.

New Initiatives Funding

In 2004 the Ministry allocated specific funds for the implementation of the MFish Treaty Strategy. The Accord needed to confirm these figures in the table below, from the 2004 consultation document, are what MFish finally agreed to.

MFish estimated costs for the project (all figures in \$m and GST inclusive)⁴

	2004/05	2005/06	2006/07
Implementation of the MFish Treaty Strategy	3.500	4.000	4.500

It was unclear where the New Initiatives funding had been spent and this needed to be clarified. It was accepted that some of this money had been used to establish the Customary Relationship Unit, Te Tari o te Kahui Pou Hononga.

The New Initiatives funding was consulted and agreed upon in early 2004. Funds would have been targeted to specific areas before the Ministry had received its budget. Questions should be pointed directly to the Minister asking how the Ministry had fulfilled each of their targets, their obligations to tangata whenua as set out in the funding schedule. An Official Information Act (OIA) request asking for the background and process since 2004 should be fairly straightforward.

The short lineout understands Te Puni Kokiri (TPK) completed a report in 2004/05 specifying how the Ministry of Fisheries was delivering on the Crown's purchase agreement, of building the capacity of tangata whenua. It is unclear whether the report was made public. The Hokianga Accord should request a copy this report, as it would have implications for all aspects of Maori fishing interests, commercial, environmental, customary and recreational.

⁴ New Initiatives consultation document, MFish, 10 March 2004.

An OIA to TPK or a direct request to the Minister should secure a copy of this document. The New Initiatives funding process would form part of this investigation.

Richard Baker to help tangata whenua get these underway.

Extension Officers

There was some discussion whether the Hokianga Accord should accept an Extension Officer or ask the Ministry for the cash equivalent in lieu of an officer, until the Forum had agreed what role it wanted its Extension Officer to perform.

Four Extension Officers had been appointed so far. Although based in Nelson they were available to different areas until Ministry had contracts for them to be regionally based. Tracey Kingi had been appointed around four months ago and had been sent north to work with Ngati Kuta on their rohe fisheries management plan.

Under the purchase agreement each iwi Forum has \$20,000 to cover costs and also an Extension Officer. The Hokianga Accord was ready for its Extension Officer. The question to Ministry should be, when is the contract available for the Extension services within the mid-north area?

The Accord does not need an Extension Officer as such, the contract for purchasing services was much more valuable to the Hokianga Accord. It was unrealistic to expect one person to fulfil the role to provide for the “input and participation” into fisheries management of the tangata whenua from the mid-north.

Hokianga Accord Hui Reports

Hard copies of the next hui report would be published soon. A brief discussion occurred about who would receive a hard copy from the Accord. The draft distribution list currently totalled 300 copies, although this could be amended by the time the report was prepared. A copy of the distribution list, an invoice for all the reports and copies for MFish would be sent to the Ministry via Stan Crothers.

Charitable Trust

At the last Hokianga Accord hui it was agreed to establish a charitable trust separate from the Forum that would have tax-deductible status for accepting donations. It would also be capable of applying for funds from other funding agencies, as long as the proposed project was for the benefit of the public as per the trust deed.

Worse case scenario is fourteen weeks from time of application to confirmation of the charitable trust, “Guardians of the Sea Charitable Trust/ *Nga Kaitiaki o Tangaroa*”.

A trust deed had been prepared and reviewed by Bruce Galloway. It would be distributed to the short lineout for feedback by the following day.

A minimum of two trustees were required although five was the recommended number for the board. Sonny advised that Teresa Tepania-Ashton, Te Runanga A Iwi O Ngapuhi CEO, had agreed to be one of the trustees. A draft list of trustee names would be sent through to Bruce as soon as the people had confirmed their availability.

Issues of governance would be dealt with as soon as the trustees were confirmed. The board would choose the chairman of the trust.

Bank Account

The Hokianga Accord would obtain a bank account in its name; any incoming invoices need to be electronic so these can be approved online. Three people would be elected to be the approval team and the accounts person holding the chequebook would complete payment.

The Hokianga Accord is an iwi Forum and does not need to be incorporated, at this stage anyway. Incorporation only takes a matter of weeks to complete if the Accord decides it wants to formalise its structure.

Bruce would confirm later if the Hokianga Accord had to be incorporated before it could receive grants from the charitable trust.

Hokianga Accord Budget

The Hokianga Accord needs to put together a budget for the next financial year and give that to the Ministry of Fisheries as the model for what the Forum considers it would meet its “input and participation” requirements. The budget could be part of a business plan that also needs to be designed for the Hokianga Accord for the next year.

Scott Macindoe and Robert Willoughby to work on the plan and budget.

Kahawai Legal Challenge

Stuart Ryan, partner, Hesketh Henry Lawyers

The New Zealand Big Game Fishing Council and the New Zealand Recreational Fishing Council are taking the Kahawai Legal Challenge to the High Court. Ngapuhi have provided support by way of an affidavit including evidence of Maori’s multiple interests in fisheries, commercial, customary and recreational. option4 has fully supported the case.

The High Court hearing is due to be heard on June 6th and is expected to take four days to complete.

Essentially the case is about getting a clearer definition of the nature and extent of recreational fishing rights. In particular, before the Minister sets the commercial quota limits he has to “allow for” non-commercial fishing interests, both customary and recreational.

The case goes beyond just the allocation of kahawai and onto the act of how the Ministry administers the Fisheries Act when a new species enters the Quota Management System

(QMS). Kahawai was one of the last important shared fisheries to go into the QMS. It was hoped non-commercial fishers would get some useful case law out of the action that would influence future management and allocation decisions.

In December 2005 commercial fishers lodged a counterclaim against the Ministry of Fisheries. The commercial companies are Sanford Ltd, Sealord Group and a holding company Pelagic and Tuna Ltd.

The counterclaim is based around the Minister setting allowances for non-commercial catch and the Ministry do very little to monitor and manage recreational and customary fishing within those allowances. Commercial's concern is that the value of their quota right, which is essentially a property right, would be eroded over time due to expanding non-commercial take.

Part of the counterclaim seeks orders from the courts in relation to customary fishing rights. In particular the lack of reporting of customary catch. The change from Regulation 27 to 27A in 2005 made it mandatory for issued permits to be recorded and reported to MFish. Previous reporting requirements were quarterly.

Stuart Ryan was due to talk with Lyn Stevens, the QC managing the case and discuss with him whether there was a need for legal counsel for customary interests in this case and whether there is a need for more affidavits from tangata whenua. Any decisions would have to be made quickly considering there was only around six weeks to the scheduled court date.

Sharing the Fish Conference

It was discovered in November 2005 that the Ministry of Fisheries was sending a delegation of nine people to the Sharing the Fish Conference in Perth, West Australia. Considering the theme was the allocation of fisheries resources it was important the non-commercial sector was represented. Objections were raised with MFish regarding the absence of non-commercial representatives at the Freemantle event from 27th February to 2nd March.

Ministry eventually succumbed to the pressure from recreational fishing representatives and agreed to send three non-commercial people, one customary, a recreational and one environmental representative. Following a poor selection process promoted by the Ministry, Shane Reece from the Chatham Islands was chosen as the customary fishing representative, Clive Monds as the environmental representative and Keith Ingram for recreational fishing.

Ngapuhi, the New Zealand Big Game Fishing Council and option4 all agreed that Kim Walshe should attend as a representative of recreational fishing interests so all parties agreed to sponsor Kim's attendance. Kim and Davidson Kemp Ltd must be acknowledged for their willingness to donate Kim's time to attend the event at no cost to the other parties. Kim has subsequently supplied a report to Ngapuhi, the NZBGFC and option4.

Value of Attendance

Kim was only able to give the hui a quick summary of the conference as he was due at another meeting. He was keen to present what he had learnt about different approaches to fisheries management at the July hui.

An alternative approach had been taken in the Canadian halibut fishery where the recreational sector has been allocated a tonnage equal to 30% more of its historical catch. They were then given the opportunity to lease that quota back to commercial fishers to enjoy a return on that investment.

Great value was gained from the information gathered at the conference and the contacts made during the event. Papers presented at the conference were online at <http://fishallocation.com/papers/>. The team were encouraged to read the reviews in Kim's report, select a few papers of interest and download those from the website.

Although Kim had not given any recommendations in his report he did make the point that how a problem is defined generally determines the type of solution arrived at.

Historically the problems in New Zealand's fisheries were viewed by the Crown as economic, so the solution was to introduce the Quota management System (QMS) to try and address the economic issues, but the Crown failed to give due consideration to the socio-economic issues.

A prime example of this was the removal of the right of small-time fishermen to continue fishing in 1983 prior to the introduction of the QMS in 1986. This disenfranchised many Northland fishermen and coastal communities from their traditional access to income and lifestyle. In addition recreational rights had not been addressed adequately in the New Zealand model.

Alternative management regimes that could be applied to New Zealand were worth considering if they had been used successfully overseas. The QMS was not the only way to manage fisheries. Kim would prepare some case studies to support his report for the July hui.

Aotea (Great Barrier) Marine Reserve

Sonya Williams and Rawiri Wharemate joined the hui and gave a brief overview of the process Ngati Rehua had gone through regarding the marine reserve at Aotea. Sonya had recently been appointed chairperson of the Ngati Rehua-Ngati Wai Ki Aotea Trust Board.

The Department of Conservation had approached Ngati Rehua around five years ago with a proposal for a marine reserve off the north east coast of Aotea (Great Barrier Island). The proposal included over 50,000 hectares and went out to the 12-mile limit. Ngati Rehua vehemently opposed the reserve and advised other iwi involved in discussions with DoC that they objected to the proposal.

Ngati Rehua had met with the Minister of Conservation twice to discuss the proposal and their understanding that DoC was supposed to be negotiating with Ngati Rehua over the proposal and not making decisions in the absence of their consent.

Ngati Rehua has also had discussions with the Ministry of Fisheries regarding a mataitai at Whangapoua. There was little value in that proposal as the area suggested was too small and not very productive.

In their opinion DoC had not shifted its objective from the first proposal and Ngati Rehua were opposed to the recent approval given by the Conservation Minister, Chris Carter, to the establishment of the marine reserve.

The Minister of Fisheries had been asked to provide his concurrence to support the establishment of the reserve. Stan Crothers, MFish deputy CEO, had given an assurance at the Whakamaharatanga hui in July last year that MFish would meet with tangata whenua before the concurrence decision was made.

Ngati Rehua had met with MFish around four weeks prior to this hui. Stan attended that hui on the island with three other Ministry colleagues. Scott Macindoe, Bill Cooke, Bruce Galloway and Peter Blackwell were also at the hui, as observers.

Ngati Rehua had planned to meet with their Auckland based people but that meeting had not occurred before this hui. They would welcome any advice on how they could stop the marine reserve process.

The imposition of a marine reserve would deny tangata whenua the opportunity to practice kaitiakitanga in their rohe, whether that was by way of a mataitai, taiapure or some other management measure deemed appropriate by Ngati Rehua. These rights stemmed from obligations of the Crown to tangata whenua through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Kaimoana fishing regulations and the Fisheries Act 1996.

Ngati Rehua has lodged a complaint with the Waitangi Tribunal. Their objective is to have the Tribunal review the Aotea marine reserve process. The marine reserve was a confiscation of some of the best fishing grounds by the Crown.

One part of the concurrence process was an adverse affect test. MFish needed evidence of “undue effect” on fishermen who use the area, commercially, customarily or recreationally. It was important tangata whenua gathered the data on customary fishing within the proposed area and supplied that to the Ministry.

The opportunity exists to initiate judicial review proceedings, but this would need to be done fairly quickly. It would have to occur before the Minister of Fisheries gives or declines his concurrence to the DoC process and agrees to the establishment of the marine reserve.

Of real benefit to Ngati Rehua would be the compilation of evidence to prove adverse effect, denial of kaitiakitanga, and confiscation of access to food and the sea. Take this information

to other iwi and ask for a position statement in support of Ngati Rehua's stance. This would be undeniable evidence to give to both the Ministry of Fisheries and DoC.

The public are also more aware of the existence of other marine protection tools available aside from marine reserves. Kaitiakitanga offered an alternative approach, which many recreational fishing representatives are now promoting.

Ngati Rehua were encouraged to work with Ngati Wai on this issue and also determine whether the Aotea process was included in Ngati Wai's recent judicial proceedings filed with the High Court.

They were also invited to participate in the Hokianga Accord and the next hui. It was expected the next hui would be in the Ngati Whatua area in July, dates to be confirmed. DoC and MFish will be invited to participate as well.

Kaitiakitanga Project

Bruce Galloway gave a summary of the continuing legal obligations of the Crown to tangata whenua and non-commercial fishing rights. These obligations were tied in with section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, sections 33 and 36 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and sections five and twelve of the Fisheries Act 1996. All of these relate back to kaitiakitanga (guardianship) obligations of tangata whenua.

All the obligations under the Fisheries Act 1996 have to be carried out in a way that is consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This is a **continuing** obligation on the Crown. The key question is whether the Crown views the Kaimoana Regulations as a discharge of its obligations to tangata whenua. If so, then Bruce needs to go back and review the Treaty obligations to verify the Crown's position.

The Kaimoana Regulations deal specifically with gazettal of rohe moana, kaitiaki, the issuing of customary permits, enabling kaitiaki to have "input and participation" into sustainability measures and reporting provisions.

More investigation is required into what the effect of this continuing obligation is for the Crown. And whether claims by Maori, in respect to non-commercial fishing, continue to give rise to Treaty obligations on the Crown.

The Kahawai Legal Challenge is seeking a clearer definition of what "non-commercial fishing interest" means in regards to section 21 of the Fisheries Act 1996. Many people had expressed their non-commercial interest as being more fish in the water to provide a reasonable chance of catching a reasonable daily bag of fish.

Public Awareness

Public support for kaitiakitanga will only come through understanding what kaitiakitanga is, the background legal obligations and what the advantages are. It would be naïve to

contemplate a public awareness campaign without a complete literature review of the Fisheries Act 1996, Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Resource Management Act, Coastal Policy Statements (DoC) and Fisheries (Kaimoana Customary Fishing) Regulations 1998.

The New Zealand Big Game Fishing Council has discussed kaitiakitanga with its members for the past two years with a majority supporting the concept. Using the Guardians of the Sea banner kaitiakitanga would be easier to market to the general population.

The public was already being tuned into the Hokianga Accord and its objectives so kaitiakitanga would be another step in the direction of marine protection without the need for no-take forever marine reserves.

Marine reserves do not deliver kaitiakitanga as they displace effort into neighbouring rohe and deny tangata whenua the opportunity to exercise their kaitiakitanga obligations.

Jeff Romeril has written a number of articles about the Hokianga Accord and its objectives. The latest item is online at http://option4.co.nz/Fish_Forums/haaromeril206.htm.

The complete record of Hokianga Accord information was also online at http://option4.co.nz/Fish_Forums/hokianga.htm

Some discussion on the need for a set of principles followed this korero. An identifiable platform was helpful for people when considering whether they would give their support for any initiative. The option4 principles had stood the team in good stead for six years and a set of principles was worth considering for the Hokianga Accord and the kaitiakitanga project.

Inspiration was the key. The Hokianga Accord had the potential to offer the public a future by working with tangata whenua to achieve good outcomes for our marine environment and the aspirations of New Zealanders.

Papakainga

The concept of papakainga was discussed briefly. The short lineout understands papakainga provides the opportunity for a number of people to be appointed to fish for the whanau/community several times a week in a relatively unconstrained manner. More details are required on this concept as there are implications for non-commercial fishers and sustainability.

Conclusion

The Hokianga Accord short lineout committed to taking responsibility for investigating and reporting the papakainga concept and the Crown obligations, for the benefit of all non-commercial fishers.

Marine Protected Areas – Hokianga Accord View

All the marine protection tools and mechanisms are underpinned by kaitiakitanga in law. DoC has an obvious preference for marine reserves as the Marine Reserves Act 1971 gives them statutory powers for a particular area. Marine reserves would be the correct protection measure in some situations but in many instances customary tools would be more appropriate.

Tangata whenua had access to temporary closures, taiapure and mataitai provisions. Due in part to a lack of awareness of kaitiakitanga and the potential of customary tools to provide for the needs of the public, support or opposition seems to be the most common outcome of a marine reserve proposal.

The short lineout needs to develop a concise document and have that available to present to the next Accord hui. This document should explain the benefits of kaitiakitanga in a series of bullet points that could include the following:

- It inspires tangata whenua and the rest of New Zealand to work together positively.
- It addresses the real issue of the impact of people's behaviour on the environment.
- Kaitiakitanga focuses on the social and cultural values of the people.
- Have “*more fish in the water*” as its headline.
- Kaitiakitanga would not create new grievances.

The document also needs to explain the benefits in a manner that answers the question, ‘what’s in it for me?’ so people support it.

This work needs to be done immediately as the standards associated with the Marine Protected Areas (MPA) strategy are one month overdue and could be released at any time. The Department of Conservation and Ministry of Fisheries are working on this project jointly. It is likely that mataitai will not qualify as meeting the standards of an MPA unless it has a large no-take component included in the area.

Many of the above points were covered in an article published in the April edition of the “Pothole,” a local publication distributed around the Mimiwhangata area. Bruce made this available to the hui and is worth reading. It is online at http://option4.co.nz/Marine_Protection/mimltonks406.htm

A joint iwi statement to the effect that until kaitiakitanga has been adequately resourced and reasonably explored there cannot be any more marine reserves accepted. This would represent a type of moratorium from Maori, to enable tangata whenua to exercise their kaitiakitanga obligations.

Jeff Romeril (team leader), Bruce Galloway, Robert Willoughby, Bill Wii, Matu Clendon and Judah Heihei would work on the draft document. Other people were welcome to participate.

Shared Fisheries Policy Project

The Ministry released a paper on the Shared Fisheries Policy project in December 2005. Mark Edwards presented the project to the recent Hokianga Accord hui. MFish has asked for feedback on the issue of allocation of resources in shared fisheries. MFish plan to release a public discussion document by the end of August, which will be followed by four months public consultation.

The Ministry has been asked where and when they planned to hold hui and public meetings to discuss the document. MFish had responded that they have no details yet of where and when the meetings and hui will occur. Reports from meetings already held with the Ministry to discuss the project are online at http://option4.co.nz/Fisheries_Mgmt/sharedfisheries.htm

It was important the Hokianga Accord formulate a position on the Shared Fisheries Policy project. A draft document in response to the Ministry's initial proposal was underway now. This would be available soon for the short lineout to consider, as the position of the Hokianga Accord on the Shared Fisheries Policy project.

It is expected that much of the draft would be based on the proportional allocation document already submitted to MFish last year. This is online at http://option4.co.nz/Fisheries_Mgmt/proportions.htm

Realistically the Accord would need to see the public discussion document before having a fixed position. The August timing made it difficult to obtain full agreement from the next hui scheduled for July. More discussion was required before a position could be agreed.

Evidence of how much influence non-commercial fishers have had into the process to date will be in the contents of the public discussion document. If it is much the same as what Ministry had promoted in previous attempts then obviously the effort had been a waste of time. If the document includes concerns expressed at the various meetings held with the MFish team, then there is hope.

Public Awareness

The hui did not have time to address the topic of public awareness, although everyone accepts this is an essential element of progressing the issues the Hokianga Accord are, and would be, pursuing. A co-ordinated effort entailing the pooling of resources is likely, as is the appointment of a public relations consultant.

Other Issues

To be addressed at the next hui:

- Public awareness
- Yield curve – fisheries management
- April Hui report

Conclusion

Another successful hui had been completed with everyone clear about their commitments to achieve the respective goals discussed over the two days. Results of their investigations would be supplied to the short lineout via email as soon as possible. A report of the hui would be produced and distributed as soon as practical. The next full Hokianga Accord hui was scheduled for July, with dates to be confirmed.

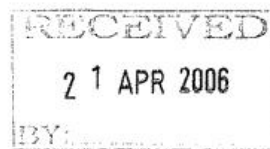
Appendix One



MINISTRY OF FISHERIES
Te Tautiaki i nga tini a Tangaroa

COPY

ASB Bank House, 101-103 The Terrace,
PO Box 1020, Wellington, New Zealand.
Phone (04) 470-2600, Fax (04) 470-2601.



Ref: 12/4/3

12 April 2006

Mr Raniera Tau
Te Runanga A Iwi O Ngapuhi
PO Box 263
Kaikohe

Tēnā koe Sonny

ENGAGEMENT BETWEEN THE MINISTRY OF FISHERIES, IWI FORUMS AND THE HOKIANGA ACCORD

I refer to the meeting between the Ministry of Fisheries (the Ministry) and the Hokianga Accord in Auckland in November 2005 and your letters of 4 and 5 April 2006 regarding your views on options for engagement between tangata whenua and the Ministry.

At the meeting in Auckland you requested more detail on the Ministry's interpretation of input and participation. Please find attached a paper setting out our views on this issue.

In your letter of 4 April, you requested information on the governments Crown Maori Relationship Policy and information on the funding provided by government for the establishment of regional forums. The information regarding the governments Crown Maori Relationships Policy originates from the Ministry of Justice and Te Puni Kōkiri. We have informed those agencies of your request for the release of the information under the Official Information Act 1982. They are considering the release of the material. The material you have requested on funding of regional forums is being collated. A decision on the release of this information will be provided to you within 28 working days of the receipt of your letter as required by the Official Information Act 1982.

I undertook to reply to your letter of 4 April 2006 in more detail within 10 working days. I have received your further letter of 5 April 2006. I will be on leave until 26 April 2006. On my return I will reply to the issues you have raised in both letters.

Naku noa, na

A handwritten signature in black ink.

G T (Stan) Crothers
Deputy Chief Executive

Encl

20-21 April 2006

Hokianga Accord
PO Box 37-951, Parnell, Auckland
Phone: 09 8186205; HokiangaAccord@option4.co.nz

http://option4.co.nz/Fish_Forums/har200406.htm

Appendix One

Action point from November hui: clarification about aspects of "Input and participation" (section 12 of the Fisheries Act 1996)

Action point: Ministry of Fisheries to provide more information about when the provisions of section 12 apply - in particular providing for input and participation of tangata whenua. The hui asked about the meaning of a "customary non-commercial interest" as mentioned in that section: whether this applied to both 'recreational' and 'customary' non-commercial fishing.

Response: Section 12 of the Fisheries Act 1996 outlines the Minister of Fisheries' obligations before doing anything under specified sections of the Act to provide for the **input and participation** of tangata whenua with a customary non-commercial interest in the stock in question, or an interest in the effects of fishing on the aquatic environment in the area concerned, and have particular regard to Kaitiakitanga.

The Fisheries Act 1996 defines tangata whenua, in relation to a particular area, as the hapu, or iwi, that is Maori and holds mana whenua (customary authority) over that area.

❖ What is a "non-commercial interest"?

"Non-commercial interest" may include:

- An interest that arises because the tangata whenua in question access the resource using the provisions available for customary use (e.g. Regulation 27/27A of the Fisheries (Amateur Fishing) Regulations 1986; the Fisheries (Kaimoana Customary Fishing) Regulations 1998; the Fisheries (South Island Customary Fishing) Regulations 1999; and parts of the Fisheries Act 1996, e.g. section 186);
i.e. 'customary fishing'
- An interest that arises because the tangata whenua in question access the resource using the provisions available for amateur fishers (i.e. the Fisheries (Amateur Fishing) regulations 1986 and the relevant regional amateur fishing regulations);
i.e. 'recreational fishing'
- Any other non-commercial interest (e.g. environmental, stock size/abundance)

❖ When does the Minister have to provide for input and participation under section 12?

- Before doing anything under **sections 11(1), 11(4)**: these sections allow the Minister to set or vary any **sustainability measure** for one or more stocks or areas - 11(1); and to set or vary the catch limit (including the commercial catch limit) or sustainability measure for any stock not within the quota management system - 11(4);
- Before doing anything under **section 11A(1)**: this section sets out that the Minister may approve, amend, or revoke a **fisheries plan**.

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- Before doing anything under **sections 13(1), 13(4), 13(7)**: these sections allow the Minister to set a **total allowable catch** for a stock – 13(1); to vary any total allowable catch by increasing or reducing it – 13(4); and, for stocks listed on the Second Schedule to the Fisheries Act 1996, to increase the total allowable catch for the stock within a fishing season – 13(7).
- Before doing anything under **sections 14(1), 14(6), 14B(1)**: these sections outline that the minister may set an **alternative total allowable catch** for a stock (i.e. one not based on the concept of maximum sustainable yield. These provisions apply only in specific circumstances) – 14(1); to provide for an in-season increase to the total allowable catch for any stock listed on the Second Schedule and managed under section 14 – 14(6); and set an alternative total allowable catch to ensure the stock is maintained above a level that ensures its long-term viability, for certain species caught incidental to other stocks – 14B(1).
- Before doing anything under **sections 15(1), 15(2)**: these sections allow the Minister to take measures to **avoid, remedy, or mitigate any adverse effects of fishing on marine mammals or other wildlife** (including steps to ensure that the maximum allowable fishing-related mortality level is not exceeded, if there is an approved population management plan – 15(1), or in the absence of such a plan – 15(2)).

❖ When else does the Minister have to provide for input and participation?

Under the Fisheries Act 1996 there is an obligation to provide for the input and participation of tangata whenua, and have particular regard to Kaitiakitanga:

- Before doing anything under the specific sections listed in section 12 of the Act relating to sustainability measures (as outlined above);
- Before recommending the alteration of any quota management area (s 25);
- In the statement of procedure for resolution of disputes under Part VII of the Act (s 116);
- Before giving a notice to temporarily close any area of New Zealand fisheries waters, or temporarily restrict or prohibit the use of any fishing method, in respect of any species of fish, aquatic life, or seaweed (s 186A & 186B).

❖ How does the Minister provide for input and participation?

- The Act does not specify how input and participation should be provided. The Minister has discretion to decide how input and participation will occur. The government, after consultation with tangata whenua, has determined that input and participation will be provided for through Regional Iwi Forums, where tangata whenua can develop their own views on the management of their fisheries interest and bring their views on preferred management outcomes for the fishery directly to the Ministry. The Ministry has been funded to provide for input and participation on this basis.

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Reference:

1. Fisheries Act 1996 Requirements to consult or to provide for input and participation

Section Number	Section Title	Consultation Required?	Input and Participation Required?
11	Sustainability measures	Yes	Yes
11A	Fisheries plans	Yes	Yes
12	Consultation	Yes	Yes
13	Total allowable catch	Yes	Yes
14	Alternative total allowable catch for stock specified in Third Schedule	Yes	Yes
14A	Alternative total allowable catch for stocks specified by Order in Council	Yes	Yes
14B	Alternative total allowable catch for certain stocks	Yes	Yes
14C	Stock may be declared no longer subject to section 14B	Yes	Yes
15	Fishing-related mortality of marine mammals or other wildlife	Yes	Yes
16	Emergency measures	Yes	
17B	Determination that stock or species be subject to quota management system	Yes	
19(7)	Matters to be included in notice under section 18	Yes	
21(2)	Matters to be taken into account in setting or varying any total allowable commercial catch	Yes	
25(3)	Alteration of quota management areas	Yes	Yes
59(7)	Aggregation limits	Yes	
60(1)	Minister may consent to persons holding quota in excess of aggregation limits	Yes	
67B(3)	Amendments to Schedule 5A	Yes	
74(9)	Minimum holdings of annual catch entitlement	Yes	
75A	Requirement to consult in relation to deemed values	Yes	
77(6)	Over-fishing thresholds	Yes	
82	Apportionment of foreign allowable catch for foreign fishing vessels	Yes	
86(2)	Suspension and revocation of licences	Yes	

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97	Special permits	Yes	
116	Content of statement of procedure		Yes
178	Initial consideration of proposal	Yes	
181	Inquiry by tribunal	Yes	
184(1)	Management of taiapure-local fishery	Yes	
186A(7)	Temporary closure of fishing area or restriction on fishing methods	Yes	Yes
186B(6)	Temporary closure of fisheries	Yes	Yes
188	Conversion factors	Yes	
188A(2)	Spat ratio	Yes	
277(1)	Members	Yes	
283(2)	Catch History Review Committee established	Yes	
296P(1)	Procedure for issuing standards and specifications	Yes	
310(1)	Southern scallop enhancement programmes	Yes	

2. Fisheries Act 1996: Section 12 - Consultation

- (1) Before doing anything under any of sections 11(1), 11(4), 11A(1), 13(1), 13(4), 13(7), 14(1), 14(3), 14(6), 14B(1), 15(1), and 15(2) of this Act or recommending the making of an Order in Council under section 13(9) or section 14(8) [or section 14A(1)] of this Act, the Minister shall—
 - (a) Consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Maori, environmental, commercial, and recreational interests; and
 - (b) Provide for the input and participation of tangata whenua having—
 - (i) A non-commercial interest in the stock concerned; or
 - (ii) An interest in the effects of fishing on the aquatic environment in the area concerned—and have particular regard to Kaitiakitanga
- (2) After setting or varying any sustainability measure, [or after approving, amending, or revoking any fisheries plan,] the Minister shall, as soon as practicable, give to the parties consulted in accordance with subsection (1) of this section reasons in writing for his or her decision.
- (3) This section does not apply in respect of emergency measures under section 16 of this Act.