

## **MFish Treaty Strategy**

### *Ben Dalton, Deputy CE Treaty Partnership and Obligations to Maori, MFish*

Ben Dalton [Ngapuhi, Ngati Porou] has been with the Ministry of Fisheries since January 2010. He is skilled in Treaty Strategies but has less experience in fisheries management issues. Ben has been Chief Executive of Te Runanga A Iwi o Ngapuhi twice; prior to, and after, Te Runanga received the fisheries settlement assets. In his previous job Ben was the Chief Executive of the Crown Forestry Rental Trust. Before moving to Wellington Ben lived in Tai Tokerau for around 20 years and spent 24 years in Otara, Manukau.

For the past few months Ben has been concentrating on simplifying the Ministry's Treaty Strategy, which sets out how MFish intends to meet its statutory obligations to Maori.

The Crown's obligations regarding fisheries are specified in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and several other pieces of legislation.

Presently MFish are working on establishing an engagement framework to identify:

- ⇒ What their obligations are;
- ⇒ Who the obligation applies to, is it Iwi, hapu or tangata whenua?
- ⇒ How MFish will know if that obligation has been met; and
- ⇒ Who within MFish is responsible for delivering on that obligation?

This Treaty Strategy has key links to the Fisheries 2030 policy. Until such time as the 2030 policy is revoked all work within the Ministry will be guided by the goals and outcomes specified.

### **Treaty Strategy: Key links**

#### *Fisheries 2030 –*

- ⇒ The Treaty Partnership is realised through the Crown and Maori clearly defining their respective rights and responsibilities in terms of governance and management of fisheries resources;
- ⇒ Seek consensus on how to fully implement the Fisheries Deed of Settlement and historic settlements.

#### *Fisheries Treaty Strategy Vision –*

- ⇒ Tangata whenua and the Crown working in partnership to provide for the utilisation of fisheries resources while ensuring sustainability;
- ⇒ Having particular regard to Kaitiakitanga;
- ⇒ With the Crown meeting its obligations to Maori.

#### *Ministry Treaty Strategy Outcome –*

- ⇒ Deliver the Government's fisheries and aquaculture obligations to Maori more effectively.

### **Proposal for input and participation**

Fundamental to the whole programme is deciding how Maori will have input and participation in the manner in which the Ministry sets its policies for overall fisheries management, not just for customary, recreational or commercial interests. Iwi Fisheries Plans are the tool that will deliver on these obligations.

Forums that are aligned to the current Fisheries Management Areas will develop Iwi Fisheries Plans. For example, FMA 1 (east coast North Island) extends from North Cape to Cape Runaway on the East Coast. These plans will seek to integrate the commercial and non-commercial interests of Maori.

Some Maori have already expressed fears that 'integration' in terms of the Iwi Fisheries Plans will require combining the hapu-based customary regulations management with the commercial interests managed by the Runanga. This is not the main issue.

The objective of this process is to work out how to bring the interests of all parties together, not how you combine the two separate 'organisations'.

The proposal is *"how do you get the interests of both parts of iwi fisheries management together to sit at the table, and through that the generation of Iwi Fish Plans, which will be aligned to the Fisheries Management Areas"*.

Iwi Fisheries Plans will contribute to the national Fish Plan framework. Five initial national plans are already underway. As of next year Iwi Fisheries Plans will feed into the MFish Annual Operating Plans. This is the proposal and it is now Ben and the Ministry's job to talk with people to determine if this approach is realistic or not.

One of the issues for mid north iwi and MFish was to determine whether the Hokianga Accord constitutes an iwi fisheries forum, and what are the criteria for a fisheries forum?

Currently there are a few issues that need to be resolved before some answers are apparent. The criteria for iwi forums, and even what goes into an Iwi Fisheries Plan, have not been confirmed yet.

In simple terms, Iwi Fisheries Plans will seek to articulate the aspirations of the people in a particular area and how they intend to manage the fisheries.

Given the earlier discussion and experiences of consultation the real test will be to get real "input and participation" into this development process and eventual outcomes.

Ben's job was to monitor and report to the Chief Executive whether that "input and participation" occurs and if that input is given effect, or just ignored by MFish officials.

## **Hui Discussion**

### **Feedback to MFish**

It was important to emphasise the statutory nature of the obligations on the Crown. As Ben had pointed out earlier, this was not just another 'consultation' process that may or may not be successful. These were ongoing rights that Maori had through the Treaty Settlement.

A long-term strategy was more acceptable than any programme that was viewed as just another project in a long list of failures. MFish needs to clarify the extent of this project and the tenure of the Iwi Fisheries Plans.

MFish needs to be aware that tangata whenua need, and want, to be able to manaaki its manuhiri, that is, provide hospitality to guests. These protocols will differ between regions and even within Fisheries Management Areas.

Fisheries Plans need to include comprehensive information on the fisheries resource. For example, there will be times when particular fish are in the harbours, off the beach or offshore. Spawning times and periods when young fish are present and need to be avoided, and regional differences, are the types of information that ought to be included in a fish plan.

Fisheries Plans ought to be treated as community fish plans because they affect everyone, not just Maori.

It was ironic that Maori were being asked to develop Iwi Fisheries Plans at the same time that the public were engaging in developing fish plans for the same regions and the same fish!

## **MFish response**

Ben noted that there were statutory obligations on the Crown that required delivery to Maori and that included Iwi Fisheries Plans. He was committed to delivering the best possible outcome for both Maori and the Crown.

## **Input and participation**

There was little doubt that the Crown has historically given lightweight consideration to its obligations under section 12 of the Fisheries Act 1996. Developing Iwi Fisheries Plan will require a lot of resources, time and effort from tangata whenua and the Crown.

A major concern was whether Iwi Fisheries Plans would have any practical effect given current legislation and policies already in place. The Fisheries Act directs the Minister to *take account* of a fish plan but there are now Harvest Strategy Standards that apply to fisheries management and national fish plans are also being developed.

Unless a hierarchy is clear then conflict may arise and people maybe left disappointed after investing so much energy into a project they thought would make a difference. For example, Bay of Islands Maori may wish to have a particular species managed at a higher level of abundance so there are more fish available, however, those aspirations may not be deliverable if there are different management strategies applied over FMA 1, the whole Fisheries Management Area.

Ben acknowledged that similar concerns had been raised earlier. It was a risk, in trying to gather everyone's aspirations into one project, that some people's expectations will not be realised due to conflicts with other's 'wish-list' or current management strategies. MFish was aware this was going to be a major issue that will need to be addressed, but at the moment there was no apparent, easy answer.

It was appropriate, even though Sonny Tau had left the hui (for whanau reasons), to repeat Ngapuhi's position that was clarified at this and earlier hui. Sonny had said, "*When there is tension between commercial and our non-commercial take, [that is] our customary rights, our commercial machine will give way to our customary machine*".

This was a gift from Ngapuhi Iwi to anyone endeavouring to put together a plan. It is clear guidance of where the Runanga stand in relation to peoples' interests.

## **Application of Kaitiakitanga**

A major blockage for the Hokianga Accord is the perceived inaction on behalf of the Ministry to comply with the Fisheries Act and most importantly the obligation on the Crown to have particular regard to kaitiakitanga, as set out in section 12 of the Fisheries Act.

While the Accord's constituent parties were attempting to practice kaitiakitanga, it did not seem the Ministry were applying the same effort. The Ministry's inaction, or inability, to respond in a precautionary way in relation to the Kaipara turbine issue was one example.

It seemed Ministry were intent on continuing to look internally for solutions and produce policy statements rather than relying on the Fisheries Act and discuss possible answers with other people such as the Accord.

After thirteen previous overnight hui and the Kahawai Legal Challenge the forum was very familiar with the Fisheries Act and the statutory obligations on the Crown.

## **MFish response – Kaitiakitanga**

Ben acknowledged that MFish has not always got their strategies right in the past. However, he has been employed because both the Minister and Chief Executive, Wayne McNee, were committed to fulfilling the Crown's obligations to Maori in regards to fishing.

If MFish has got the strategy wrong then people need to say so. Part of the reason why both he and John Beaglehole were at the hui was to gather people's thoughts. MFish were open to discussion both at and after the hui.

### **Deeds of agreement**

It was frustrating for Te Uri o Hau and others with deeds of settlement that they continued to wrestle with MFish to achieve what had been agreed in their Memorandum of Understanding with the Crown. Te Uri o Hau looked forward to talking more with Ben to try and accomplish what had been anticipated and agreed in their 2002 Settlement.

Te Uri o Hau confirmed it was very keen to have "input and participation" as opposed to consultation with MFish to achieve the best outcome for their people and the community. Regarding fish plans, that maybe an opportunity to include some customary practices such as appropriate harvesting times and methods. Although with the changing weather patterns the seasons and fish patterns are not as defined as they were in the past.

### **Recreational harvest survey**

Ministry staff had to leave the hui to catch their flights home. Prior to their departure John Beaglehole advised the hui that the Minister of Fisheries had announced the previous evening that a major recreational harvest survey would be initiated this coming summer. The objective is to have a better understanding of how many people are fishing and what is being caught. This information will assist the Minister when making decisions about recreational allowances.

It will be a large-scale multi-species survey, supplemented by other measures such as boat ramp and aerial over-flight surveys and web cameras to monitor traffic at boat ramps. Total cost for this survey will be around \$5 million.

### **Hui closing statements**

John was asked to advise the Minister that Te Uri o Hau has an environmental problem with the Kaipara, and specifically with the sustainability of west coast snapper stocks if the underwater power generators are installed. Te Uri o Hau want to meet with the Minister to discuss the Crest Energy turbine proposal and their Settlement programme.

John confirmed MFish is very aware of their legal obligations in regards to maintaining sustainability. The Ministry's role was to advise the Minister on how to achieve the right balance between sustainability and use of the fisheries.

If MFish is going to ask over 50 iwi to provide "input and participation" into developing Iwi Fisheries Plans then it was incumbent on the Ministry to ensure it was a meaningful exercise with tangible outcomes. Development of fish plans required much time and effort from all involved.

Many of the people at the hui had been involved in the development of North Island West Coast finfish plan process over two years. There was much disappointment when MFish revealed recently that the final plan was no longer going to be a separate document. Latest news is that the plan may or may not become a chapter in the National Finfish Fisheries Plan.

John did not have time to address his second agenda item "*Research on Amateur Fisheries*". He left the PowerPoint presentation at the hui for later discussion. John welcomes any questions arising from that discussion.

MFish departed the hui at 3.15pm.

## Summary session

There was a wide range of views expressed about the two presentations after MFish left the hui.

Many comments related to the seeming inaction or inability of MFish or the Minister to oppose the Crest Energy turbine proposal, on the grounds of sustainability and environmental degradation.

On a positive note, there was the opportunity to engage with MFish on the Iwi Fisheries Plan proposal to ensure adequate “input and participation” into the development of meaningful plans that would benefit the whole community, not just Maori.

MFish are suggesting that regional forums will develop an Iwi Fisheries Plans for a complete Fisheries Management Area (FMA). Currently tangata kaitiaki have the right to develop a fish plan for their rohe, so will that mean those people will be tangata kaitiaki for the whole FMA? This issue will need to be clarified.

The Hokianga Accord has and is the mid north iwi fisheries forum. How that fits in with the Ministry’s plan for FMA-based Iwi forums is up to them to figure out. The Accord was available to help them sort out that issue. The Accord was a good model to develop a community fish plan as opposed to an Iwi-only fish plan.

In terms of heirachy, MFish will also need to clarify the terms *have regard*, *take into account*, *have particular regard*, and which term applies to each plan, considering there will possibly be around 50 Iwi Fisheries Plans, five national plans and other government policies.

For many years the Accord has strongly advocated for recognition of the Act’s s12(1)(b) statutory obligation on the Crown to provide for the “input and participation” of tangata whenua into fisheries management. This Iwi Fisheries Plan initiative seems to be an acknowledgement of that obligation. The Accord can take some comfort that the Ministry is now asking for “input and participation” , whereas before it merely relied on ‘consultation’.

It was frustrating that current legislation entitled the Minister of Fisheries to veto a marine reserve proposal, aimed at achieving marine protection, yet there did not seem to be the same authority available to veto a project such as the Crest turbines that would put west coast snapper stocks at risk. A change of legislation to give the fisheries Minister this entitlement may be a long-term solution.

In the meantime, it might be appropriate to write a letter from the Accord asking MFish or the Minister for an explanation as to what input they have had into the consent process and why they are not opposing the project on environmental grounds.

Without any evidence to the contrary, it seems MFish are taking an anti-precautionary management approach in regards to the Kaipara Crest Energy proposal, as opposed to the statutory obligation to take a precautionary approach when information is uncertain, unreliable or inadequate.

Most fisheries management decisions are based on the cost to the industry because dollar values are easy to measure. No real assessment is made of the environmental costs because those values are difficult to quantify.

After hearing the MFish korero it was plainly obvious the Hokianga Accord and its constituent groups needed to continue working together to achieve "more fish in the water/kia maha atu nga ika ki roto i te wai".

It is also clear that the initial stage of developing regional iwi fisheries forums is over. Management focus will be on the Iwi Fisheries Plan encompassing the whole Fisheries Management Area. Aspirations for community-led management risks being swallowed up by the needs of the wider management area. This will be a major challenge in most areas.

MFish still seem committed to the paradigm of separate ‘recreational’ and ‘customary’ interests. The announcement of a \$5M survey to measure recreational catch does not mention customary interests. The results from the survey will most likely mean changes to the non-commercial allowances.

Clearly the customary regime has been distorted beyond what those real interests are. The Accord needs to help the Ministry to implement measures that benefit the community and sustain the fisheries for future generations of New Zealanders.