

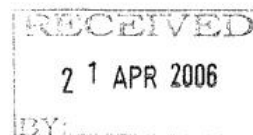
Appendix Four – MFish Letter to Hokianga Accord



MINISTRY OF FISHERIES
Te Tauiaki i nga tini a Tangaroa

COPY

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Ref: 12/4/3

12 April 2006

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

Tēnā koe Sonny

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

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

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

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

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

Naku noa, na

G T (Stan) Crothers
Deputy Chief Executive

Encl

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

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

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

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

❖ What is a "non-commercial interest"?

"Non-commercial interest" may include:

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

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

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

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

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

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

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

❖ **How does the Minister provide for input and participation?**

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

Reference:

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

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

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

2. Fisheries Act 1996: Section 12 - Consultation

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