

**Hui Report**  
**Hokianga Accord Working Group**  
*7 December 2005*

**Prepared by Trish Rea**  
**18 December 2005**

**MFish:** Mark Edwards (Manager, Fisheries Policy), Carl Ross (Manager, Customary Relationship Unit, Te Tari o te Kahui Pou Hononga), Jonathan Peacey (National Manager, Fisheries Operations), Terry Lynch, Graeme Morrell (Pou Hononga, Tai Tokerau), Jodi Mantle (Manager, Northern Inshore team), Stephanie Hill (Northern Inshore team).

**Hokianga Accord:** Raniera T (Sonny) Tau (Ngapuhi), Scott Macindoe (option4), Tom Moana (Tainui), Paul Haddon (Ngapuhi), Koha Reupena Tuoro (Te Rarawa), Bruce Galloway (Mimiwhangata Guardians), Raniera Tau jnr. (Ngapuhi), Judah Heihei (Ngapuhi), Steve Naera (Ngapuhi), Trish Rea (option4), Richard Baker (NZBGFC).

**Duration:** 3.5 hours

**Venue:** 4 Almorah Place, Newmarket, Auckland

**Objectives:** Clarify the Ministry of Fisheries (MFish) position on the draft Kaupapa Whakahaere (MOU) developed by the Hokianga Accord and discuss issues raised by MFish.

Progress the understanding of the Ministry's requirements for achieving a CMRI (Crown Maori Relationship Instrument).

Further develop the Hokianga Accord Kaupapa Whakahaere.

## **Introduction**

After the welcome Sonny Tau opened the hui with an explanation that Maori iwi from the north and non-commercial 'recreational' fishers were determined to work together to achieve the best outcomes for all non-commercial fishers. Furthermore, the Hokianga Accord has a good understanding of the basis for the iwi forums and tangata whenua's involvement in fisheries management processes and the Ministry's obligations to provide for that "*input and participation*".

A clear message was given to Ministry that who the Hokianga Accord associated with and gathered advice from was of no relevance to the Memorandum of Understanding (MOU) or Kaupapa Whakahaere being developed by the iwi in the north and in association with the Ministry of Fisheries.

It was insulting to Maori involved in the Hokianga Accord that MFish's perception was that option4 were "driving" the Forum. This notion was rejected outright. It was accepted that Maori on their own would not be able to take on the role that the Forum had decided to, without the expertise being provided by option4 and other interested parties.

Ngapuhi are involved in the Kahawai Legal Challenge and would continue to be associated with that action. An affidavit supporting the Statement of Claimed signed by Sonny, on behalf of Ngapuhi, had been filed in the High Court.

*"Over the past nine years the Ministry have certainly been absent from it's responsibility for the public awareness of what Maori customary tools are available, so much so that over the seven years I have been associated with Ngapuhi and it's fishing interests, the Ministry has not come to Ngapuhi and asked 'what do you think about these changes we want to implement?' The Ministry's obligations are quite stringent in regards to the Fisheries Act. **You haven't done that, so where are our fish?**"*

As for the MOU provided by the Ministry the previous day, the Hokianga Accord Working Group do not perceive the MOU, at this early stage, being "set in concrete" but more it is an evolving process starting with a simple document. Whether that develops into a formal MOU between the Forum and the Ministry would be determined later, but certainly not at this hui.

Ngapuhi already have an existing MOU with MFish that is fairly straightforward. This will provide the basis for ongoing work with Ministry when fisheries management decisions are being made. Ngapuhi would consider any MFish proposal and estimate the total cost of involvement in a particular process. The \$20,000 being offered to the Forum would only cover basic costs such as photocopying and does not provide for real "input and participation" by tangata whenua into fisheries management processes. Ngapuhi, and possibly other iwi later on, want to be able to promote their own fisheries proposals to enhance management of important species.

The MFish MOU seemed to be a narrow interpretation of existing legislation and the Forum would rather the relationship with MFish be based on current statute and the Ministry fulfil its obligations as per the Fisheries Act 1996 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

The Working Group require more time to consider the latest MOU from MFish but would like clarification from Jonathan, Mark and the team on some of the points raised in the document.

It was pointed out that the Hokianga Accord record all meetings with the Ministry including the video taping of the Forum's hui to ensure accuracy of reporting. As for some concerns from Ministry about the attendance of the media at the November hui, the Hokianga Accord hui are public meetings and anyone is welcome to attend and

participate. There was a growing interest in the Forum's activities and the Accord had nothing to hide.

## **Ministry of Fisheries**

### **Jonathan Peacey, National Manager, Fisheries Operations**

The Ministry of Fisheries acknowledge their *“provision for the input and participation from iwi has not been as good as it should have been, hence why the whole funding and Forum initiative was commenced. Hence that's why we're here to try and make sure that's improved.”*

*“We understand your proposal that this MOU should not be seen as set in concrete. We are happy to see that evolve over time and clearly nothing will be signed now. We will have to work together to determine when that might be appropriate.”*

The Ministry acknowledge the long working relationship between northern iwi and other recreational fishers and *“see some very positive elements there”*. As initiatives such as Fisheries Plans are developed MFish is supportive of iwi working with other groups to achieve good outcomes.

Government and Cabinet limit the Ministry as to what they can sign and what they can spend money on. Some of the issues raised by the Forum would need to be worked through with MFish to determine how flexible Ministry can be. *“There maybe some things that we identify that we can't meet your needs immediately and what we can do is identify what changes would be required if we were able to do that.”*

MFish accept that the Forum can decide how it runs its hui and who attends, including media. *“How hui operate will in some way affect the nature of the way in which the relationship happens. For instance, if there are media present that means the way the Ministry and probably others, would be able to interact, maybe more formal. It may mean that informal interaction is more difficult.”* MFish are willing to identify ways to overcome some of the issues around this subject.

### **Mark Edwards**

#### **Manager, Fisheries Policy**

The Ministry appreciate the opportunity to talk with the Working Group to go through some of the issues MFish have identified in the draft Kaupapa Whakahaere. The experience of working with the Bay of Plenty Forum has already identified some areas that Ministry can work around to achieve what both parties want.

*“ You may disagree with it or think it's inappropriate but we [Ministry] have fixed on Fisheries Plans as our mode for achieving that level of interaction right across stakeholders. We can talk to you in more detail about the way we see that engagement with other non-commercial fishers and tangata whenua aligning with that. You guys have come up with a slightly different model, that's good, let's see how we can make it work.”*

Ministry view a formal MOU of considerable value. For a ‘high level’ document it does not need to be too detailed, but should include principles and objectives. MFish want to be ‘upfront’ about what conditions they can work within and what they cannot, according to limitations in policy from Government and Cabinet.

Ministry strongly endorse tangata whenua’s willingness to promote their view in their own fisheries management proposals. MFish recognise *“it is part of our obligations, we need to recognise and provide for iwi and hapu aspirations in fisheries management. We have got a set of tools that enable us to do that.”* Some of these would mean a considerable adjustment to the way MFish currently operates but they are willing to work through that with tangata whenua.

### **Jodi Mantle**

#### ***Manager, Northern Inshore team***

Jodi added that this process was a huge learning curve for all involved but stressed the need to look at the positive outcomes that could be achieved by working with the Ministry.

### **Terry Lynch**

Endorsement of the value of having an MOU with the Ministry came from Terry Lynch. He made the point that Ministers change with time but an MOU, the operational agreement, remains the same over the longer term. An MOU keeps people accountable. Stan Crothers had made the statement previously, “that fisheries management is not rocket science; it’s harder than that”.

## **Intersectorial Allocation Process**

### ***Hokianga Accord***

Allocation of fisheries resources is the primary issue. The Intersectorial Allocation process is what we need to discuss as a priority. It is part of the understanding of the partnership between tangata whenua and the Crown. Until the issue is discussed and resolved we would continue to see compromised fisheries management decisions and relationships between the Crown and stakeholders.

### ***MFish***

#### ***Mark Edwards***

There has been an ongoing process between the Minister, stakeholder, tangata whenua and Government to give consideration on how to improve the allocation process.

*“The other issue is, and there is some disagreement between the parties about this that we talked about quite a lot, is that the way the Act is set up we would see it as a kind of procedure. First of all it’s an output based system i.e. your first job is to control the total level of mortality or removals to a level that is sustainable. In doing*

*that you also address the other environmental obligations, the adverse effects of fishing on the environment.*

*“Then you come to the second part of the purpose, which is to enable utilisation. The first step in doing that is to allocate the available total yield between fishers. In that respect the Act is pretty deficient and has virtually no guidance to a decision maker on the basis for which to make the allocation.*

*“Scott’s comment about tangata whenua come first, with all respect, [is] a bit of a simplification of the considerations which the Minister has to provide to allow for non-commercial customary fishing. But certainly because of the Deed of Settlement he has to give particular consideration to how to provide for those interests. And that is, although not very clear, much clearer than the situation for recreational or other non-commercial fishers, where from our perspective and the perspective of our lawyers and Crown law and we would argue the courts, they’ve said, all the Act says is that you [the Minister] need to make an allowance. You need to make an allowance but it doesn’t specify the nature or extent of that. It then says, after you have made those provisions you’ve got to allow for other sources of mortality like illegal take and sub legal fishing mortality and so on, however objectionable that may be. That’s a fact that those removals take place.*

*“When those things are done then you specify the Total Allowable Commercial Catch (TACC) and people go about their business of making use of the allocation. But the huge uncertainty around the nature and extent of allocations provided to each sector is a big disincentive for people to actively and constructively engage in fisheries management because they don’t know how those decisions are going to be made. **So as the policy manager, if I was to rank all the problems that we need to address, in domestic fisheries management, I would put that one right at the top of the list.***

*“So in past processes, the Ministerial Reference Groups, Soundings, the things that preceded that, they didn’t get us the outcome that I would argue everyone needs, irrespective of your view about allocation, we need certainty and fisheries management needs certainty.*

*“So we are in the process of creating a body of advice for the new Minister. We have engaged with him, only preliminarily, **enough to know that we regard this as the major domestic fisheries management problem.** We are constructing advice and both talk to him about problem definition, the scope, the process we think needs to happen to properly engage stakeholders in this.*

*“Some policy issues you can deal with them in Wellington, in behind closed doors. This is not one of them. Everybody has a huge stake in this issue and it’s necessary that people understand the constraints, the problem well and get engaged in finding the solution. At least that’s our view. **That means you are going to have a complex and resource intensive process but this Government is formulating a new process, formulating its agenda, we need to make a case that allocation issues are an***

***important part of that agenda and get the Minister to sign up to a process we can move into to start resolving those issues.***

*“So that’s the stage things are at. We can’t talk to you about; we are a long way away from starting to specifically discuss any of the range of solutions that would improve the current situation and the other linked issues, like the role and capacity of the non-commercial stakeholder groups to engage and the engagement processes, to mention just one. So that’s the stage the Ministry is at, we hope to have decisions and guidance from the new administration and Minister such that we are able to enter into a process with stakeholders and start to talk in more detail about that.”*

### **Hokianga Accord**

It was refreshing from a non-commercial fishers perspective that the Ministry were looking to deal with the allocation issue as a priority. While the “preference debate” or allocation issue remained unresolved it was debatable whether it was worthwhile engaging in the “proof of concept” fisheries plans process i.e. Coromandel scallops, Foveaux Strait oysters and Southern Blue Whiting.

With the scarce resources available to the non-commercial sector our focus had to be on the overarching issue of allocation. The danger is having tangata whenua distracted on customary Maori management tools for their rohe when the most impact on their non-commercial fishing interests would come from the allocation debate, their understanding of what proportional share means, proportional allocation means, what capping recreational catch means to them. What the compensation debate is all about. What is the number Treasury has for the worse case scenario, the likely outcome of compensation being payable? How much is it over the next two/three generations? One, two, three hundred million dollars per generation? This is information the Ministry must have; as MFish has known for a long time there is a major issue of allocation that needs to be resolved.

We need to know this information at the earliest opportunity; we need the whole picture about the debate. We also need a timeline of the process and meaningful resourcing. We cannot go into that debate without MFish providing the resources to inform the public. We are all going to need total focus on the debate.

### **Ministry**

In response to a question regarding the existence of a policy paper focused on the allocation issue Mark advised, *“there is one coming together but we wont be providing it to you now because, as is normal procedure within the public service, we first of all provide it to the Minister, he considers it, there will be a wide range of options and means to progress, he will make those decisions. He will then decide which course of action he wants to proceed with and how he wants to engage with stakeholders. We will advise him on that but we don’t decide we just advise.”*

Terry Lynch added, *“but that paper hasn’t been produced yet.”*

Ministry would not advise when a policy or briefing paper would be available for our scrutiny but Mark did advise, “ *we aim to get advice to the Minister before Xmas.*” When a paper is available for us to read is dependant on the Minister’s decision.

## **Hui Focus**

Ministry was keen to engage with non-commercial fishers on a number of other issues, in addition to allocation. Other relevant issues include TACC settings, planning and spatial management including use of Part IX [of the Fisheries Act] tools. While allocation is a very important issue there are 25 policy projects underway in Mark’s team, some of which would be of significance to all fishing interests including non-commercial fishers such as allocation in the Oceans context and the Marine Reserves Bill, the role of various biodiversity protection tools and how the interests of fisheries stakeholders are recognised in achieving those biodiversity protection interests. Fisheries stakeholders, including non-commercial, would be interested in being involved in the process to determine the final form of legislation to achieve those objectives and the process that is used to implement them.

## **Crown Maori Relationship**

With the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and Fisheries Act 1996 MFish has obligations to tangata whenua but there seems to be some inconsistencies. The nature of the relationship is already established and formalising the relationship with iwi should be a fairly simple process.

Sonny had mentioned previously that Ngapuhi had never been asked to have “input and participation” into sustainability measures or MFish processes since the introduction of the Quota Management System (QMS) in 1986. Now was a good time to start providing for that statutory obligation.

Ministry agreed with this assessment and advised that the Crown Maori Relationship Instrument (CMRI) framework that they work with is generic across Government departments, across a range of issues. MFish are willing to discuss tangata whenua’s concerns about the particular MOU provided by Ministry if that was required.

## **Input and Participation**

Considering the five year development process of the MOU between MFish and Tainui it was a concern that Ministry would focus the effort of both MFish and tangata whenua on the MOU for the Hokianga Accord and divert attention away from the Minister’s existing obligations under section 12 of the Fisheries Act 1996. Section 12 specifies the Minister has to 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.

Ministry agreed that the obligation on the Minister to provide for the “input and participation” of tangata whenua into sustainability measures was “*black and white*” in the Act. For other fisheries management processes Mark Edwards made the comment that MFish and tangata whenua would probably not agree, at this stage, what that meant.

MFish consider there needs to be a lot of discussion to determine how and what process is used to provide for the section 12 obligations, within their available resources. The needs of tangata whenua would be different for a sustainability measure for a shellfish bed decision compared to the requirements of being involved in developing the Oceans policy.

Ministry were asked to clarify their definition of “tangata whenua having a non-commercial interest” as referred to in section 12 (1) (b) of the Fisheries Act 1996. Mark’s reply was, “*our understanding, and it hinges around the customary regulations, is the non-commercial interest would be where they wish to take seafood for use and consumption that is not for the purposes of pecuniary gain or trade.*” The Treaty of Waitangi (Fisheries Claims) Settlement Act specifically provides for tangata whenua’s non-commercial customary interest. Maori recreational fishing interests are catered for within the Fisheries Act 1996 section 21.

MFish pointed out that the Forums could address other interests such as recreational, commercial and environmental interests.

## **Tainui MOU**

Tainui representative Tom Moana made the trip from Ngaruwahia to support Sonny, Ngapuhi and the other northern iwi involved in the Hokianga Accord. He raised the issue of their MOU that had been underway with MFish for over five years. Being a document of only one and half pages he struggled to understand the delay in addressing the outstanding issues. His main point was to encourage MFish to talk with iwi first and foremost before consulting with Te Ohu Kai Moana (TOKM) on matters that affect Maori non-commercial fishing interests. TOKM certainly do not speak for iwi on non-commercial fisheries matters.

## **MFish MOU**

The day before the hui the Ministry had sent through a paper titled ‘Parameters for Ministry of Fisheries Engagement on Terms of Reference and Memorandum of Understanding with the Hokianga Accord’ (Appendix One).

The Hokianga Accord Working Group had not had time to consider this paper in any detail so asked the Ministry representatives to work through the paper, section by section and explain their logic.



The Ministry explained the constraints placed on them by legislation and Government policy. MFish were adamant they have always recognised most fishing by Maori is done under the amateur fishing regulations but have not specifically stated this fact.

MFish gave a list of items that could be included in the Terms of Reference (TOR) for the parties to the Hokianga Accord. Ministry do not see themselves as a signatory to the Hokianga Accord. The MOU is a more general document that covers the relationship between the Forum and Ministry. The Crown Maori Relationship Instrument was also discussed in the MFish paper.

In the paper the Ministry commented on specific sections from the draft Kaupapa Whakahaere developed by the Hokianga Accord.

Ministry envisage involving the Forum in the development of fisheries management proposal documents before they are written and sent out to stakeholders for input in order to meet their obligation to provide for the “input and participation” of tangata whenua.

## **Fisheries Management**

MFish have four sustainability processes per annum and they are currently considering the April 2006 sustainability round. MFish determine what resources they have available and work out a priority list to assist them in deciding what fisheries should be reviewed. Ministry plan to consult with the regional Forums to determine what their priorities are for each round and give tangata whenua the opportunity to have input at that stage.

MFish are looking to improve their consultation processes to take into account the needs of Maori. Ideally this would include early notice of proposals to allow for Maori to gather the mandate, participate and get involved in the research planning process. Ministry are developing a monthly bulletin to advise the Forums of upcoming issues.

## **Fisheries Plans**

Fisheries Plans are viewed by Ministry as the long term solution to the reactive style process currently operating where submissions are written in response to MFish proposals.

On consultation with other non-commercial fishing interests the Minister said last year that he wanted to establish a national advisory body to advise him on strategic issues. Mark went on to explain, “ *that is focused on allocation. The whole reason why the Minister wanted to develop a high level relationship with that other non-commercial sector was to progress this allocation issue. That is what is at the heart of the strategic issues that we need to address. We know how critical it is to that sector. But he also needed another way to engage with recreational fishers that have much*

*more local, regional interest in fisheries and engage in existing statutory process. They fulfil a different statutory obligation than what we are trying to achieve through the iwi regional Forums”.*

## **Statement of Intent**

The draft MFish Statement of Intent is due to be released before or not long after Xmas. This document would be presented to the next Forum hui for discussion and input. MFish were asked when tangata whenua would be provided their opportunity to have “input and participation” into this process. Terry Lynch responded, “ *we need to be quite clear about the legal duty of what “input and participation” is, it is only matters to do with sustainability of fisheries. It’s not to do with the other business activities of the Ministry”.*

## **Fisheries At or Above BMSY**

Ministry are not clear where the current Minister stands on David Benson-Pope’s July announcement about managing fisheries of importance above Bmsy or significantly above Bmsy<sup>1</sup>. MFish are waiting to see if Jim Anderton will endorse several of Mr Benson-Pope’s policy statements. In the meantime section 13 of the Fisheries Act provides for the management of fisheries at or above a level that can produce the Maximum Sustainable Yield.

## **Iwi Forums**

Original MFish plans were for two meetings in the first year of a Forum’s existence, four and six meetings for the second and third years respectively. Ministry also expected the attendance of only five staff per Forum meeting. The Ministry have been “over delivering” to the four Forums established to date and also recognise that four meetings in the first year is more realistic. The \$20,000 MFish funding only provides for hui costs and some transport costs for tangata whenua to attend the meeting. The \$20,000 is ongoing funding.

Ministry do not envisage providing funding to Forums to engage independent advice on fisheries management matters. MFish have offered the Extension Service Officers as assistants for developing Fisheries Plans and attending to other issues of importance to the Forum.

According to the Forum’s definition of section 12 (1) (b) of the Fisheries Act all sustainability measures approved by the Minister since the passing of the 1996 Act is illegal because for eight years the Minister has failed to “provide for the input and participation of tangata whenua”. Therefore those processes are illegitimate.

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<sup>1</sup> “That species important to recreational fishers should be managed above, or even significantly above, what fisheries documents refer to as B<sub>MSY</sub> – the size of a fish stock that delivers the maximum sustainable yield.” David Benson-Pope, 8 July 2005 - NZ Rec Fishing Council AGM and Conference.

There was plenty of discussion about who would be involved in the Hokianga Accord. The Ministry were advised that the only formal parties to the Forum would be tangata whenua. The involvement of other non-commercial recreational fishing interests was irrelevant to MFish. Ministry were concerned that their obligation was to tangata whenua according to the CMRI policy.

## **Alternative Model**

The four regional iwi Forums in existence have been established using the MFish model managed by the Customary Relationship Unit (Te Tari o te Kahui Pou Hononga). An alternative relationship model was presented to the Ministry for their consideration and feedback. (Appendix Two). The draft alternative has iwi as the focal point of contact with MFish. Other iwi including Te Rarawa, Ngati Wai and Ngati Whatua are yet to decide their position on being parties to the Hokianga Accord and could conceivably fit into this alternative model, with their own formal arrangement with the Ministry.

MFish expressed some favourable feedback on the model's ability to provide a formal relationship with a mandated body, but they would have some reservations about signing an MOU with each iwi. They would be looking to have an agreement with a collective of iwi. Mark Edwards reminded the hui that they have existing relationships with other fishing interests and could possibly have more connections between MFish and parties to the Hokianga Accord than was depicted in the alternative model. The hui accepted this.

Mark advised that they would need to talk with others in Wellington including Te Puni Kokiri (TPK) about the alternative model and provide some feedback.

Sonny then spoke about the Electoral College established under the Maori Fisheries Act 2004 as perhaps a model to look at when considering clusters of iwi to engage in formal MOU with the Ministry. Ngapuhi, as the overwhelmingly largest iwi in the country, stood on its own by virtue of its huge population. Other recognised iwi throughout the north were clustered together under one umbrella and population wise, did not match Ngapuhi's numbers, even combined. It was therefore proposed that this model be investigated by the Ministry for its suitability.

## **Conclusion**

Both MFish and the Hokianga Accord Working Group agreed the allocation of fisheries resources is the primary issue that needs to be addressed. The Working Group does not believe non-commercial fishing interests would be served well if the Hokianga Accord diverted its attention and resources into developing fisheries plans or local management regimes.

The Intersectorial Allocation Policy being developed by the Ministry and the ensuing process would need to be monitored and have meaningful input from the Forum.

MFish and the Working Group agreed to give due consideration to the discussions held during the day in relation to the MFish MOU explanation and the Accord's draft Kaupapa Whakahaere.

Clarification of tangata whenua's 'non-commercial interest', as specified in the Fisheries Act section 12 (1) (b) is still required. MFish's understanding is it "hinges" on the customary regulations. The Working Group has some doubts whether it only refers to customary fishing and could extend beyond this to include recreational fishing and other interests.

The opportunity to receive and respond to MFish's priority list of sustainability measures was welcomed. The Forum look forward to receiving the Ministry's monthly bulletin advising of upcoming management issues.

The Draft 2006/07 Statement of Intent due to be released around Christmas will need to be reviewed and ideally the Forum would provide some feedback to MFish within the three month consultation period.

Interest is high amongst Hokianga Accord participants on whether Jim Anderton would endorse the previous fisheries Minister's policy of managing important recreational fisheries above or significantly above Bmsy. If endorsed, how the policy is given effect would need to be monitored and commented on.

Ministry committed to providing some feedback on the alternative relationship model presented during the hui. No timeframe was mentioned but the Forum would expect some feedback before or at the next hui of the Hokianga Accord.

The next full Forum meeting is due for early March 2006, date to be confirmed.

# Appendix One

5 December 2005

The Chairman  
Hokianga Accord Work Party

Tena koe Sonny

## **Parameters for Ministry of Fisheries engagement on Terms of reference and memorandum of understanding with the hokianga accord**

### **Background**

1. Representatives of the Hokianga Accord and the Ministry of Fisheries have been tasked with developing a relationship document that will establish how the parties will work together to:
  - a. better provide for the input and participation of hapu and iwi participating in the Accord, into the Ministry's sustainability process;
  - b. interactions between hapu and iwi on a range of business group activities that may be agreed between hapu and iwi representatives and the Ministry.
2. Hapu and Iwi representatives of Nga puhi, Ngati wai and Ngati Whatua (including Te Roroa and Te Uri O Hau) have indicated to the Ministry of Fisheries that the majority of hapu /iwi non-commercial fishing activities is conducted under the provisions of a range of amateur fishing regulations, rather than under the customary fishing provisions provided through Part IX of the Fisheries Act 1996. This situation is likely to continue for the foreseeable future.
3. In view of the predominant use of amateur fishing regulations by hapu/iwi members to take fish for non-commercial purposes, Iwi representatives and recreational fishing interests in the area have recognised that they have many areas of common concern. They have established a commitment between themselves to work together to advocate fisheries management outcomes that will provide benefit to customary fishers, amateur fishers and the fishery resources that they utilise. The Ministry recognises the constructive approach taken by the groups to work co-operatively together.
4. To assist the groups to work together, hapu and Iwi in Mid Tai Tokerau have chosen to invite representatives from a number of recreational fisheries groups to participate in processes that may be established with the Ministry of Fisheries to address the Ministry's statutory obligations to provide for the input and

participation of hapu and iwi with a customary interest in fisheries into a range of sustainability processes run by the Ministry of Fisheries. The Ministry has recognised the right of hapu and iwi to extend this invitation to recreational fishers to contribute to iwi processes.

5. The Ministry has a range of statutory duties and government requirements that it must adhere to in interactions with any party. These duties and requirements will need to be recognized and provided for in any relationship documents or operational processes that may be developed between Hapu/Iwi and the Ministry to provide for input and participation into fisheries processes.
6. The Ministry is seeking to constructively work with hapu and Iwi representatives to provide for their invitation and desire to work with recreational groups. To that end, the Ministry seeks to contribute to the development of relationship documents that will meet the objectives of hapu/iwi and recreational fishers, while recognising the constraints imposed on the Ministry by statute and government policy.

## **Constraints on the Ministry of Fisheries**

### ***Legislation***

7. Any undertakings by the Ministry either arising from a Terms of Reference (TOR) between iwi and other parties, or through a Memorandum of Understanding (MOU) between iwi and the Ministry must take account of and be consistent with the following legislative requirements.
8. Section 5 of the Fisheries Act 1996 requires any decision maker to act in a manner consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, (TOW(FC)S Act. The TOW(FC)S Act in turn requires that the Act be interpreted in a manner that will give best effect to the 1992 Fisheries Deed of Settlement. The TOW(FC)S Act requires that the Minister of Fisheries recommend regulations to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and places of customary food gathering importance. It also provides for tangata whenua to request the Minister to develop policies or programmes to recognise and provide for customary food gathering interests, where the current provisions developed under Part IX of the Act do not achieve that objective.
9. Section 12 (1)(a) of the Fisheries Act sets out the consultation requirements the Ministry must undertake with Maori and sector groups.
10. Section 12(1)(b) requires that the Minister must provide for the input and participation of tangata whenua having a non-commercial interest in a stock or an interest in the effects of fishing on the aquatic environment, and have particular regard to kaitiakitanga. Section 12(b) applies only to tangata whenua (being hapu

and iwi who hold manawhenua over an area where a fishery under discussion exists). It does not apply to tangata whenua who do not hold mana whenua in the area of a fishery under discussion, or to any of the other sector groups.

11. The Fisheries Act sets out processes relating to the management of fisheries. In general, the Fisheries Act sets the scale of management for fisheries at a stock level, either through Fisheries Plans, QMAs or FMAs. The Act also provides for smaller scale management of customarily important fisheries through Part IX tools or, where commercial fishing activities unreasonably impact on amateur catches rates for areas of importance to amateur fishing to be closed after disputes resolution und Part VII.

### **Government Policy**

12. The Ministry is required to act in accordance with and promote government policy. It is also required to carry out the directions of the Minister.

### **Input and Participation**

13. The Government and Minister has determined, after consultation with iwi, that the primary vehicle to discharge the Ministry's legal duty to provide for the input and participation of hapu and iwi will be Regional Iwi Fisheries Forums. Funding has been provided specifically to address this duty to tangata whenua. The Ministry is not able to expend resources targeted for this purpose in other areas without Ministerial agreement.

### **Crown Maori Relationship Instruments Framework**

14. Cabinet requires that any documents that have the effect of committing government agencies to relationships or actions with Iwi must conform to the requirements of the Crown Maori Relation ship Instruments Framework. The Ministry of Justice and Te Puni Kokiri are tasked with assessing a document for consistency with the Framework before it is sent to Cabinet for approval. The Ministry does not have discretion to agree to documents. It can participate in good faith, to advise what conforms to the Framework and then take the resulting document into Government processes for consideration.

### **Non-commercial consultation**

15. The Government and Minister's policy is that the primary vehicle to provide advice to the Minister on matters of concern to recreational fishers is the Ministerial Recreational Advisory Committee and Regional Recreational Fishing Forums. The groups at both levels have been selected to represent a wide breadth of interest, including Maori. Funding has been provided specifically for the support of the Ministerial Advisory Committee and Regional Recreational Forums, one of which is based in Whangarei, and which covers the whole of Northland. The Ministry must operate consistently with the Government's policy direction and work with these bodies to provide advice and raise issues relating to the recreational fishing sector.

## **Statement of Intent**

16. The Ministry of Fisheries issues a Statement of Intent (SOI) for a three year period that is approved by the Minister. The SOI sets out the activities that the Ministry is funded for and gives broad guidance to the activities the Ministry will carry out. The current SOI also sets out the activities of the ministry in the 05/06 financial year. The Ministry must act consistently with the SOI while it is in force, although the Minister may direct or agree to re-prioritisation of activities or effort.

## **Fisheries Plans**

17. The Ministry policy, confirmed through Government of the SOI, is that Fisheries Plans will be the primary vehicle for management of fish stocks and for interaction amongst Iwi and stakeholders, and between Iwi, stakeholders and the Ministry on issues relating to the development of stock management and allocation. The Ministry's priority must be to develop Fisheries Plans as the primary stock management mechanism. We are currently developing three proof of concept fisheries plans as a first step towards wider use of fisheries plans.

## **Funding**

### **Input and Participation**

18. The Government has provided specific funding to assist hapu and iwi to have input into and participate in fisheries sustainability processes through Regional Iwi Forums. The Ministry has budgeted \$20,000 to meet the costs of holding meetings, including travel of hapu/iwi representatives, venue, and catering. The Ministry is accountable for ensuring that funding that is allocated for specific programmes is expended in those areas. Funding for input and participation of hapu and iwi in the Forum processes cannot be re-allocated for other purposes without the approval of the Minister.
19. The Ministry is prepared to consider contracting the current budget for the organisation of Forum meetings to an iwi structure that is agreed to by all the participating hapu and iwi groups. The contracting party would need to be a legal entity that could enter into such a contract. It would also need to meet the conditions of any contract, such as to organise and hold an agreed number of meetings of agreed hapu/iwi representatives in accordance with a timetable approved by that Forum and the Ministry. The Ministry is prepared to discuss this matter in more detail if it is considered that the approach has merit.
20. In addition to the budget for conducting meetings of the Forums, the Ministry has been provided with funding to provide policy/operational support to the Forums to enable hapu/iwi to develop their views on the sustainable utilisation of the fisheries in their areas. Government has primarily targeted this funding to employ extension officers within the Ministry to work with the Forums. The SOI proposes in future that these positions could be contracted to the Forums. The Ministry is open to working with hapu and iwi of the Forum on the circumstances in which either the positions or funding might transfer to the Forum. These discussion should include governance arrangements, accountability procedures



and the purposes for which these resources might be used that would be consistent with Governments funding decisions.

### **Non-commercial consultation**

21. Government has made specific decisions on the establishment of the Ministerial Recreational Fisheries Advisory Committee and Regional Recreational Fisheries Forums. The Government has provided the Ministry with specific funding to resource the meetings of both groups. As with funding for input and participation of tangata whenua, the Ministry is not able to expend resources targeted for the Ministerial Recreational Advisory Committees and recreational forum for other purposes without Ministerial approval.

### **New Funding**

22. The Ministry's existing resources are under significant pressure. In addition, it is highly unlikely that new funding will be provided to the Ministry in the near term for existing or new projects. In that circumstance the Ministry is constrained as to the quantity of resources it can put into the Forum process.

### **Engagement processes**

#### ***Terms of Reference***

23. The Ministry does not see it self as being a signatory to the Hokianga Accord, although it accepts responsibilities to act in specified ways when working with the Group. In addition, given the constraints on the Ministry's ability to commit to outcomes that are at variance with legislation or government policy, it is useful for iwi and recreational representatives to develop a TOR setting out their own objectives for fisheries management and procedures to work together to achieve those objectives. A TOR could include, amongst others things:

- a. their interests in fisheries or fish stocks;
- b. roles in legislation;
- c. mechanisms to involve each other in the processes arising from legislation (like the iwi regional forums) or non-statutory sources (like representation on recreational fishing organizations);
- d. each iwi and recreational groups goals and objectives for fisheries(s) or fish stocks;
- e. common goals and objectives of iwi;
- f. common goals and objectives of iwi and recreational groups;
- g. processes to work together on specific issues, procedures to resolve disagreements where goals and objectives differ for a fishery;
- h. activities or programmes to plan and work towards achieving objectives including iwi fisheries plans, advocacy processes, and publicity /communications processes and engagement processes with other sectors and government agencies.

24. The TOR is a useful mechanism to:

- a. establish a long-term framework to identify the groups aspirations for the fishery;

- b. their views on how to advocate or, where provided in legislation to undertake activities to achieve the groups goals and objectives;
  - c. maintain the focus of the group on to issues of key importance.
25. There may be areas set out in a TOR where the Ministry could not commit to work with the Hokianga Accord to achieve an outcome because of conflicts with the constraints identified above. However, this would not preclude the Accord advocating for those outcomes itself, to other stakeholder groups, local or central government or the public.
26. The Ministry has provided comment on the draft TOR for the Hokianga Accord and welcomes the opportunity to assist in the further development of the document. A copy of those comments is attached as Annexe I.

### ***Memorandum of Understanding***

27. In general, MOUs are documents that set out a range of activities on which the parties will interact and how parties behave and work together on those activities. MOU's do not generally set out agreements on outcomes on specific activities.
28. The Ministry considers that the purpose of the MOU, in this case, is to set out the relationship and activities that iwi and the Ministry will undertake to better provide for input and participation of tangata whenua in fisheries sustainability processes and iwi involvement in specified business processes of the Ministry.
29. The Ministry considers that there should be a MOU between the Iwi of the Hokianga Accord and the Ministry. The Ministry has provided a draft MOU that meets the CMRI Framework requirements. A copy of the draft MOU is attached as Annexe II.
30. However, the Ministry recognises as constructive the desire of iwi and recreational fishers to work together on areas of common interest. In view of the unique situation arising from the iwi invitation to recreational fishing representatives to participate in this iwi regional forum, this draft will need some modification. In particular the Ministry considers that the document could better specify:
- a. The role of hapu/iwi and the Ministry in the MOU;
  - b. The role of recreational representatives in the Iwi Forum;
  - c. procedures to provide and share information (what information, to whom and in what time frames);
  - d. disputes resolution procedures;
  - e. decision making processes.
31. In addition, the MOU could note areas of work that the parties agree should be given priority and which could be developed in more detailed supporting documents to the MOU, including:

- a. timing and frequency of meetings amongst the members of the Hokianga Accord and between the Accord and the Ministry;
- b. operating procedures for Forum meetings, including codes of behaviour;
- c. funding of meetings;
- d. the circumstances in which either the positions or funding for extension services might transfer to the Forum, including appropriate governance arrangements, accountability procedures and the purposes for which these resources might be used.

32. We look forward to working with you to develop an MOU that will establish a positive and enduring working relationship between, the Hokianga Accord and the Ministry.

Noho ora mai

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## Appendix Two

### Draft Alternative Iwi Relationship Model December 2005

