# Report

# Hokianga Accord

## Whakamaharatanga Marae Hui

**A hui to discuss non-commercial fishing interests and Maori customary forums.**

***10 – 11 November 2005***

***"Waiho i te toipoto, kaua i te toiroa"***
*Let us keep close together, not far apart*

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## Executive Summary

One of the greatest achievements of the Hokianga Accord to date has been the breaking down of barriers between Maori and other New Zealand non-commercial fishing people. The scepticism that existed at the first hui held in May 2005 at Whitiora Marae, Te Tii, Northland has dissipated and been replaced with an appreciation of what everyone has to offer and a thirst for more information.

This document is a report of the third hui held at Whakamaharatanga Marae, Waimamaku, Hokianga from 10 – 11th November to discuss solutions to fisheries mismanagement and the protection of our precious marine environment. This report has been written by Trish Rea and was commissioned by the Hokianga Accord in November 2005.

Unique is how the Hokianga Accord has been described due to the parties that make up the Forum. Originally intended to be one of eleven regional customary iwi forums to be established throughout the country the Accord has determined it wants to be inclusive of all non-commercial fishing interests, both Maori customary and recreational. The Forum currently includes representatives from Ngapuhi, Ngati Wai, Ngati Whatua, option4, the New Zealand Big Game Fishing Council and the New Zealand Recreational Fishing Council.

The Fisheries Act 1996 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provide statutory support for Maori input and participation into management of fisheries and the marine environment. Section 12 of the Fisheries Act is of particular interest to this Forum and has been analysed, in detail, in this report.

The value of having the Ministry of Fisheries attend the hui was evident when the discussions turned to customary fishing. The MFish team have committed to return to Wellington and provide feedback to the Forum on the Ministry's definition of non-commercial and customary fishing and many other questions posed over the course of the two-day hui.

When the Quota Management System was introduced in 1986 the Government's policy was that recreational fishing, which includes over 99.9% of fishing by Maori when fishing to feed their whanau (family), would be given preference over commercial fishing if there was insufficient abundance to provide for the needs of both commercial and non-commercial fishers. The Government policy, referred to as Moyle's Promise, was news to many at the hui.
http://www.option4.co.nz/Your_Rights/moyles.htm

Compliance is a major issue for MFish and their compliance leader from the Whangarei Fisheries Officers team, Harvey Fergusson, gave the hui an insight into compliance and enforcement matters in the North. It was evident from his korero (talk) that the public were still in the dark as to what the compliance team were using as strategies to ensure public awareness about the level of poaching and the impact it was having on fish stocks.

MFish's Te Tari o te Kahui Pou Hononga unit will be busy over the next few weeks as they expect to have another two iwi Forums underway by years end and eleven Forums operational by June 2006. Unit manager Carl Ross gave the hui an overview and also discussed some issues that had been raised in his management meetings in Wellington.

The draft Kaupapa Whakahaere or Memorandum of Understanding (MOU) developed by the Hokianga Accord does not comply with Government policy. Feedback to the draft was discussed during the hui. The Accord's Working Group will review the draft before it is presented to the next hui in February 2006.

Proportional allocation of fisheries is an unfair and unjust way of allocating fisheries resources between commercial and non-commercial sectors. The Ministry of Fisheries is using this policy interpretation throughout its advice to their Minister to limit the catch of recreational fishers and avoid compensation issues for the Crown. Proportionalism needs to be rejected wholeheartedly and was covered comprehensively during the hui.

Based in Nelson, the Extension Services team will be providing strategic advisors to the iwi Forums. The equivalent of one person per Forum will be available to help with the use of statutory management tools and other assistance.

Public awareness is overlooked in many of the Ministry's plans. In order to have a good chance of success for the implementation of the customary tools public awareness is essential. Ministry will need to address this issue before much progress can be made.

Commercial fishers have indicated the possibility of Court action if customary Maori management tools and/or marine reserves prevent them from catching their quota. Effectively, there is a "race for space" developing between hapu and the Department of Conservation (DoC). Maori are increasingly disillusioned by the prospect of being denied application of customary management due to the no-take forever marine reserve ideology being promoted by DoC, often as not over areas that are prime candidates for meaningful customary management. The mismatch of resourcing is becoming all too apparent as DoC spends seemingly endless sums on marine reserves and the "science" to reinforce their position.

Solutions for dealing with the "race for space" issue were offered and could also provide the answer to address the mismanagement of important shared fisheries.

Tauranga was the scene of the most recent gathering of the Executive Forum consisting of the chairmen of the iwi Forums. Tom Moana, with Sonny Tau providing backup information, gave a brief report of this hui to the Hokianga Accord.

DoC's approval for a marine reserve at Aotea (Great Barrier Island) is very contentious and MFish have agreed to meet with tangata whenua to discuss the impact on customary fishing. The Accord discussed the need to address the impact on recreational fishing as well and agreed that this had not been well handled by DoC.

So much was learnt during this hui and there is now a greater understanding of the management tools, the background in fisheries management and the steps that need to be taken to make progress. This was a successful hui and the Hokianga Accord undoubtedly has the potential to go ahead with confidence and knowledge.

## Introduction

The many new faces, both brown and white, gathered outside Whakamaharatanga marae, Hokianga were a good indication of the growing interest in the Hokianga Accord. Held in the second week of November, this was the third Hokianga Accord hui held at Waimamaku. After a heart-warming powhiri by the Hokianga hapu of the Ngapuhi iwi around 50 people entered the marae for an overnight hui.

The Ministry of Fisheries (MFish) team were introduced to the hui. Joining Jodi Mantle from the Northern Inshore team were Stephanie Hill and Stacey Whitiora. The Inshore team attended the hui to listen and add value to the Forum.

The Customary Relationship Unit (CRU), Te Tari o te Kahui Pou Hononga, lead by Carl Ross were joined by the Pou Hononga of the three other iwi Forums from around the country.

Jonathan Dick, the Extension Services manager from Nelson explained that his team had been tasked with implementing initiatives from the Deed of Settlement programme. One of his jobs is to introduce Extension Officers to all customary Forums to assist tangata whenua have input and participation into fisheries management.

Tom Moana of Tainui is the chairman of the Waikato Forum. Tom had been to the previous hui and also attended the Executive Forum held in Tauranga recently for the leaders of the iwi Forum.

Manny (Tuiringa) Mokomoko, chairman of the Bay of Plenty Forum advised the hui their Forum's area extends from the Coromandel down to East Cape and he was very supportive and interested to participate in the hui.

Tom Paku, chairman of the Hawke Bay Forum consisting of Ngati Kahangungu and other iwi collectives advised that he had to leave the hui early but was certainly thankful for the information he had gathered whilst in the north.

Peter Ellery from Rotorua introduced the recreational representatives including Paul Barnes, Scott Macindoe, Trish Rea, Jason Foord, Brett Oliver and Bill Cooke of option4. Pete Saul and Paul Batten represented the New Zealand Big Game Fishing Council. Bill Bell and John Torr attended on behalf of the Whangarei based Northland Outboard Boating club. The Kaipara Harbour Sustainable Fisheries Management Study Group was well represented by Peter King, mayor of the Kaipara District Council.

Paul Barnes, project leader of option4, had attended all four hui in 2005 providing much needed technical information, advice on fisheries management and offering solutions to problems confronting non-commercial fishers, both Maori customary and recreational.

Scott Macindoe of option4 has led the initiative to engage with Maori fishing interests and had, as always, much to contribute to this hui.

Bruce Galloway is a member of the Guardians of Mimiwhangata's Fisheries and Marine Environment Incorporated /Nga Kaitiaki o Nga Ika, Nga Kaimoana Me Nga Ahuatanga Takiwa o Te Moana o Mimiwhangata established to look at and work with tangata whenua and local communities on alternative marine protection to the marine reserve proposed by the Department of Conservation in 2004 for the coastal waters at Mimiwhangata on Northland's north-eastern coast. Mimiwhangata already has protection as a marine park prohibiting commercial fishing and limiting recreational fishing.

## Background

***Sonny Tau, Chairman, Ngapuhi***

For the purpose of informing everyone present of what had developed since the formation of the Hokianga Accord, Sonny gave a comprehensive explanation covering many of the important issues facing the Accord.

Sonny assured the hui that Ngapuhi were here for their long-term interests. *"Pakeha could exploit the fishery, which they have, and sell up and get out of the fishing game. Maori however are strapped into fishing and cannot sell their quota on the open market."* Ngapuhi's commercial fishing asset is worth around $67 million and any concerns about overfishing would have an adverse effect on the value of their fishing asset.

The Hokianga Accord was reminded that the Accord is not a forum to implement the tools of mataitai and taiapure. The Forum was here to support whanau and hapu to implement the tools, their mataitai and taiapure plans, not to do that for them.

The Forum has been set up to give effect to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. *"We* [Maori] *lost our right to go fishing customarily to feed our family on the 23rd September 1992,* [on that day] *that right changed forever".* Ever since then Maori need a permit to go customary fishing.

*" 99.99% time Maori go fishing we are categorised as recreational fishers when we go fishing to feed our whanau. The only time we are customarily fishing is when we have a permit".*

Regional recreational Forums and Maori customary Forums established by the Ministry in the same areas amounted to a segregated approach by MFish. This did not make sense as both Forums have the same concerns regarding fisheries management. "*The fragments of information they* [MFish] *give about Maori causes the confusion.*

*The fragments of information the Ministry feed us about our recreational fishing right causes the difficulty between the two parties. So we* [Hokianga Accord] *have said no, we want to work this thing out together. The Minister has written a letter and agreed that the Hokianga Accord will be treated accordingly".*
To read the Minister's letter to the Hokianga Accord please go here
http://option4.co.nz/Fish_Forums/images/halminr805.gif

The Hokianga Accord has found the recreational fishers to be very skilled and helpful in getting the Forum together so any problems can be worked on collectively.

Section 12 of the Fisheries Act 1996 is very important for Maori. It describes the provision of *"input and participation"* of tangata whenua into fisheries management processes. Due to the high incidence of recreational fishing by Maori this section of the Act would be discussed in more detail over the course of the hui.

MFish have not clarified what "input and participation" means, "*so we* [Hokianga Accord] *have an open chequebook, to put into our MOU of what we think input and participation means."*

At the last hui the Working Group, or "short lineout" of the Forum, was assigned the task of working on the draft Memorandum of Understanding for the Hokianga Accord and also the draft MOU provided by MFish. The draft Ministry MOU was based on what had been supplied to the Bay of Plenty Forum. It seemed the Bay of Plenty draft had been driven by Ministry and *"doesn't suit where the Hokianga Accord want to go."* The Accord wants a combined approach to the sustainable management of our fisheries; hence this is a combined Forum of both customary and non-commercial recreational fishing interests.

A fair amount of feedback had been received on the draft MOU, the Kaupapa Whakahaere, from both Maori and non-Maori fishing interests. The draft had been distributed since the August hui. The feedback would be discussed later in the program.

The feedback to the Kaupapa Whakahaere proves there is a lot of work to do for both non-commercial recreational fishers and Maori to educate people on what the Hokianga Accord is trying to achieve. Some of the feedback included concerns about Maori getting what they want and then leaving the recreational fishers out of the process. *"The fact of the matter is we are inextricably connected because our desires are both the same – to leave more fish in the water."*

There are 107,000 people registered as Ngapuhi and as chairman Sonny has the responsibility to manage their commercial asset on behalf of everyone. While acknowledging their commercial interest, his people have said they would rather have fish on the table to feed their whanau (family) than on some overseas persons plate. They have determined their whanau's interest comes well before their ability to export seafood overseas for an economic return.

The Forums have been offered $20,000 each to provide for input and participation. This is likely to be used up in copying paperwork alone, it is not enough to provide for the statutory obligations due to Maori under section 12 of the Fisheries Act 1996.

The Quota Management System was brought in to constrain commercial catch not customary or recreational catch. It was to halt the *"rape and pillage"* of our fisheries. While Maori still struggle to come to terms with being "categorised" as recreational fishers by law, it is the reality that when fishing to feed the whanau Maori are recreational fishing.

The biggest problem is lack of public awareness. When it comes to initiatives such as mataitai and taiapure the Ministry should be held accountable for the public awareness campaign to inform people of what it means, what the tools are and how it will benefit everyone. *"It makes good sense to work together with Ministry on this issue"*.

An integral part of the Hokianga Accord process has been the video recording of the hui to ensure accurate reporting. Attendees to the hui have been informed of the process before they speak and given the opportunity to request a non-recorded session. Speakers were reminded of *"te tika, te pono me te tuwhera,"* being righteous, truthful and transparent, in the interests of everyone present. All sessions of the Hokianga Accord have been recorded to date.

## Fisheries Act 1996, section 12

***Bruce Galloway, partner, Kensington Swan***

Prior to the hui, at Sonny's request, Bruce wrote a paper on section 12 of the Fisheries Act which, in broad terms, requires that before the Minister of Fisheries makes any decisions on sustainability measures he must provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned, and consult widely including Maori, environmental, commercial and recreational interests.

Bruce said that in order to understand section 12 contained in Part 3 of the Fisheries Act 1996 concerned with sustainability measures, it was important to consider previous sections of the Act which underpin fisheries management in New Zealand.

Section 8 contains the purpose of the Fisheries Act:

> *Section 8 (1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.*
>
> *(2) In this Act –*
> ***ensuring sustainability** means –*
>
> *(a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and*
>
> *(b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.*

Sustainability is not just a short-term issue, but goes well beyond our lifetimes.

> ***Utilisation* is defined as** *conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.*

Bruce posed three questions in relation to section 12:

1. What does section 12 mean?
2. What section 12 requires the Minister to do?
3. How it would work in practice?

## What does section 12 mean?

The effect of section 12 is that, before giving any approval or carrying out any functions specified in relation to sustainability measures the Minister **shall** - there is no discretion - *provide for input and participation* of tangata whenua and *consult* widely.

***Section 12***

(1) Before doing anything under any of sections 11(1)……(sustainability measures), 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****.*

The obligations to both consult and provide for the input and participation put in place a two-layered requirement on the Minister on the proposed sustainability measure, namely, the Minister must:

1. Consult and engage with a wide group of interests; and
2. Make the necessary arrangements, including adequate resourcing, to provide for the input and participation of tangata whenua ….

*and have particular regard to kaitiakitanga.*

## What section 12 requires the Minister to do?
## Consultation

The courts have considered the term "consultation"[1] and although not defined in the Fisheries Act 1996 is defined in at least one other statute, the Local Government Act. (Appendix One)

The Ministry has considered what consultation means in the Fisheries Act context as discussed in the Ministry paper entitled "Section 12: Consultation" (dated October 2001); in broad terms consultation has to be a meaningful engagement with an open mind, not merely an offer of a proposal and disregarding people's responses. (Appendix Two)

## Input and Participation

The MFish section 12 paper refers to an informal working group having initiated a project to establish how to incorporate the views of tangata whenua in developing proposals and making decisions relating to fisheries management, seeking advice from tangata whenua on how they wished to provide such *input and participation* with the project to have been completed by the end of the year 2000.

Apart from statements made in various Ministry plans - the five-year plan and the ten-year plan - of the need to involve tangata whenua in decision making processes, to date it appears that the Ministry has not developed a policy on what the Ministry considers *input and participation* means.

Some key phrases in section 12:

***Provide for***
This suggests:

- Positive steps or actions that need to be taken;
- Adequate resourcing.

***Input and participation***
This must include:

- The contribution of tangata whenua in formulating the sustainability proposal;
- The act of taking part or being involved in the process to which the proposal relates.

Contrasted with *consultation, input and participation* means being involved in the formulation of a proposal.

***Tangata whenua having a non-commercial interest***
There was some discussion of what tangata whenua having *"a non-commercial interest"* actually means. One interpretation put forward was that this term is limited to a customary non-commercial interest.

[1] Wellington International Airport Limited and others v Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671)

The consensus of those at the hui was that the words *"a non-commercial interest"* clearly includes both customary and recreational fishing especially given the realisation that the vast majority of kaimoana harvested by tangata whenua is categorised as recreational fishing.

It was suggested the Forum request the Ministry for its view on this point.

***kaitiakitanga*** - section 2

> *means the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori.*

In response to a question by Bruce, Sonny informed the hui that, in his experience since the Fisheries Act came into force in 1996, MFish have never consulted with Ngapuhi on sustainability measures at the formative stage. There is a clear need for consensus on how the *input and participation* and *consultation* processes are to work. Then tangata whenua can engage with MFish and say, "this is what we think you should be doing" on a specific sustainability measure proposed.

## How section 12 will work in practice?

At the last hui the Ministry advised that $20,000 per annum could be made available to the Hokianga Accord to assist in the *input and participation* and *consultation* processes. Bruce considered that the money would be a contribution towards the cost of an administrator. (Sonny, tongue in cheek, mentioned that this amount may only cover photocopying costs).

The reality is that the amount of resourcing required will depend on the nature of the particular sustainability measure the Ministry has in mind on which tangata whenua's *input and participation* is required. As mentioned, $20,000 may help to fund secretarial services but the Accord would need to look at each sustainability measure that came up and decide how much is required to provide for proper *input and participation*.

## Fisheries Act 1996, section 12

***Scott Macindoe, option4***

The analysis completed on section 12 to date needs more work in order to be of assistance to the Hokianga Accord and other Forums. It is very important the Forums have a good understanding of the Fisheries Act and the Crown's obligations to tangata whenua's interest and participation in fisheries management.

***12.Consultation—***
***Section 12 (1) (a)***
There was some concern expressed about the provision for consultation in section 12 (1) (a) that would allow the Minister to have discretion over who he consults with during sustainability rounds.

Phil Grimshaw confirmed the negotiations held during the process to set up the Kaimoana regulations in 1997 and 1998 the *"input and participation"* of tangata whenua and how that would be given effect was discussed. As a Treaty partner it was envisaged that Maori would talk with the Ministry before the process would move on to the consultation phase. Nothing much had happened since these talks to give effect to the *"input and participation"* phase.

As the law is written, and had been interpreted for these discussions, there is a two-stage process. The *"input and participation"* by tangata whenua should be conducted with the Ministry of Fisheries to formulate a sustainability proposal before it goes out for consultation.

***Section 12 (1) (b)***
Section 12 (1) (b) (i) refers to tangata whenua's *"non-commercial interest in the stock concerned"* which, in the case of flounder 1 or grey mullet 1, extends from north Taranaki in the west to Cape Runaway on the east coast.

Whereas section 12 (1) (b) (ii) of the Fisheries Act refers to tangata whenua in regards to *"the area concerned"* which indicates tangata whenua's interest lies in an area they have manawhenua over.

## *Carl Ross*

In response to several comments made during the question and answer session on section 12 Carl Ross, manager of the Customary Relationship team, advised the hui that the regional forums were put forward to the Ministry, by the chief Maori negotiators, they were not a construct of the Ministry of Fisheries. Carl also pointed out that the Ministry is obligated to have these hui.

The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provides for the Pou Hononga unit to achieve two things:

1. *"To ensure the capacity and capability is there for Maori to manage fisheries; and*
2. *To have true and meaningful input into fisheries management. I tested that when I first started this position."*

*"If there is a question about customary, then that goes on as action point and we come back with an answer."*

If there were some doubt about the Ministry's policy on participation then Carl would like the Hokianga Accord and MFish to work together on the issue.

## Ministry of Fisheries

***Jodi Mantle, MFish Manager, Northern Inshore team.***

MFish is trying to improve tangata whenua's input into fisheries management and this was one of the reasons Jodi, Stephanie and Stacey were attending the hui. "*We* [MFish] *are very open to expanding on the input from the forums into fisheries management.*" Her expectation is that if her team were writing a paper, they would come to the Hokianga Accord and ask for input at the development stage, before the paper is written.

*"If my team is not involved in writing those papers then we can definitely go back to the Ministry and lobby the person who is on the particular issue you are really interested in, and try and get them here and to listen. And if not, the best we could do is take your expectations back to them and see if we can put them that way."*

## Customary Fishing

***Phil Grimshaw, Ngapuhi***

The Fisheries Kaimoana Customary Fishing) Regulations 1998 describes customary fishing as customary food gathering,

> *"Customary food gathering means the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, being the taking of fish, aquatic life, or managing of fisheries resources for a purpose authorised by tangata kaitiaki including koha, to the extent that such purpose is consistent with tikanga Maori and is neither commercial in any way or for pecuniary gain or trade".*

In order for Maori to be able to have "*input and participation"* the Ministry is obligated to up skill Maori through training and increase capacity building. Discussions were held throughout 1997 and 1998 regarding Ministry's obligations and how it conducts its processes such as Fisheries Assessment Working Groups, regional planning groups and all the other units associated with fisheries management.

The Ministry has very clear processes around the setting of sustainability measures. What was not clear was how the Ministry were going to resource that "*input and participation",* up skill tangata whenua and recognise Maori as being partners with the Ministry as fisheries managers. The task then would be to work out how tangata whenua would participate in the Working Groups and other sustainability programs.

Ministry were adamant Maori had to go to Wellington to participate, tangata whenua were agreeable to the suggestion but MFish were not willing to provide the funds required to get them to Wellington. Talks broke down after this impasse.

The Ministry have offered to ask for a definition of customary fishing from officials in Wellington and advise the Hokianga Accord of the outcome. The MFish team are obliged to report back to the Accord if that is what the Forum has asked for.

## Moyle's Promise

***Scott Macindoe, option4***

In June 1989 the Minister of Fisheries, Colin Moyle released the National Policy for Marine Recreational Fisheries. He also made a statement now referred to as Moyle's Promise.

> *"Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing."*

The promise of preference for non-commercial fishing interests had not been made law. One reason is that the Labour party lost the next election to National.

Sonny Tau stated that in all the years he has been involved in the Ngapuhi fisheries asset discussions, he had not heard Moyle's Promise being discussed once. *"The question for Ngapuhi is, did our fisheries negotiators know about Moyle's Promise when they signed the Sealords Deal?"*

At the first hui at Whakamaharatanga Terry Lynch of MFish confirmed he was involved in the settlement process. He also confirmed at that hui that he believed the Maori negotiators were aware of the preference that had been promised but decided they would accept a portion of the Total Allowable Commercial Catch (TACC) as a settlement anyway.

## Compliance and Enforcement

Another question put to the Ministry staff for an answer was, if tangata whenua are considered to be fisheries managers under the law then does *"input and participation"* provide for the ability of tangata whenua, or these types of Forums, to have a compliance and enforcement role rather than just as customary permit issuers or Honorary Fisheries Officers (HFO's)? The Hokianga Accord would expect an answer to this question from MFish.

### Compliance

***Harvey Fergusson, Fisheries Officer, team leader, Whangarei***

Harvey agreed with the interpretation of amateur fishing previously discussed, that everyone in New Zealand has a right to fish recreationally, irrespective of race.

Customary fishing is covered in the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and under Regulation 27 encompassed in the Fisheries (Amateur Fishing) Regulations 1986. These regulations allow, under certain circumstances, people exercising their customary right to take more, or different size fish than is allowed for under the amateur fishing regulations.

Management of compliance and enforcement are core roles of Government, which can be assisted by other people but these roles need to remain with the Crown. MFish are currently looking for HFO's for the Hokianga area so the Ministry would welcome any assistance in this area.

Harvey was asked if there were any trends in regards to compliance and people's perception of gathering kai, whether there was an understanding that Maori were fishing recreationally if they did not have a permit authorising customary take. In his opinion, there did seem to be an increase in the use of permits to gather kaimoana (food), within the regulations. A small amount of permit abuse does occur but most people were fishing within the customary or amateur regulations.

# Customary Forums

***Carl Ross, manager of the Customary Relationship unit***
The Ministry and the Te Tari o te Kahui Pou Hononga unit expects to have six customary forums established by the end of the year and eleven by June 2006. The logistics of how the Pou Hononga unit is going to service and attend all the forum hui still needs to be worked out. With so many forums there will be a bigger demand for the attendance of MFish staff from other units to be available to have input and answer questions from each forum.

*"It has been really interesting to see and hear the feedback that's been coming from Wellington on the Hokianga Accord."* The funding supplied by Government was to support customary forums. *"This* [Hokianga Accord] *is running a little bit outside the scope of what we are supposed to be doing. What we have been talking about in amongst the Pou Hononga is that every Forum is now unique. The uniqueness is something I would like to nurture. The Hokianga Accord has certainly tested the boundaries of where we are supposed to be. It's good to hear some of the statements that have been made from this Forum are now being used in Wellington. That goes to show the importance of it."*

## Input and Participation

Carl suggested the Hokianga Accord establish a Working Group so the Forum and Ministry can discuss what true and meaningful input into fisheries management is and develop the concept. Following that, Carl can take the outcome of that process to Wellington as the format of what the Accord have determined what *"input and participation"* means.

A hui held in Tauranga recently of all the Forum chairmen was an opportunity for the Ministry and the chairmen to exchange ideas. There are ideas and benefits that can be shared amongst all Forums. This Executive Forum will meet three times per annum. The Terms of Reference for the Executive is still in draft form and once finalised will form the basis of the relationship between the Forum and the Ministry.

## Kaupapa Whakahaere

**Memorandum of Understanding (MOU)**

Tom Moana of Tainui and Manny (Tuiringa) Mokomoko of the Bay of Plenty expressed support for the Hokianga Accord and the effort being put into developing the Kaupapa Whakahaere. (Appendix Four)

Along with the feedback from Forum participants MFish had also provided some feedback. Unfortunately the Ministry's feedback only arrived the night before the hui so there had been little time to analyse the feedback and make some informed comment. (Appendix Five)

The Ministry of Fisheries had asked for more time to consider the draft Kaupapa Whakahaere. The feedback from Stan Crothers, on behalf of the CEO, is that MFish do not seem to have any major issues with what is contained in the draft document.

Jonathan Dick, the Extension Services Manager gave an overview of the feedback received from Stan Crothers, to the draft MOU distributed after the last hui. There are six main points that MFish have raised, most of those are directed back to a particular document – Crown Maori Relationship Instrument Policy (CMRI). The feedback continually refers back to that document as the standard or benchmark of how the Crown engages with iwi organisations.

The feedback from Ministry was strongly supportive of a legally binding document being developed by the Hokianga Accord, as an MOU but the document needs to be consistent with Government policy.

Jonathan read out a couple of statements from MFish's feedback to the draft Kaupapa Whakahaere -

> *"MFish does not consider its approach to working with tangata whenua and recreational fishers to be segregated. MFish has specific statutory duties to recognise and provide for the input and participation of tangata whenua and to provide mechanisms for the exercise of non-commercial customary fishing activities."*

The feedback included reference to a clearer disputes resolution process. The Crown also wanted confirmation on the issue of mandate of those involved in the Hokianga Accord. Fisheries plans were mentioned in respect of the Hokianga Accord forming its own plans encompassing its vision for fisheries management in the area of concern for the Forum.

It appeared the Ministry were introducing new criteria in its feedback to the Forum. No mention of the Government policy had been made previously.

MFish suggested the Accord put together a "short lineout" i.e. A Working Group comprising of a select number of individuals from the Hokianga Accord, to work with the Ministry team to develop how the issues would be addressed.

Carl suggested the reference to and the need to be consistent with the Government's policy was an outcome of a review of MOU's between Crown agencies and others being very different in content and application. This was an opportunity for the Hokianga Accord and the Ministry to work out how to develop the relationship from here on in; it was not about one or the other document being discarded altogether.

The criteria are new elements that have not been presented to the Hokianga Accord on any previous occasion. It was particularly frustrating to receive the feedback the night before the hui, which did not allow time for the Working Group to consider or draft a response to present to the hui. Some felt the Ministry should be told, in no uncertain terms, that the circumstances surrounding the MFish feedback i.e. Its untimely arrival and content, does not constitute "good" consultation with tangata whenua.

The hui was advised that the Government relationship policy being referred to is still in draft form. If this is true, the Ministry were asked what risks are associated with Forums drafting an MOU under a policy that is in draft form and not finalised? Ministry representative, Jonathan Dick did not want to answer that specific question but it does require an answer.

At this point Carl Ross felt it appropriate to give some background on other Forums.

Carl advised the hui that the Ministry felt they had learnt a lot from working with the Bay of Plenty Forum, their MOU has been debated for the past two years. The Pou Hononga are answerable to the Minister of Fisheries so their role in the process is to take the Forum's feedback back to Wellington, give it to the Justice Department, if they are happy with it the document then goes onto Te Puni Kokiri (TPK). Once they have been through the draft it is returned to the Pou Hononga. The Bay of Plenty Forum's process is at the stage now where TPK'S response has been received, both MFish and the Forum have agreed on a document, a Cabinet paper had been drawn up and was awaiting confirmation from Cabinet. It is hoped a more streamlined approach to MOU development will be available soon.

> *"Legislation is getting passed that they (Cabinet) are going to devolve that* [responsibility] *down from Cabinet to strictly the Ministry of Justice and TPK."*

This hui was clearly frustrated at what was perceived as another hurdle to be overcome before the Hokianga Accord was considered official. The Accord did not want to lose sight of the common goal of *"more fish in the water"* ***"Kia maha atu nga ika i roto te wai."***

Encouragement was evident for the Working Group to keep working on the draft Kaupapa Whakahaere and incorporate the feedback if and as necessary. It is an unfortunate trait of working with Government departments that most things take time to complete but the outcome needs to be robust so the advice to the hui was to keep working on the draft MOU.

When asked about the Ministry providing for the *"input and participation"* of tangata whenua even though the MOU had not been finalised, Jodi Mantle responded,

> *" Even though it's* [the MOU] *not signed, I don't see any problems with working towards the principles. On my side of things, with my team, yes we are there to help with that input; help with the participation."*

The Ministry advised the hui that the Bay of Plenty Forum had received some of its funding, the allocated $20,000 budget, even though their MOU is not signed off.

Aside from the money aspect and the draft status of the MOU, the Minister had already recognised the Hokianga Accord in writing. MFish were asked if tangata whenua could have *"input and participation"* into Ministry's processes now.

Jodi's response was,

> *" The difficulty with that aspect, it depends on the proposal. We need to go back to the Ministry and say hey, these guys really want to talk about this, can you come and talk to them."*

In regards to Fisheries Plans or an allocation decision,

> *" Absolutely, so you just need to put that forward and we would need to go back to the Ministry and find out who the person is, particularly if it's a proposal that has already been written, we need to get that person here to listen and have the resources to do that."*

## Forum Funding

The Ministry is there to provide $20,000 funding to run the Forum hui and pay for such needs as photocopying, koha, meals, and travel.

Carl explained,

> *"When the Memorandums* [of Understanding] *are signed, you've got a legal body within your Forum that will accept the responsibility of the administration of that $20,000. It's going to be sent out to the Forum to manage. It's actually going to save me work. So when the Forum's up and running and the Memorandums are done, it's there and I will be able to transfer it."*
>
> *"The money has been received from Government to run our Forums at $20K. That's sitting in the budget that I run at the moment. It needs to be devolved."*

## Combining Forums

The Ministry were asked why work was not going into combining all the Forums and pooling the available funds so more could be achieved through a collective effort.

Carl explained the Executive Forum (of the chairman) would be discussing issues of collective interest.

> *"The budget allocated for each of the forum is $20K. Our office has received forecasted budgets by two of the four forums that exceed the allocated budget.*

*One budget was 700% more than the Government purchase. I have discussed these requests at fisheries management and will be reporting to the respective forums."*

It was important to note it was Treasury that made the financial decisions with input from the Minister. Carl pointed that there are others providing financial support to the Hokianga Accord and he uses that point in his promotion of the Hokianga Accord in Wellington. *"The Ministry is not a funding agency."*

There are various takiwa with charitable organisation status, or recognised legal bodies that are attached to the Hokianga Accord. The Ministry was asked why the Forum could not use one of these accredited agencies (that already had a MOU with the Government) as a channel through which Ministry could fund the Accord. That way the Forum could concentrate on getting on with the work that needs attention such as fisheries management.

Jodi's response was, *"Let's put that to the Ministry and find out."*

The Ministry have no authority to provide money to any organisation apart from one that has an MOU specifically detailing what the funds will be used for and who is involved in the organisation accepting the funds. The body has to be a legal entity before any funds would be forthcoming from the state. Any concept of providing the funds via another organisation would amount to using that organisation as a bank account, that would not meet Government's criteria for the allocation of funds.

The Hokianga Accord needs to be aware that if it concentrates all its efforts on the MOU then other matters may not be given the attention required. The Forum should consider a two-layered approach, working on the MOU but not at the expense of *"input and participation"*. The Government needs to be satisfied who it is dealing with in the Forum but the process does not preclude the Hokianga Accord having *"input and participation"* into Ministry processes now.

There was some discussion about whether the MOU would allow the Crown to discharge its responsibilities to tangata whenua. The $20,000 being offered to Forums could be locking Maori into an arrangement that may not suit some hapu/iwi. The Forum should consider funding itself and just getting on with the important issues that needed to be addressed.

The goodwill of MFish was questioned due to the new criteria that had been revealed in their feedback to the draft MOU. Discussion continued around the issue of money and whether the Ministry would put the funding aside until the Hokianga Accord was ready to receive it, this could take years. The money should not be a hurdle for the Accord to make some headway in fisheries management and other issues that need *"input and participation"* by tangata whenua.

Ministry advised the hui that the Government allocates funding to be spent within a financial year; if it were not spent it would be reabsorbed into Government funds.

It was suggested that maybe the Hokianga Accord didn't need an MOU with the Ministry and the inherent dangers of the Government discharging its responsibilities to tangata whenua. If the Ministry continued to pay the costs associated with the Forum's hui then why not just leave the arrangement as it stands and get to work on the issues that the Forum could have some influence over?

The hui was discouraged from abandoning work on the MOU. Tainui's advice was to get a win-win out of the situation by having the Government departments working together for the good of the Forum. If the Hokianga Accord continued to concentrate on the funds the bureaucrats would not progress Forum matters. The Waikato Forum's experience had been a wait of over five years for their MOU to be signed off by the Ministry of Fisheries and they didn't want to witness the same process in the north.

The benefits of spending time on planning was valuable if the prospect of working with the Ministry was perceived as being better in the long run for the Forum. If the issues could be worked through then the obvious benefits of a mutual arrangement with MFish is much needed resources, experience and early advice of management issues.

The key was not to overplay the importance of the $20,000, which would not be enough to fund more than just the basics, rather than continue to concentrate on the development of an MOU that would hold the Hokianga Accord and Ministry together well into the future. The Hokianga Accord needed to consider if achieving the goal would be more likely if the Forum continued working with the Ministry. It has to be remembered that the Hokianga Accord is breaking new ground and both the Forum and Ministry have accountability issues that need to be worked through and these tend to take time.

It was agreed the Forum's Working Group would continue work on the draft Kaupapa Whakahaere and the feedback received including the Ministry's. The Working Group or "short lineout" includes Sonny Tau, Scott Macindoe, Stephen Naera, Bruce Galloway and Paul Haddon.

Koha Reupena Tuoro advised the hui that he is now part of the Te Rarawa executive and they are keen to participate in the Hokianga Accord. Koha was talking on behalf of his hapu and other groups interested in the Hokianga Accord's direction. Sonny mentioned that anyone could attend Hokianga Accord meetings with equal rights to korero. Koha was happy with that.

Sonny Tau, interim chairman of the Hokianga Accord, advised the Forum that a meeting would be arranged as soon as possible with Stan Crothers, deputy MFish CEO. The Working Group would meet Stan to discuss progressing issues of importance including the Ministry's feedback on the draft Kaupapa Whakahaere.

# Proportional Allocation

***Paul Barnes, option4***

*(Full speech notes in Appendix Three)*

In the year 2000 option4 analysed the Ministry of Fisheries proposal of proportional allocation included in a discussion document called *Soundings.* option4 strongly objected to *Soundings* and managed a campaign that saw over 60,000 people submit to the Ministry objecting to the proportional allocation model; equalling 98.5% of all submissions.

During the *Soundings* consultation process the true objective of the proportional allocation system was revealed by a Ministry representative, Jenni McMurran. She advised a public meeting that the objective was to cap the recreational catch and to avoid compensation issues for the Crown.

After nearly 20 years of failing to implement the QMS properly and rebuild depleted inshore fisheries the Ministry of Fisheries now wanted to change the way it allocates catches between commercial and non-commercial fishers.

The Ministry had recently started using a system it calls proportional allocation.

## Proportional Allocation of Fisheries

Proportional allocation of fisheries is a method of giving all of the competing users in a fishery, an explicit portion or share of the available catch.

If the fishery improves, everyone's portion is increased by the same percentage.

If the fishery becomes depleted everyone's catch is reduced by the same percentage.

It sounds very simple, and on the surface, it appears to be fair.

Nothing could be further from the truth.

## Capping Recreational Catch

Recreational catch has been suppressed to all time lows in many important inshore fisheries through ongoing mismanagement of the commercial fishery.

If the Ministry can cap recreational catches now it would mean the minimum possible amount of fish would have to be set aside for non-commercial fishers.

The Ministry wanted to do this is because the maximum possible tonnage of fish had already been given to the commercial sector.

## Minister's SNA8 Decision

The area on the west coast of the North Island from Wellington to North Cape is defined as snapper 8 (SNA8). In September 2005 the Minister made a decision to cut commercial, customary and recreational allocation of snapper by around 13% each in this area.

The Ministry has failed to constrain commercial fishers to their quota since 1986 and as of last year commercial fishers had removed over 6000 tonnes of snapper in excess of their initial annual quota entitlement, through a variety of Ministry condoned methods.

During this period non-commercial fishers accepted voluntary cuts by way of reduced bag limits, increased minimum size limits and a reduction of hook numbers on longlines to conserve in this fishery. These voluntary measures have resulted in a 26.6% reduction in non-commercial catch, a saving of 800 - 1600 tonnes since 1995.

When the Minister, David Benson-Pope, made the proportional decision and cut both commercial quota and non-commercial allowance by 13% each he explained it by saying, *"To be fair to all New Zealanders, I've decided these reductions should be shared across all sectors."*

While the Minister may think these reductions are fair what is obvious is that proportionalism punishes those who conserve and rewards those who waste and squander.

It is hard to imagine a system that would be more unfair, particularly to Maori.

Maori by ethnic grouping are the biggest recreational fishers in the country. Maori are also increasing in numbers by a bigger percentage than other groups therefore any adverse impacts on recreational fishers will have the most impact on Maori.

While the Ministry realise there are major unresolved issues in the way they are implementing proportional allocations it is obvious they find it easier to continue to take fish off the non-commercial sector than face the consequences of their mismanagement of the commercial fisheries.

## Management Bias

The Government seem frightened to deal harshly with the commercial sector. This reluctance introduces a bias into fisheries management because if the Crown is frightened of being sued by commercial fishers then all fisheries management decisions would be biased in favour of the commercial sector. This is because the commercial fishers are the only sector with rights strong enough to sue the Crown.

This is why recreational and customary fishers are facing reductions in SNA8 even though the non-commercial sector had conserved in this fishery.

## Shares of the TAC

TAC means -

> *Total Allowable Catch is the total amount of fish that can be taken from a particular fishery and includes commercial, recreational and customary Maori catch and also other fishing related mortality.*

TACC means -

> *Total Allowable Commercial Catch is the total amount of fish specified that can be taken by commercial fishers in each fish stock.*

Currently when the Minister sets or varies a TACC for any quota management stock the Minister has to allow for certain things as per section 21 of the Fisheries Act 1996.

> **Section 21.Matters to be taken into account in setting or varying any total allowable commercial catch—**
> (1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall **allow for**—
> (a) The following non-commercial fishing interests in that stock, namely-
> (i) **Maori customary** non-commercial fishing interests; and
> (ii) **Recreational** interests; and
> (b) All other mortality to that stock caused by fishing.

The proportionalism being promoted by the Ministry is an attempt to alter the commercial quota rights in the fishery. Instead of commercial fishers quota representing a share of the Total Allowable Commercial Catch (TACC) it will represent a share of the Total Allowable Catch (TAC) of all sectors.

Equally, non-commercial fishers will also be given a share of the Total Allowable Catch of all sectors.

This share will be the amount that is left over after the commercial quota rights have been transferred to the proportional system. This would effectively mean full privatisation of the fisheries and the non-commercial component of the fishery would be minor portion or share of the bigger commercial fishery.

It would also mean a change to the law would be required as section 21 stipulates the Minister must ***"allow for"*** non-commercial interests.

Jodi's responded to a request for more information,

> *"Recently the policy* [division] *has resourced a person in their staff to look at the allocation right. I think it's called the Intersectorial Allocations Management, or something along those lines. At this stage….Robin Connor has been given that role but he's just reading about it and finding all those things. It doesn't mean that…it does look like they are trying to come up with further definitions about what that right actually means. But, it's early stages…"*

When asked if there would be a public consultation process Jodi confirmed this by saying, *"there would have to be a public consultation process"*.

Proportionalism is a dangerous experiment that could see the people of this country losing their fishing rights as described in section 21 of the Fisheries Act.

## Fisheries Plans

Under a proportional system the Ministry of Fisheries will remove themselves from allocation decisions and commercial and non-commercial fishers will be asked to develop Fisheries Plans "collaboratively".

The Ministry and the Minister of Fisheries would then be able to avoid their responsibility to the people of this country, the Treaty and tangata whenua.

With allocation being unresolved there is no chance of knowing what could possibly be gained from a fisheries plan. People would be going into the process blind. Without knowing what there is to start with there is no way of knowing what benefits can be gained from a plan.

The essential first step in the fisheries plan process would be to resolve the allocation issue. Stan Crothers made a commitment at the July hui that the Ministry of Fisheries would meet with representatives of the Hokianga Accord to discuss any outstanding issues on proportionalism after October 1st this year[2].

Only by resolving this issue will there be any possibility of achieving our common goal of -

*"More fish in the water"*
**"Kia maha atu nga ika i roto te wai"**

## Ministry's Fisheries Plans

The Fisheries Plans the Ministry are proposing should not be confused with local management plans being formulated by different groups.

The Ministry's plans discuss managing the whole Quota Management Area under a fisheries plan. Under this arrangement, to have the Kaipara or another northern harbour closed off as a separate management area for mullet or flounder would entail gaining the agreement of every tribe or hapu from Cape Runaway on the East Cape to Tirua Point in north Taranaki. That would have to be done before any influence can be brought at a planning level. This is a huge undertaking for anyone contemplating such a plan.

In addition, consideration needs to be given to the Minister who has refused to make any management changes in flounder 1 and grey mullet 1 this year, despite the Ministry advising him that the quotas had never been caught and were unsustainable.

[2] Whakamaharanta Hui Report 27-29 July 2005.

The chances of getting any favourable management action out of such a Minister is unlikely.

*"Proportionalism means, in the case of flounder and grey mullet 1, taking 'paper fish' off the commercial sector and food off the plates of your children."*

### Ministry Perspective

***Jodi Mantle***

The Ministry are waiting for the decision letter to be signed off for the 2005 fisheries management changes but in the Minister's press release he indicated a need for some changes. Once Ministry get that directive it looks like there will be some resources to look at some of the things that have been raised. David Benson-Pope didn't sign the decision letter off before he left office. *"So, it's gone up, readdressed, to the new Minister, to sign off but on his behalf, on the decisions he* [Benson-Pope] *has made."*

## Extension Services

***Jonathan Dick, team manager, MFish Nelson***

In December 2003 the Cabinet signed off on money for the Pou Hononga, the extension service and set up additional resources for two extra staff in each of three inshore teams. It also helped to set up two additional fulltime people in the non-commercial compliance area, as customary liaison officers.

The purpose of the Cabinet decision was to add momentum to the initiatives of the Deed of Settlement. It was originally called the Deed of Settlement Implementation Program. The first intention is to support the Forums.

### Role of Extension Service

The primary vision is to look for enduring solutions put in place to manage the rohe moana (local area).

The team of Extension Officers, up to eleven eventually, will be strategic advisors to the Forums. They will be available to provide advice on the use of statutory management tools such as temporary closures, taiapure, mataitai, customary led fisheries plans and also non-statutory options.

### Management Tools

Jonathan described taiapure as *"a somewhat cumbersome tool to use but it's been used up and down the motu* (country) *so that's another one* [tool] *the team is able to support."*

*"We are seeing a growing interest in setting up mataitai reserves up and down the country."* So the team is available to support with that form of management tool.

There has been a shift from customary led fisheries plans to Ministry driven fisheries plans. The inshore team have been given the task of delivering at least two, if not three, fisheries plans by June 2006.

There is still the potential for tangata whenua to do their own fisheries plans through section 11A of the Fisheries Act 1996.

Non-statutory options are discussed rarely but could be as simple as education. Signs on beaches to advise of local limits are potentially very good educational tools.

Once the Extension Officer has helped with a (plan/tool) proposal, it is submitted and if approved the Officer can then assist with bylaw writing, management strategies or writing mataitai management plans.

Currently there are seven each of the following tools in place around the country - mataitai, taiapure and s186 temporary closures. Of the mataitai and taiapure only two, possibly three, have management plans drafted or being reviewed. This is something tangata whenua need to get underway.

There are some very serious challenges to these tools. Industry representatives, particularly SeaFIC and the paua industry are very concerned about the "proliferation" of mataitai reserves applications. They are currently lobbying the Ministry about this issue.

Te Ohu Kai Moana Ltd (TOKM) and Aotearoa Fisheries Limited (AFL) had also expressed some concern at several meetings with Ministry. With Maori holding an interest in AFL there needs to be some consideration as to the impacts of these tools on the ability for commercial operators to harvest their quota. There needs to be plenty of information available so people can make the right decision based on as much knowledge about all aspects of using these tools.

## Forums

There are currently four iwi Forums around the country and the expectation is there will be eleven by June 2006. Concurrent with that will be an Extension Officer, or the equivalent, available to each iwi Forum.

Into the future, the vision is to support the Forums to achieve fisheries management objectives, whatever they may be.

There are a variety of scenarios for accessing the extension service. The four current officers (soon to be five) have helped with pre-applications for several temporary closures and mataitai applications. Existing mataitai committees have also asked for and received assistance from Jonathan's Extension Officers team.

It is conceivable the Forum may choose to contract the Extension service, *"that is definitely an option available. There is a certain amount of putea available, and they*

[the Forum] *could appoint their own person and this person could work within one of the Runanga or one of the Trust Boards and provide that service."*

*"Another option is to second a person from the team across"*. As tangata whenua *"you would have access to all the fisheries management information coming out from the inshore management teams and the decisions they make under section 12* [of the Fisheries Act], *as a result of your section 12 participation."*

The Extension Service is only planning one year in advance and has no plans to educate or measure the public awareness aspect of the customary management tools available for use by tangata whenua.

As an advisory service there are no plans to ask for, or make a decision for, a law change to streamline the taiapure process although they are aware the Whakapuaka (Delaware Bay) application took around eight or nine years to complete including the two years (approx) it sat on the Minister's desk awaiting approval.

In terms of what percentage of the coastline is currently protected by the use of the customary tools, Jonathan committed to responding after the hui with the details, as he did not have access to the figures at the hui.

Ngati Kuta's management plan is almost completed and they would welcome input from the Extension Services team and the Hokianga Accord as long as that support fitted in with what Ngati Kuta wanted for their area. As Kaitiaki of the Rawhiti/Bay of Islands area it is their responsibility to consider not only the non-commercial fisheries but other issues such as the impact of land run off, tourism and commercial fishing effort.

The Extension Service is not responsible to fund schemes to measure the impact of customary management tools to see if they are achieving their objective/s. Jonathan considers *"the extension service is not responsible for that"*. But there will be another part that will be? Jonathan's response was *"yes"*.

It has already been accepted by the Hokianga Accord that the $20,000 being offered by the Ministry will not be enough to fund the Forum let alone any initiatives being promoted by participants to the Accord.

## Public Awareness

In order to have a good chance of success for the implementation of the customary tools public awareness is essential. The Ministry's policy and Treaty strategy manager, Mark Edwards, has previously stated, "Advocacy without resources is an illusion." With the lack of funding from MFish what expertise does the extension service offer in respect to public awareness campaigns and grant application expertise?

The Ministry funding at present is for eight people to be in the Extension Service by June 2006. Cabinet funding is targeted for specific purposes; grant applications are

not one of them. Having said that, once the Forum is able to contract services there is no reason why the person employed would not be able to carry out that function.

Public awareness, *"yes, again it's been the most underused tool is the educational tool. Yes, there is a fund within the Ministry of Fisheries for education and science and people have every right to request that, that goes through Neville Buckley; I think he's the manager of that. He has the potential to go to joint ventures and he is going to do that with a number of tribes around the motu, for education. Again, he comes under the Deed of Settlement funding. Public awareness, I agree, there is a need for more."*

There was some concern expressed that the people appointed as Extension Officers would have a huge task coping with the expectation that they would need to provide advice on so many issues. The resource management consents process was difficult for even experienced operators to work within. The expectation that these Officers would be able to provide assistance for mataitai, taiapure and temporary closure applications as well as being involved in other statutory processes would eventually mean a long delay, possibly five to ten years, of achieving any success through using the customary tools.

The Ministry's lack of credibility amongst Maori and the general public was also raised as an issue for the Extension Officers and the Pou Hononga team. The installation of a few signs at beaches would do little to address the issue. MFish needed to work hard on gaining the trust of many Maori who have lost faith in the Ministry's ability to manage fisheries well.

## Compliance

Compliance without effective management was another issue raised. While Maori can initiate and implement local management in the form of fisheries plans compliance responsibility remained with the Crown. MFish's lack of credibility is hampering people's willingness to comply with current regulations and those proposed in fisheries plans. Maori wanted more *"input and participation"* into management.

Graeme Morrell, Te Tai Tokerau Pou Hononga, advised the hui that signage installed on Ninety Mile Beach had been paid for via Neville Buckley's division in MFish. The signs seemed to be successful in limiting the take of toheroa. MFish compliance confirmed there had only been one infringement in the past twelve months compared to more than ten the previous year.

Robert Willoughby advised the hui that Ngati Kuta have decided their best response to mismanagement of their rohe was to formulate their own management plan. Once Ngapuhi has signed that off it will be submitted to the Northland Regional Council to be included in the District Plan. Once completed, the Council has to take the plan into consideration when making management decisions. This puts Maori in a management role with the Council, for their rohe.

The question was put to the Ministry regarding the new Resource Management Act and how that interacts with customary management tools. It was suggested the new

RMA has reduced requirements for consultation and could delay the use of customary tools.

*"Sections 62 to 66 of the RMA gives the power through the Regional Policy Statement and the Regional Coastal Statement for fisheries plans, for recognition of an Iwi Planning Document. Through that, by law, you have the opportunity, combined with your management tools and your fish plan, and through section 11A of the Fisheries Act; through those windows of opportunity we can actually get some support from either District Council or Regional Council or the Ministry of Fisheries, to put some teeth to whatever it is you want to use as an intervention tool or a management tool."*

## Race for Space

***Scott Macindoe, option4***

**Between Hapu** *(see also page 33)*

Industry has some concerns about the Pou Hononga initiative. Mr. Randell Bess, the MFish Spatial Allocations team manager has expressed that the moves to protect the coastline is a "race for space". This will ultimately lead to a race for space between hapu.

The Minister of Fisheries has to be satisfied the mataitai does not prevent commercial fishers from catching their quota within the Quota Management Area. In the case of paua and rock lobster, it is only a matter of time before a mataitai application is turned down due to failure of "prevention test". This conceivably leads one hapu to meet their aspirations for their rohe and another missing out because they were not quick enough to have their mataitai approved. Alternatively, the hapu that misses out could have to accommodate more commercial fishing effort in their rohe.

"Has every hapu in the country been told they are now racing each other? Because that is how it is." Ministry's answer was no.

MFish were advised they should inform all hapu about this issue so they are aware of the implications.

Industry has already indicated they are willing to go to court if a mataitai has an adverse impact on their ability to catch their quota. The success of the mataitai proposed for the Tory Channel was used as an example of possible court action as required to find a resolution to spatial issues.

**Between Hapu and DoC – marine reserves**

*(See also page 33)*

The race for space also applies to the Department of Conservation and their initiatives that will impose on hapu plans for their rohe. Hapu need to be aware of this threat as well.

DoC has indicated that mataitai would not necessarily qualify as a marine protected area. To meet this qualification it will have to pass a "Protection Standards" test. Whilst MFish and DoC have some understanding of these Protection Standards that are being formulated, the public have absolutely no idea what these "standards" will

look like. What is known is that they are being formulated and that a public consultation process will be announced soon. This is more of the "make it up as you go" behaviour that the public have become accustomed to with the DoC approach to marine protection. The ridiculous mismatch of resourcing also seriously disadvantages tangata whenua as the Department of Conservation rushes to secure as much territory as possible.

In the meantime hapu have no idea if their initiatives will "satisfy" DoC's strategy.

Graeme Morrell advised the hui, from his experience, there are some problems associated with mataitai he has been involved with, including the following:

- Land use surrounding mataitai not managed sustainably.
- Time frame for notifying mataitai applications is not adequate.
- Tangata whenua not engaging with other stakeholder groups.
- Failure of the Spatial Allocations team to understand the process to ensure the consultation between tangata whenua and the commercial stakeholders was sufficient.
- Maori need to be aware they are now 54% stakeholders in commercial fishing so need to take this factor into account.

## Tauranga Executive Forum

***Tom Moana, Tainui***

The Executive Forum consists of all the chairmen of the regional iwi Forums. The most recent hui of the Executive Forum was held in Tauranga on October 10th and was attended by Sonny Tau, facilitator Hokianga Accord, Tom Moana, Nga Hapu O Te Uru, Tom Paku and Manny Mokomoko from the customary Forums further south.

Members of the Executive Forum had heard what the Hokianga Accord was doing and were keen to listen to Sonny and learn. They all expressed their appreciation with the sharing of information and would be reporting back to their respective Forums.

One of the Forum's tasks was to work through the draft Terms of Reference with the Pou Hononga team in attendance. The draft Terms had been supplied by Carl Ross's team.

After the hui the record of the meeting was circulated to the chairmen. There was some discrepancy with the official record taken of the meeting and what the chairmen recalled. The chairmen agreed that it seemed like the Ministry were trying to set the Executive meeting up the way they wanted it to be rather than how it actually worked out. The issue of accurate recording of meeting will need to be addressed before the next Executive Forum hui.

Despite the initial hiccup, the Executive Forum is seen as a useful vehicle for the exchange of information and development of new regional forums along the most successful path. It could be that the newer forums could incorporate a similar structure as the Hokianga Accord by including recreational fishing interests.

The chairmen did not feel the facilitator supplied by MFish added any value to the Tauranga hui and would prefer if the Pou Hononga of the area hosting the Executive Forum records the discussions held during the meeting.

Tainui's perspective is that the Executive Forum has the potential to be very good as more regional forums are established.

# Friday 11th November

The Hokianga Accord was due to appoint/elect an executive to manage the Forum's affairs. Considering all the feedback, including that from MFish, had not been incorporated into the Kaupapa Whakahaere it was debatable if the elections would be held at this hui or at a later stage. Some discussion was required to reach an agreement on appointing an executive.

It was agreed the Working Group already established would continue to work on the Kaupapa Whakahaere (MOU) and report back with another draft before the next hui. A meeting of the Working Group and a team from Ministry is scheduled for December 7th; this discussion would help with the development of the MOU.

# Aotea (Great Barrier Island) Marine Reserve

Bill Cooke asked the Hokianga Accord if there was any way the Forum could help in the situation facing the residents of Aotea and those who are concerned about the marine reserve that has been approved by the Minister of Conservation. The reserve, on the northeastern coast of Great Barrier, only needs the concurrence (agreement) of the Minister of Fisheries before it is finalised.

Sonny advised the hui that he was due to meet the Prime Minister in the next hour or so and he would mention the concerns about the reserve to her.

## Carl Ross

Stan Crothers made a commitment at the previous hui that the Ministry of Fisheries would go to the island to discuss the marine reserve application put forward by the Department of Conservation. A meeting has been arranged for Saturday 19th November, all the main parties had been invited and MFish would be attending.

It would be an opportunity for *"those who are there to have their say"*. The Ministry want to satisfy themselves that consultation has been conducted and do not want to be seen to be just ticking off DoC's process.

## Keni Piahana

***Aotea Pou Hononga, MFish***

The hui at Great Barrier Island on November19th was about bringing *"Ngati Wai and Ngati Rehua people on the island up to speed about the concurrence process. That's going to be an opportunity to look at the process. Secondly, it's an opportunity to be able to reflect the type of information that the Ministry is aware of and has observed*

*about the process to date. And to give some reflection on whether that type of information can or can't be included into a concurrence process. So it's a matter of reflecting that quality of information or status of that type of information. That's the first part of the morning. "*

*" Up to date, the Ministry of Fisheries has essentially observed the process that the Minister of Conservation has undertaken in respect to the application for the marine reserve. At the end of that process the Ministry of Fisheries provides a concurrence, a view on whether they concur with the recommendation for the reserve or not."*

*" At this point in time the primary issue is to look to the scope of that meeting, is the impact of the reserve on customary fishing. That's why its been focussed down to the Ngati Rehua, Ngati Wai community, at this point."*

*" The second part of the day is to allow tangata whenua, primarily the older people, like Harry* [*Walker*] *and co, to be able to state, in front of Stan and the Ministry, the impact on their customary fishing that the marine reserve would have."*

*" That's how the day has been organised. Within that time also Ngati Wai, as iwi authority have an interest so there's been a structuring of an option for Ngati Wai to present to the Ministry of Fisheries as well."*

*" Because we are looking to focus on the impact on customary fishing that's why it's* [the meeting] *has been structured in that way."*

MFish are going to Motairehe Marae to hear the issues in a combined way.

MFish are in no position to say to anyone, don't go. Marae are open to anyone. Sonny committed to ringing a few people between the end of the hui and the following weekend to find out more. Sonny would confirm, through Scott Macindoe, the marae would welcome other people to this hui and that those people would have an opportunity to talk to the hui.

The Ministry were asked if they plan to consult with anyone else apart from those who attend the hui at Motairehe Marae. Kenny was not aware of any other consultation plans. MFish always had the intention of talking with Ngati Wai and Ngati Rehua.

Jodi Mantle was unaware of any plans for MFish to consult with recreational fishers regarding the Aotea reserve. Jodi committed to talking with Mr. Randell Bess, the Spatial Allocations team manager, and would confirm Ministry's intention regarding further consultation on this reserve.

The Ministry were reminded that their credibility was "on the line" as far as their process unfolds in regards to the Aotea marine reserve. While it is recognised the marine reserve initiative has come from DoC, and this has placed MFish in a difficult position, the Ministry were being watched on how they go about their consultation process.

# Spatial Issues

***Paul Barnes, option4***

The "race for space" is driven by the fact that the amount of area closed by marine protection management tools is limited to a level below what will displace commercial fishing effort. That is, the test that is used by MFish during a marine protection investigation considers whether the closure will "adversely" affect commercial fishers ability to harvest their quota within the Quota Management Area.

This implies that there is a limit on the total amount of area that can be given marine protected status. Eventually, it would not be possible to have a marine protected area without exceeding the threshold.

Currently, the Department of Conservation is filling the available space (for marine protection) with marine reserves. The outcome of this strategy is that there is less area available for tangata whenua to have a mataitai or taiapure in.

Maori are losing the opportunity to choose the best areas for Maori management tools. DoC is confiscating these areas for no-take marine reserves, forever.

One of the ways to deal with this situation is to reverse the order so Maori have the first choice of management. This could be achieved through standard principles being included in every hapu/iwi management plan for the whole of the country's coastline.

One of the principles should include the stipulation that before the Minister approves any marine reserve application Maori are given the first opportunity to investigate whether a customary management tool such as a mataitai or taiapure could achieve the same objective/s as the proposed marine reserve.

This strategy effectively means Maori would be given the first option to manage the important area and DoC are left with the whatever space is leftover before the "adverse" impact effect is taken into account.

The Ministry has failed to implement strategies to give effect to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 for 13 years. DoC had been given a head start in the race to grab the best parts of the coastline.

This marine protection strategy is a golden opportunity for MFish to discharge its responsibilities to tangata whenua by providing for the true and meaningful *"input and participation"* of Maori in this process. It would also restore some goodwill into the process on MFish's behalf.

## Iwi/Hapu Plans

If the principles were included in every iwi/hapu plan then there would be consistency around the country. If the management plans are accepted by the statutory bodies such as regional or local councils, the Minister of Fisheries is then obliged to consider the plans when making concurrence decisions.

If the Minister (or Ministry) does not consider the plans before giving concurrence then he can be held accountable.

Tangata whenua do not need DoC telling them where they can have a mataitai or taiapure by pushing a marine reserve in before any customary management tool can be implemented.

Maori need to demand the same respect as commercial fishers are given in terms of thresholds of acceptability. Why should commercial fishers be considered in the current tests for adverse effects and not the effect it would have on tangata whenua's ability to exercise their kaitiakitanga?

Currently MFish considers the effect on customary fishing but not the effect on the loss of space to implement Maori customary management tools.

In the Great Barrier Island scenario the marine reserve includes over 60% of the east coast rocky hard shoreline and extends out to the 12-mile limit. The displacement of the fishing effort (commercial, customary and recreational) to the remaining coastline would have inevitable adverse impacts on that part of the coast. This displacement effort has not been fully considered.

It also unlikely, with a marine reserve of this size, that a mataitai would be approved on the east coast of the island.

It would be appropriate to include a threshold in the iwi/hapu plans stipulating the amount of area that is required to satisfy tangata whenua's aspirations to exercise their kaitiakitanga. That way MFish and DoC would know what is acceptable to Maori before they initiate their own plans.

## Fisheries Focus

The second principle required in iwi/hapu fisheries plans is to do with fish species of importance. The plan should identify all the species of fish in the area that the plan covers. The list should be broken into two categories:

- Fish that are reasonably important.

The plan should state that to provide for customary fishing it is imperative that these fisheries are always managed above the biomass required to produce maximum sustainable yield (Bmsy). And never managed below Bmsy.

- Fish that are very important.

As a principle of the plan, these fisheries should always be managed above or significantly above the biomass required to produce maximum sustainable yield (Bmsy). And never managed below Bmsy.

The driver that creates the support for marine reserves is fisheries mismanagement. It is the frustration from the environmental sector that the Quota Management System and its implementation by the Ministry has failed to achieve its objectives.

If the iwi/hapu plans include the two perspectives, to use customary tools as a priority if they can achieve what the MPA is supposed to achieve, and, to manage the fisheries at healthy levels then the pressure for more marine reserves would be reduced.

The ideology that if people are given a property right they will look after the asset has failed in the QMS. The economic drivers in the commercial industry forces fishers to look at the short term returns rather than take a long-term view.

There is no recognition in the QMS of best practice; the most gains go to the most economic fisher not those who look after the fishery.

If the Ministry follow the proportional allocation model there will be no incentive to conserve as all cuts or gains would be equal regardless of fishing behaviour.

If these principles are included in every iwi/hapu plan around the country, are accepted as management initiatives and therefore implemented it would disempower those who are constantly attacking the publics right to fish and tangata whenua's right to manage themselves. All this because the fisheries are being mismanaged. Maori have the tools to address both these fundamental issues.

## More Fish in the Water

There was some discussion on how much progress had been made in regards to the common goal of *"More fish in the water"* **"Kia maha atu nga ika i roto te wai".**

It was accepted that for both Maori and non-Maori representatives the awareness of each other's challenges is growing. The relationship is developing, as is the realisation amongst Maori that most of their fishing for the whanau is now categorised as recreational.

There is a strong feeling that the Ministry of Fisheries had deliberately kept Maori and non-Maori representatives separate in the past. The Hokianga Accord is an opportunity for all parties to work together.

## General Discussion

Te Raa Nehua of Hikurangi attended the hui specifically to discuss whether the Hokianga Accord is able to umbrella freshwater fisheries issues. *"Don't forget our tuna (eels). When the fish run out in the ocean you will be coming back to eat our tuna, so it's correct we think about the tuna too."*

The Ministry offered to return to the next hui with whatever information the Hokianga Accord requires. A request to Jodi would be sufficient to get the process underway.

Much of the Hokianga Accord's discussions had been focussed on fisheries management when the real battle was on two fronts. While the Hokianga Accord might achieve the goal of *"more fish in the water"* the public might find itself in a position where the fish cannot be caught because the coastline had been locked up in marine reserves. The Department of Conservation are intent on an ideological path

that the only good thing for the marine environment is to lock up as much of it as possible so the only opportunity left would be to look at the fish.

The draft Kaupapa Whakahaere needs to be strengthened in recognising the threats associated with marine reserves, particularly points 11 and 12.

Current issues regarding marine reserves are covered under the Marine Reserves Act 1971. There has been a review of that Act and this is now in the form of the Marine Reserves Bill. This new bill gives complete control to DoC, with no concurrence (as per Barrier discussion) required from the Ministers of Transport or Fisheries.

The department seemed to be acting on the presumption that the Bill had been passed. It does seem that the current Bill would not get through parliament given the mix of MPs after this past general election, but this would need to be monitored.

The same effort that is going into Maori and non-Maori working together on fisheries matters needs to be applied to marine protection issues.

Ministry were asked to provide a comparative analysis of the different marine protection management tools i.e. Marine reserves, mataitai, taiapure, and rahui, for the next hui. MFish agreed to this request.

It was also suggested that DoC be invited to attend the next hui to answer questions, considering much of the discussion is focussed on the department's actions in the marine protection area.

There was some concern whether the Hokianga Accord was going around in circles and not addressing the real issues. In response Judah Heihei assured the Forum it was making progress, albeit slowly, but it was important everyone understood the basic issues facing both customary and recreational fishers and shared information with each other. Only then could a collective stand be taken.

People would be more accepting of the concept if the word sustainability were used more often. Sustainability has more positive connotations in looking after for future generations than protectionism, as in marine reserves.

Environmentalists see marine reserves as a benchmark with reserves having a place in the marine protection suite. There is no reason why a new tool or a new plan could not be invented if the current statutory or customary tools did not suit. The power is working together with Maori, fishers and environmentalists to achieve the goal.

## Conclusion

Without a doubt this hui was the most progressive for the Hokianga Accord. The evaluation session at the conclusion of the Accord's third hui at Whakamaharatanga Marae proved the value of the collective knowledge that had been shared at the hui.

A common theme was the need for public awareness to be increased if the Maori customary management tools were to be implemented. MFish had very little to offer in this respect so this essential role will need to be fulfilled by those promoting mataitai, taiapure and rahui. Critical factors for the success of these tools are education and the inclusion of other stakeholders from the beginning of any process.

Sceptics within Maori and non-Maori were impressed with the korero (talk) and were most surprised to learn that 99.9% of the time Maori fish to feed their whanau they are categorised as recreational fishers. The need to impart the information learnt during the hui was acknowledged as many non-Maoris considered Maori were out to claim all the fish and many Maori considered pakeha were out to stop them claiming their fishing rights.

Proportional allocation of fisheries was mentioned many times as the issue that needed to be addressed before any other matters could be resolved.

The "race for space" in the marine environment also needs to be addressed. Maori have the opportunity to determine their aspirations in the form of iwi/hapu fisheries management plans. Standard principles included in these plans can influence outcomes for both fisheries management and marine protection issues in the rohe.

The input from MFish was appreciated. The Ministry team's willingness to listen, answer questions and provide follow up information is a positive ingredient as the Forum develops its combined knowledge.

Having both Maori and non-Maori non-commercial fishing interests working together to achieve the common goal of *"more fish in the water"* is a credit to the effort put into the Hokianga Accord initiative by Sonny Tau, Scott Macindoe, Te Runanga A Iwi O Ngapuhi and most importantly the kaumatua and kuia of Whakamaharatanga marae and their hard working team of helpers.

Everybody left Whakamaharatanga Marae anticipating the next hui at Whitiora Marae, Te Tii, Northland in February 2006, on a date to be confirmed.

***"Kua tawhiti ke to haerenga mai, kia kore e haere tonu He tino nui rawa ou mahi, kia kore e mahi nui tonu"***

*"You have come too far, not to go further, You have done too much, not to do more"*

*Sir James Henare, 1988*

# Appendix One

## Consultation

**Court of Appeal Decision Wellington Airport**
Wellington International Airport Limited and others v Air New Zealand [1993] 1 NZLR 671, at p. 675. Judgment of the Court of Appeal delivered by McKay J quoting McGechan J in the High Court in Air New Zealand and others v Wellington International Airport Limited and others, HC, Wellington, CP 403-91, Jan 6, 1992:

*"Consultation must allow sufficient time, and a genuine effort must be made. It is a reality not a charade. The concept is grasped most clearly by an approach in principle. To "consult" is not merely to tell or present. Nor, at the other extreme is it to agree. Consultation does not necessarily involve negotiation toward an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate situation involving meaningful discussion. Despite its somewhat impromptu nature I cannot improve on the attempt at description, which I made in West Coast United Council v Prebble, at p 405:*

> *'Consultation involves the statement of a proposal not yet fully decided upon, listening to what others have to say, considering their responses and then deciding what will be done.'*

*Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses. It is also implicit that the party obliged to consult, while quite entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh. Beyond that, there are no universal requirements as to form. Any manner of oral or written interchange which allows adequate expression and consideration of views will suffice. Nor is there any universal requirement as to duration. In some situations adequate consultation could take place in one telephone call. In other contexts it might require years of formal meetings. Generalities are not helpful."*

# Appendix Two

## Ministry of Fisheries section 12 (Fisheries Act 1996) Policy Definition

## October 2001

### Key components of statutory consultation

45. The key components that need to be incorporated into statutory consultation required by the Fisheries Act have been identified as follows:
    - A well defined proposal to be consulted on.
    - Provision of appropriate information to those being consulted to enable them to effectively participate in the consultation process (this should include the particular proposals up for discussion as well as the consultation process to be followed).
    - Adequate time allowed for those consulted to:
        - Consider information provided
        - Request further information or clarification
        - Consult with those they represent
        - Formulate their ideas and responses
    - Appropriate opportunity must be provided for those consulted to convey their views and due notice must be taken of those views.
    - Responses must be received with an open mind and due respect accorded those views before the decision is made.
    - Provision of feedback on final decisions including how the views expressed in the consultation process have been incorporated or otherwise into those decisions.

# Appendix Three

## What does Proportional Allocation Mean?
## Why is it unfair to non-commercial fishers?

Presentation to the Hokianga Accord
By Paul Barnes
*10 November 2005*

## Introduction

**How It Used To Be**
There were more fish and they were bigger.

**How it is now**
The average size of fish we now catch north of the Manukau has become much smaller. Northland's west coast was once famous for it's numerous big snapper.

Now, there is not much difference between the size of a snapper caught off the Hokianga and a snapper from the Hauraki Gulf.

## Fisheries Management

There is a widespread belief that our fisheries are not well managed.

As recently as this week environmental groups were complaining on TV3 about the poor management of our fisheries and the lack of constraints on commercial fishing.

The Ministry of Fisheries freely acknowledge there is only half as much snapper on the west coast as what there should be, this means that recreational and customary fishers will inevitably catch smaller fish and fewer fish as there is only half as many fish in the sea as there should be.

The flounder and mullet fisheries are further examples of how the Ministry of Fisheries has given preference to commercial fishers.

They admit the quotas in these fisheries are set far too high and are unsustainable yet fail to take action and cut the quotas.

The reality is that after having a QMS for 20 years many of our fisheries are still in a depleted state.

It is recreational and customary fishers who bear the brunt of this mismanagement.

As the size of fish stocks fall the recreational and customary catch falls.

Commercial fishers simply get bigger boats or nets to continue to catch or exceed their quota

After 20 years of failing to implement the QMS properly and rebuild depleted inshore fisheries the Ministry of Fisheries now wants to change the way it allocates catches between commercial and non-commercial fishers.

The Ministry has recently started using a system it calls proportional allocation.

Proportional allocation of fisheries is a method of giving all of the competing users in a fishery, an explicit portion or share of the available catch.

If the fishery improves, everyone's portion is increased by the same percentage.

If the fishery becomes depleted everyone's catch is reduced by the same percentage.

It sounds very simple, and on the surface, it appears to be fair.

**Nothing could be further from the truth.**

The reality is that the proportional system of allocation does not adequately provide for non-commercial fishers, it will only make them minor shareholders in a commercial fishery.

Recreational leaders first became aware of the true objective of a proportional allocation system at a public meeting in Auckland in the year 2000.

I asked Jenni McMurran, a Ministry of Fisheries representative, what the objective of the *Soundings* process was, her response, it was to cap the recreational tonnage and to avoid compensation issues for the Crown.

## So why cap recreational catch now?

Recreational catch has been suppressed to all time lows in many important inshore fisheries through ongoing mismanagement of the commercial fishery.

If the Ministry can cap recreational catches now it will mean the minimum possible amount of fish will have to be set aside for non-commercial fishers.

The Ministry want to do this is because the maximum possible tonnage of fish has **already been given to the commercial sector**.

This has happened because the Ministry's initial commercial quotas that were set at levels to allow the rebuild of depleted fisheries have been ignored and exceeded through a variety of measures.

## Why Do the Ministry Need to Avoid Compensation Issues

The Ministry of Fisheries, in their latest advice to the Minister, acknowledges the initial allocations between commercial and non-commercial fishers were set without any proper process.

It is obvious that serious mistakes have been made. Flounder and mullet are two good examples. Commercial fishers have been given so much quota in these fisheries they have never been able to catch it.

The result is excessive commercial fishing that leaves less fish available for recreational and customary fishers in areas like the Manukau and Kaipara harbours.

Both of these fisheries were reviewed this year, however the Minister decided it was more important to keep the excessive commercial quotas in place, and avoid any risk of compensation, rather than address the needs of the local communities around these harbours.

Those who have been fighting for sensible management over the past 15 years will likely have to wait another five years for another opportunity to have these issues resolved.

To understand the dangers of proportionalism we need look no further than the history of snapper 8, the west coast fishery from North Cape to Wellington.

In September the Minister made a decision to cut commercial and recreational allocation by 13% each.

In 1986 commercial fishers were given 1330 tonnes of quota.

At time the Ministry said this quota would allow this commercially depleted fishery to rebuild.

Since that time the Ministry has failed to constrain commercial fishers to this quota.

As of last year commercial fishers had removed over 6000 tonnes of snapper in excess of their initial annual quota entitlement.

These excesses have been achieved through mechanisms the Ministry has condoned such as allowing QAA increases to inflate quotas, deeming and by illegal activity, which the Ministry has failed to address.

Also during this time non-commercial fishers accepted voluntary cuts by way of reduced bag limits, increased minimum size limits and a reduction of hook numbers on longlines to conserve in this fishery.

These voluntary measures have resulted in a 26.6% reduction in non-commercial catch, a saving of 800 - 1600 tonnes since 1995.

When the Minister made the proportional decision and cut both commercial quota and recreational allowance by 13% each he explained it by saying, *"To be fair to all New Zealanders, I've decided these reductions should be shared across all sectors."*

While the Minister may think these reductions are fair what is obvious is that proportionalism punishes those who conserve and rewards those who waste and squander.

**It is hard to imagine a system that would be more unfair**

If we do not challenge decisions that are as poor as these, we can expect more of the same.

It is becoming increasingly clear that all non-commercial rights in fisheries are only strong as our determination to fight for them.

Remember, Maori customary catch was also reduced in the snapper 8 decision.

While the Ministry realise there are major unresolved issues in the way they are implementing proportional allocations it is obvious they find it easier to continue to take fish off the non-commercial sector than face the consequences of their mismanagement of the commercial fisheries.

## Proportional Allocations

Proportional Allocation of fisheries is a recent policy construct of the Ministry of Fisheries.

It is not a mechanism included in the Fisheries Act 1996.

Non-commercial fishers are certain that it is a means by which the Ministry will allocate the minimum possible tonnage of fish to non-commercial fishers to avoid compensation issues for the Crown.

Proportionalism is firmly rooted in the privatisation ideology of the 1980's and 90's that caused major upheavals in society.

It caused massive unemployment in the initial phase and is the reason why many unskilled workers earn a pittance to this very day.

This ideology is all about giving business priority and allowing market forces to determine social outcomes.

I am sure everyone knows someone who was adversely affected.

Now they seem to be asking us to endure more pain while commercial fishers are given total priority as to how our fisheries are managed.

The proportionalism promoted by the Ministry of Fisheries is an attempt to alter the commercial quota rights in the fishery.

Instead of commercial fishers quota representing a share of the Total Allowable Commercial Catch (TACC) it will represent a share of the Total Allowable Catch (TAC) of all sectors.

Equally, non-commercial fishers will also be given a share of the Total Allowable Catch of all sectors.

This share will be the amount that is left over after the commercial quota rights have been transferred to the proportional system.

Under a proportional system the Ministry of Fisheries will remove themselves from allocation decisions and commercial and non-commercial fishers will be asked to develop Fisheries Plans "**collaboratively**".

The Ministry and the Minister of Fisheries would then be able to avoid their responsibility to the people of this country, the Treaty and tangata whenua.

Remember, even with all the resources available to the Ministry of Fisheries, they have failed to properly manage commercial fisheries and rebuild them to the minimum biomass required by the Fisheries Act 1996.

What hope then will an under-resourced non-commercial sector have against the might of the commercial fishing sector under a proportional system?

Proportionalism is a dangerous experiment that could see the people of this country losing their fishing rights as described in section 21 of the Fisheries Act.

It is totally against what was promised to non-commercial fishers when the QMS was discussed back in 1986.

The QMS was developed purely to constrain commercial fishers who had depleted most of our inshore fisheries.

Non-commercial fishing was covered under a separate document the National Recreational Fishing Policy and this is what was promised….
Moyle's Promise

> *"Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing."*

We must never forget what is rightfully ours in legislation.

We must argue that setting the non-commercial allocations when our catch has been driven down to low levels by excessive commercial fishing and poor management is not acceptable.

At the present time commercial quota is still a share of the TACC, not a share of the TAC, despite whatever the Ministry of Fisheries may say. They will need legislative change to pursue their proportional allocation system.

We have come one step forward this year – instead of the Ministry ignoring the obvious flaws in proportionalism they are now acknowledging them.

Our next step is clear, we have to continue to apply pressure to the Ministry of Fisheries so that our concerns are addressed.

The Ministry of Fisheries appear to be operating under an irrational fear the commercial fishers would win a court case against them if they make a decision that is not proportional. However this belief has never been tested in court.

Neither the 1996 Fisheries Act or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 have specifically addressed how non-commercial fisheries would be "allowed for" but they have made it clear that the Minister is not bound by some proportional rule.

## Why Is The Snapper 8 Decision Unfair?

Whole generations of Maori customary and recreational fishers have been denied access to a healthy snapper 8 stock and will not experience this fishery even at the minimum biomass level required by the Fisheries Act.

This means two generations will have had their rightful access suppressed because of the low stock size caused by commercial overfishing.

Now the Ministry want to lock all "recreational" fishing people into proportional allocations based on what they catch in these depleted fisheries.

This includes Maori when they are fishing for their whanau.

A survey of recreational fishers clearly indicated that Maori are the highest "recreational" users, 34% of recreational fishers.

Even though Maori may not like the categorisation as being recreational they are a major player.

And also growing, population wise, at the fastest rate.

Depleted fisheries have also made it difficult for Maori customary fishers to adequately provide kaimoana for marae functions.

This impacts on the mana of the marae and Maori people.

Against this background the non-commercial initial allocations have been made when non-commercial catch was at minimum levels.

# Appendix Four

10 November 2005

## Hokianga Accord
## Draft Kaupapa Whakahaere

***(How the Hokianga Accord will operate)***

**mo**

**Ngapuhi**

**Ngati Whatua**

**Ngati Wai**

**in partnership with**

**non-commercial fishing interest groups and individuals**

**and**

**The Ministry of Fisheries**

**(Te Tautiaki i nga tini a Tangaroa)**

### 1. Preamble

Te Tiriti O Waitangi is the founding document of Aotearoa, New Zealand which established the unique relationship between Tangata Whenua and the Crown. Tangata whenua and other non-commercial fishing representatives, as contributors to the Hokianga Accord acknowledge to each other, that Te Tiriti O Waitangi is the basis upon which each party wishes to interact with the Crown or its agencies as a good treaty partner. Te Tiriti O Waitangi gives rise to this Kaupapa Whakahaere to the Minister of Fisheries.

### 2. Background

A chance meeting between tangata whenua and recreational fishing representatives at a select committee presentation in 2003, where Tangata Whenua were making submissions to the Marine Reserves Bill led to the development of a close working relationship between recreational fishers and Tangata Whenua. After many hours of discussion tangata whenua realised that when Maori went fishing to feed their whanau, they were categorised as recreational fishers. It was therefore common sense to collectively discuss how tangata whenua could address matters of common interest with recreational fishers.

An inaugural hui of recreational fishers and Tangata Whenua was held at Whitiora Marae, Te Tii, from 29th April to 1 May 2005 which set the platform for all tangata whenua and recreational fisheries hui held since then in Te Tai Tokerau. The most significant outcome of that hui was the commitment of both tangata whenua and recreational fishing organisations and representatives to work together to achieve the objective of “Kia maha atu nga ika i roto i te wai” or “more fish in the water.”

Although members from Whangaroa and Te Rarawa were in attendance at that hui, they were unable to commit to the joint approach with non- Maori recreational fishing and interests and agreed to reporting back to their various iwi organisations to seek support for the developing relationships with non- Maori recreational fishing interests. The representatives from these iwi attended the first hui at Whakamaharatanga Marae and committed to join with Te Rarawa in setting up their own forum. Hapu representatives from Te Rarawa asked that they remain part of the Hokianga Accord as they lived in the Hokianga and saw a natural alliance with the Hokianga Accord.

Whilst all the activity around strengthening Maori and recreational fishing interest groups collaborative relationship was progressing, the Ministry of Fisheries was in the process of releasing it's new policy of appointing a Ministerial recreational fishers advisory group as well as various recreational and separate customary Maori fisheries forums elsewhere in Aotearoa, New Zealand. This policy was the catalyst for a contingent of Tangata whenua and recreational fishing representatives setting up a meeting to address what was seen at the time as a segregated approach to fisheries management, that is, customary Maori forums on the one hand, as well as recreational forums discussing very similar issues on the other hand.

It was the Ministry of fisheries promotion of this segregated approach that reinforced the commitment of the Hokianga Accord to ensure that tangata whenua and recreational fishing interest groups would work together in one forum to represent all customary Maori and non-commercial recreational fishing interests.

At the first Whakamaharatanga Marae hui held in July 2005, the thrust for an expanded recreational fishing and tangata whenua representation was achieved with the attendance of members of Option4, the New Zealand Recreational Fishing Council, New Zealand Big Game Fishing Council, Ngati Wai Trust Board, Te Runanga O Ngati Whatua, Te Runanga O Te Rarawa, Te Runanga O Whaingaroa, Te Runanga A Iwi O Ngapuhi with many whanau and hapu also in attendance. The reinforcement of the forum objective of "more fish in the water" was strongly supported.

Four weeks prior to that hui an email was sent to the Ministry of Fisheries putting a number of questions to the Ministry to answer at the hui. Ministry representatives attended the hui and were capably led by Stan Crothers, There was an excellent exchange of ideas between the forum members and the Ministry of Fisheries and all questions put to the Ministry were answered in detail. By the end of this hui there was a document presented to the hui spelling out how MFish and the Hokianga Accord would work together toward a better shared interest in the sustainable management of our fisheries.

The second Whakamaharatanga Hui was held in August 2005 as a platform to develop and consolidate the working relationship between tangata whenua and recreational fishing interest groups. This hui was well attended with the parties again committing to a collaborative approach to the sustainable management of our fisheries. Although other areas of Aotearoa New Zealand have opted to follow the

path of separate forums for recreational fishing interest groups and Maori customary fishing interests forums, the Hokianga Accord intends pursuing collaborative approach.

Concerned that the Hokianga Accord may not be recognised by the Ministry as an official representative forum, recognition was sought from the Ministry. On 23rd August 2005, Stan Crothers of the Ministry wrote to [state to whom] and assured the Hokianga Accord that the Hokianga Accord would be recognised as an official area forum under the Deed of Settlement of Maori fisheries issues. On 12 August 2005, the Minister of Fisheries, Hon. David Benson-Pope wrote to the chairman of Te Runanga A Iwi O Ngapuhi confirming Stan Crothers' statement of support in Stan Crothers' letter to the Hokianga Accord.

At the hui the Ministry presented for consideration by the Hokianga Accord a draft Memorandum of Understanding as to how the Hokianga Accord and the Ministry might work together relative to the Minister's performance of his s12 Fisheries Act 1996 obligations.

At the conclusion of the hui, a group of attendees committed to consider the draft Memorandum of Understanding and report back at the next hui.

## 3. Objectives of the Hokianga Accord

Tangata whenua and other non-commercial fishing representatives contribute to the Hokianga Accord in their desire to have input and participation in relation to sustainability measures proposed by the Minister.

It is part of a framework to assist the Minister to perform his obligations under s12 in relation to sustainability measures.

Whilst this kaupapa relates to the input and participation of tangata whenua concerning proposed sustainability measures tangata whenua have other rights and privileges statutory and otherwise in relation to fisheries management not addressed in this kaupapa.

## 4. The Ministers obligations - section 12

The effect of section 12 of the Fisheries Act 1996 is that before giving any approval and carrying out any of the functions specified in relation to sustainability measures specified in s12 (1) the Minister must:

1. consult with such persons or organisations, including Maori, environmental, commercial and recreational interests whom the Minister considers are representative of such persons or organisations having an interest in the stock (defined in section 2) on the effects of the sustainability measure under consideration: s12 (1)(a); and

2. provide for the input and participation of tangata whenua having a non-commercial interest in the stock, or an interest in the effects of fishing on the aquatic environment in the area concerned -: s12 (1) (b),
and have particular regard to Kaitiakitanga (as defined in s2 of the Act).

For this purpose, MFish (Cabinet) has proposed a grant of $20,000 per annum to each forum in any one year. If only one or two proposals were being considered by the Minister in a given year this might be sufficient, but in another year that amount could be inadequate.

So much will depend on the importance to tangata whenua non-commercial interests of the sustainability measure under consideration, and the complexity of the measure proposed as this will determine the level of input and participation required including outside resources to assist tangata whenua with their input and participation.

A possible approach for MFish could be to provide a basic annual grant to the Hokianga Accord for administration purposes, and further grants in respect of each proposal for which input and participation is required. For example, it is proposed that MFish provide the annual grant of $20,000 per annum for as an initial contribution towards secretarial and administration costs, with further financial provision for each sustainability measure under consideration by the Minister as claimed by the forum in a draft budget submitted to MFish to enable input and participate on each proposal.

It is important to the Hokianga Accord that discussions with the Minister or with MFish on the provision and funding by the Minister neither divert the Minister (and MFish) from carrying out such obligations and functions nor delay the Minister (and MFish) from doing so in the meantime.

Moreover, whatever framework is adopted in relation to the performance by the Minister of his Section 12 obligations must neither constrain tangata whenua in making their input and participation, nor prevent or be a substitute for the Minister carrying out of those obligations.

## 4. Tikanga of the Hokianga Accord

The Hokianga Accord is committed to “te tika, te pono me te tuwhera” at all times. That is righteous, truthful and open.

Furthermore, the Hokianga Accord expects the Ministry to be complete, accurate and timely in all of its dealings with the Forum. Forum members will behave and act in the same manner.

## 5. Make up of the Forum

Over time the inclusive nature of this Forum will produce input and participation of a high calibre.

Participation of tangata whenua as individuals and representatives is fundamental to the existence of the Forum. Other non-commercial interest’s contributions are deemed

essential to compliment the categorisation of 99.99% of the time Maori go fishing to feed their whanau.

The functionality of the Forum will depend upon the aroha and availability of people with experience in tikanga Maori, kaitiakitanga, manaakitanga, customary fishing best practices, recreational fishing, fisheries management, science and marine protection experience. Other vital skills will include Forum secretariat, records management, public awareness, media relations, signage, grant applications, database management, project management, accounting,

It is expected that those attending and contributing to the Forum will agree that understanding of and adherence to "Forum Protocol Guidelines" is essential if high calibre input and participation is to be achieved and maintained.

## 6. Principles of the Hokianga Accord

The Forum has produced a set of principles that underpins all activities undertaken by the Forum. These principles are:

1. To promote the management of fisheries which are of importance to Maori and other non-commercial fishers at levels above or significantly above biomass required to produce the maximum sustainable yield (Bmsy)

2. To promote the use of customary management tools where deemed appropriate
    - mätaitai
    - taiapure
    - Temporary closure 186a (Nth island)
    - Rahui

3. To promote and support the development of Iwi/hapu Fisheries management plans.

4. Whanau/hapu/takiwa initiatives and aroha. The Hokianga Accord will support local Customary fisheries management initiatives and seek to empower and encourage such initiative. All outstanding Customary fishing issues with Ministry must be addressed as soon as possible. For the Hokianga Accord to be effective, these resolutions must be a priority for the Ministry with agreed upon action plans implemented and adequately resourced.

5. To review the QMA within the respective rohe and pursue legislative change for identified at risk areas or fish species.

6. To review and implement fishery input controls such as spatial controls, method restrictions, fish size and spatial separation of commercial fishers.

7. To develop an information collection strategy to;
    - Measure effectiveness of management initiatives made by the forum

- Assist in the management decision making process

8. To participate in the research planning process, identify and promote priorities.

9. To identify and recognise areas of commonality between non-commercial and customary fishing interests.

10. To promote, measure and ensure the general public have a reasonable awareness and understanding of
    - The Crowns Statutory obligations to tangata whenua having a non-commercial interest in fisheries or areas
    - Fisheries management issues
    - Marine protection issues
    - The purpose and role of the Forum

    The Forum will
    - Implement means to measure these outcomes
    - Advise MFish on areas of weakness and potential solutions

11. The Hokianga Accord wishes to highlight the absence of a framework and understanding of how the Marine Reserves Act (Bill) and the statutory obligations embodied within the 1996 Fisheries Act to have particular regards for Kaitiakitanga, will interact with and compliment each other. The Protection Standards approach to determining what is and what is not an MPA is in its infancy.

12. The Marine Reserves Bill currently before Parliament in its present form is not compatible with the aims and aspirations of tangata whenua or the statutory obligations contained within the Fisheries Act 1996 to have particular regard to Kaitiakitanga.

13. Outstanding issues raised in the paper entitled “Proportional Allocation of Fisheries Resources in NZ, August 2005” are to be addressed by Ministry and the Forum.

## Glossary for Hokianga Accord

**5/11/05**

Te reo Maori is a beautiful language. Some words have complex and multi faceted meanings. This Glossary endeavours to offer meaning in the context of the Hokianga Accord Kaupapa Whakahaere. It is expected that this Glossary will grow steadily over time, both in the number of words and their meanings. Feedback and suggestions are welcome. Public awareness and understanding is much sought after.

| | |
|---|---|
| Aroha | Sympathy, love |
| Hapu | A collective of immediate families |

| | |
|---|---|
| Iwi | A collective of hapu |
| Kaitiaki | Guardian |
| Kaitiakitanga | Guardianship and/or "the sacred responsibility to protect that part of Papatuanuku that lies within your tribal area" |
| Kaupapa whakahaere | Modus operandi or how we are going to operate |

*Kia maha atu nga ika i roto i te wai - "more fish in the water."*

| | |
|---|---|
| Kotahitanga | Solidarity, united, togetherness |
| Mana | The spiritual power and authority that can be applied to people, their words and acts. |
| Manaakitanga | Behaviour that acknowledges the mana of others as having equal or greater importance than ones own, through the expression of aroha, hospitality, generosity and mutual respect. Or, "the pastoral care of all people within your tribal area" |
| Rahui | Temporary closure of no fixed timeframe |
| Rangatiratanga | Autonomy, freedom, leadership |
| Rohe | Geographical area |
| Rohe moana | Geographical area along the foreshore and seabed |
| Runanga | Leadership council |
| Takiwa | Geographic region |
| Tangata | One person also used as many people on occasion |
| Tangata whenua | People of the land - in NZ means Maori |
| Te reo | The Maori language |
| Te Tai Tokerau | Pakeha geographic area from Rodney district to the Cape |

"te tika, te pono me te tuwhera" - being righteous, truthful and transparent

| | |
|---|---|
| Te Tiriti O Waitangi | The Maori (authentic) version of the Treaty of Waitangi |
| Tikanga | Principles, way of doing things |
| Tikanga Maori | Maori principles, way of doing things |
| Whakapapa | Genealogical lines of descent, chronology of the unfolding of an event. |
| Whanau | Extended family |
| Whanaungatanga | Relationships |

# Appendix Five

## Ministry of Fisheries Feedback on the draft Kaupapa Whakahaere

8 November 2005

Sonny Tau
Chair
Te Runanga A Iwi O Nga Puhi
PO Box 263
Kaikohe

Tena koe Sonny

## Hokianga Accord: Kaupapa Whakahaere

### Introduction

1. First let me re-iterate the Ministry's commitment to building a strong working relationship and the establishment of workable arrangements with the Hokianga Accord to support that relationship. I welcome the work you have done to date to produce the Kaupapa Whakahaere for consideration by the Accord.

2. I regret to say that because of sickness and commitments including providing support to the new Minister neither I nor members of the Policy team will be able to attend this hui.

3. We would like more time to consider your proposals, but I have provided preliminary comments on the Kaupapa Whakahaere. I think it would be most useful to establish a smaller group of my staff to work with your team to work through the issues and finalize the necessary relationship documents that will enable the Hokianga Accord and MFish to work together. The driver for MFish continues to be our commitment to use this opportunity to establish a forum to fulfill our settlement and legislative obligations to provide for the input and participation of tangata whenua into sustainable utilization processes.

4. This note comments on the draft Kaupapa Whakahaere that is being developed by the working group for their engagement with the Ministry.

## Background

5. The comments that are provided on the draft Kaupapa Whakahaere recognise that the Ministry of Fisheries has a number of restrictions placed on it by:

    a. the provisions of the Fisheries Act 1996 that set out specific obligations on decision makers and the Minister to act consistently with the Treaty of Waitangi (Fisheries Claims) Settlement Act (TOWFC) and to recognise and provide for the input and participation of tangata whenua in sustainable utilization processes;

    b. funding for initiatives and particular costs to address TOWFC objectives and to recognize and provide for input and participation by tangata whenua that are specifically allocated for those purposes and can not be reallocated without Ministerial approval;

    c. the commitments set out in the Ministry's Statement of Intent, particularly the intention to manage fisheries through the development of Fisheries Plans, (rather than the annual sustainability measures currently undertaken by the Ministry;

    d. the Governments requirement that any relationship document that is entered into between a Crown agency and Maori (including any Memorandum of Understanding between the Hokianga Accord and the Ministry) must conform to the Crown Maori Relationship Instrument Policy (CMRI) and be approved by Cabinet.

6. The key components of the Government's CMRI Policy are attached as Appendix I.

## Comments

7. As a general comment, the Kaupapa is drafted as a terms of reference (TOR) between the Iwi and the non-commercial fishers, rather than a Memorandum of Understanding (MOU) setting out how the members of the Hokianga Accord and the Crown will work together. The Ministry does not see itself as a signatory to the Accord, although it would accept responsibilities to act in specified ways when working with the Accord members or on issues of concern to Accord members. The mechanism to record the Ministry's commitments would be the MOU that is consistent with the Cabinet CMRI Framework.

8. We therefore make the following as suggestions only for your consideration as a TOR for the Hokianga Accord. The document could provide more detail on the legal basis for the Accord to participate in MFish processes, membership of the Accord, the procedures that will guide the activities of the members, and the key activities that you want to undertake.

9. If you use this as a TOR between members, then it would serve as a background to the finalisation of a Hokianga Accord/Ministry MOU based on the draft we tabled at our last hui. That draft has been approved as consistent with the Government's CMRI Policy.

10. The Kaupapa could be reorganized to make it clearer as to who are the members of the Accord, what is the policy and legal basis for them being involved in Ministry processes, what are the fisheries management objectives of the Accord, and what actions they want to undertake to achieve those objectives. We suggest that the document could be re-ordered as follows:

    i. Preamble;
    ii. Background;
    iii. Legal basis for the Accord – section 5 and sections 11 –14 obligations of the Fisheries Act and provisions of the TOWFC;
    iv. Membership of iwi/hapu including mandate/status of representatives attending the Accord;
    v. Acknowledgement of the significant non-commercial interest of iwi/hapu, the fact that these are often exercised through harvesting under recreational regulations and the common interests and objectives shared by tangata whenua with recreational groups. Recognition of this shared interest can be effected through an invitation by the iwi for recreational representatives to participate in Accord and to assist iwi to have input into sustainability processes. This approach would assist in clarifying the involvement of non tangata whenua groups in a process that legislation makes exclusive to tangata whenua.
    vi. List of non-commercial participants;
    vii. Process to include new members/ remove non-participants;
    viii. Tikanga of the Hokianga Accord. You might want to expand this to detail how you resolve issues where parties have different views on achieving the Accords objectives;
    ix. Objectives of the Accord;
    x. Actions the Accord wishes to undertake to achieve those objectives.

11. Alternatively if you wish the Kaupapa Whakahaere to form the basis for a MOU with the Ministry it would need significant amendments to meet the Government's CMRI framework. If that is the case, I would make the following comments on each clause.

## Clause 1 - Preamble

12. The preamble appears to be consistent with requirements of the CMRI Policy. However, a specific acknowledgement of the treaty might be better set out in a specific treaty clause, rather than a pre-amble which is more often used as a background to a document.

## Clause 2 - Background

13. Paragraph 3 of the background might need confirmation with those iwi. You have accurately recorded what both you and MFish understood to be the case from hui, however subsequent discussions with Te Rarawa indicates they have a different view.

14. Paragraphs 4 and 5. MFish does not consider its approach to working with tangata whenua and recreational fishers (who as you point out have a significant Maori component) to be segregated. MFish has specific statutory duties to recognize and provide for the input and participation of tangata whenua and to provide mechanisms for the exercise of non-commercial customary fishing activities. These legal duties apply only to tangata whenua and have been funded by Government on that basis. This of course does not prevent tangata whenua and other groups working together to propose common approaches to fisheries management. MFish recognizes that the Accord approach is an effective way to achieve this objective.

## Clause 3 - Objectives of the Hokianga Accord

15. The objective of input and participation to sustainability measures is one possibility that the Accord might consider but the way it is stated is inconsistent with MFish's statutory duties and the CMRI Policy. This wording also omits what results you may want from input into sustainability processes, as well as any role you might see for the Accord in other processes MFish runs, for example research planning processes. The participants in the Accord have said their common objective is more fish in the sea, perhaps of a type/abundance and at places of importance to customary/non-commercial fishers. This would form a good high-level objective to be achieved by having input and participation into sustainability processes and involvement in other MFish processes. The principles section in clause 6 sets out a mix of objectives and actions. It might be beneficial to reorganize the document and join these together as a set of objectives, followed by actions to achieve those objectives.

## Clause 4 – Ministers obligations

16. It might be useful to bring this clause further forward in the document to set out the legal and policy basis for input and participation by tangata whenua and the role of the Accord in meeting those legal requirements.

17. The issue of funding should be clarified. The current putea of $20,000 is designed to address meeting the costs of venue, travel costs and some administration for regional forums to meet the Ministry's engagement obligations to tangata whenua. The support to the Forums to develop plans and input into Ministry processes was intended to be provided separately through the Ministry extension team. This could either be through personnel who would be employed by the Ministry until the Forums had the governance systems to enable the transfer of the positions, or

through a contract fto undertake particular functions. The second option still needs further development and will be subject to any government policy on governance and performance that might be associated with direct contracting.

### Clause 4 –Tikanga of the Hokianga Accord

18. MFish supports the intent of this clause, however, could be useful to set out dispute procedures where parties cannot agree on a common approach to achieving the Accords objectives. MFish considers that the areas of interaction and the standards relating to frequency of meetings, and timing of information transfer could usefully be included in this clause. The format of the draft MOU tabled at the last hui could provide a basis for the content of this clause.

### Clause 5 – Make up of the Forum

19. See paragraph 7 iv, v and vi. The Government's CMRI Policy requires that iwi organizations participating in any MOU with a Crown agency be specified and their status to represent iwi be confirmed. Similarly, any representative must have a mandate from the iwi to make decisions that might bind that group. Similar requirements could most usefully apply to any non-commercial group. Where a group or individual could not meet these requirements they could still participate in the hui and other activities of the Accord, but the Kaupapa should set out how their input would be included in decisions.

### Clause 6 – Principles of the Hokianga Accord

20. See comments on Clause 3.

### Hokianga Accord work priorities

21. I note that the objectives and principles of the Accord are based on the current MFish processes and are necessarily reacting to the problems presented by that process. The Ministry Statement of Intent signals a change to move towards managing fisheries or groups of fisheries through Fisheries Plans. While MFish generally manages fisheries at a QMA level, and the scale of management for Ministry led Fisheries Plans is yet to be determined, it might be useful for the Accord to consider the benefits of developing an plan of their own that could inform the Ministry's Fisheries Plans and also set out a permanent record of iwi values and objectives for your fisheries that could be used in the current sustainable utilization processes run by MFish.

22. A plan could, amongst other things, identify the customary, recreational and commercial importance of each fishery or groups of fisheries to tangata whenua. It could identify the areas where customary/non-commercial fishing traditionally took place as well as the measures tangata whenua considered necessary to rebuild the fishery to achieve the objectives that tangata whenua wanted from the fishery, including research and compliance priorities. A plan could also set out the value to and objectives of the non-commercial groups for those fisheries where they differed from tangata whenua. The Plan approach would limit the necessity to

respond in detail to each proposal of the Ministry to manage each fish stock. It would also address the probability that when the Ministry moves towards developing a Fisheries Plans for stocks, there will be less emphasis on regular assessments and alterations to the TAC/TACCs for individual fish stocks. While such a Plan could not be part of an MOU between the Accord, the development of a plan of that nature could be included.

23. As I noted above, given the importance of working through these issues carefully, I consider it would be most useful to set up a separate smaller working group of MFish/Accord members to finalise a TOR and the MOU for consideration by the Hui. I am happy to discuss further.

Stan Crothers
for Chief Executive
Ministry of Fisheries

## *Appendix I - Ministry of Fisheries Feedback on the draft Kaupapa Whakahaere*

**Government Criteria to Guide the Development of Crown Maori Relationship Instruments**

The CMRI policy framework should:

a. give assurance that government policy is being complied with;
b. provide an authoritative source of advice for officials;
c. manage the government's risks;
d. allow maximum flexibility and autonomy to the parties which enter into CMRI;
e. minimize administrative hurdles and compliance costs both for officials who develop and use CMRI, and in the administration of the overall CMRI framework.

### *Definition of instruments subject to the CMRI policy framework*

For the purposes of the CMRI policy framework that CMRI be defined as "a documented agreement or arrangement, signed by both parties, that establishes or recognizes an ongoing collaborative relationship between Ministers, government departments or Crown entities, and a whānau, hapu, iwi, Māori organization or Māori community.

### *Proposals to guide and regulate the development and content of CMRI*

The CMRI policy framework contain the following directions to government agencies:

a. that all CMRI are to include clear statements of:
   - who the parties are and who they represent, preferably with a legal description and reference to their accountabilities and relationships;
   - the purpose of the agreement;
   - definition of any terms liable to cause misunderstanding;
   - any particular undertakings regarding outcomes, aspirations, deliverables or processes;
   - whether or not the agreement is intended to be legally binding upon the Parties; and
   - execution, signed and dated.;

b. that any commitments undertaken within CMRI are to be consistent with the agency's statutory obligations and not devolve statutory obligations inappropriately or limit the ability of the agency to meet those obligations;

c. that agencies are to ensure that acknowledgments of the status, representative role, mandate or rohe of Māori parties to CMRI are accurate, by checking the acknowledgement:
   - against settlement legislation,
   - through a mandate determination procedure,
   - by seeking advice from the appropriate authorities, being the Office of Treaty Settlements and Te Puni Kōkiri

- through internal systems and procedures;

d. that agencies should avoid statements in CMRI which limit the government's freedom to act in any matter not directly covered by the agreement or to interact directly with any other citizens or their representatives;

e. that agencies should ensure consistency among and within CMRI in respect of:
   i. compliance with policy and legislation
   ii. acknowledgements of tangata whenua/mana whenua status
   iii. recognition of rohe/areas of interest
   iv. recognition of mandate
   v. fairness between parties in similar situations;

f. that undertakings in CMRI be given only by signatories with the authority to ensure that they are kept;

g. that agencies ensure that where a CMRI creates obligations for other agencies those agencies are joined in the CMRI;

h. that undertakings from Maori may be accepted only from people with the necessary authority and mandate to give them;

### *Clauses within CMRI which recognise Treaty obligations*

Where agencies choose to include their understanding of the Treaty and Treaty obligations in a CMRI, and except as allowed by Cabinet, they are required to use the following model clauses:

a. The parties acknowledge the Treaty of Waitangi as New Zealand's founding document and the basis for relations between the Crown and Māori.

b. "To give effect to their obligations under the Treaty the parties will:
   - seek continually and in good faith to improve communication and cooperation between them.
   - share all information of interest to the other party, subject to restraints of law, policy or tikanga.
   - cooperate reasonably and earnestly together to promote the objectives of this instrument and to seek agreed solutions to any issues which arise between them;
   - The Crown party will respect the aspirations of the Māori party.
   - In the event of disagreement the Māori party acknowledges the right of the government, following all efforts in good faith to find agreed solutions, to make final decisions in the national interest;
   - The Crown party will inform the Māori party of all decisions affecting this agreement and the reasons for them, subject to constraints of law or policy."