

Questions for MFish from Hokianga Accord Hui

19 May 2008

Treaty Obligations and Customary Management

1. What is the state of the Mātaitai Guidelines? At the November 2007 Hokianga Accord hui MFish advised these Guidelines had been presented to, and noted, by the Minister of Fisheries in October 2007. We understand the Guidelines are currently being peer reviewed by MFish' Policy Manager Terry Lynch. Why is this necessary after the Minister has already noted this document?
 - > What are the officials doing with it now?
 - > When can the Hokianga Accord see a copy of the Guidelines?
 - > Can we have a copy of the original Guidelines, as noted by the Minister in October 2007?

The role of the Ministry of Fisheries is to manage the mātaītai reserve application process and ensure the process set out in the customary fishing regulations is followed. This includes providing advice to the Minister of Fisheries on whether an application meets the criteria set out in the regulations.

The Mātaitai Reserve Guidelines provide guidance to staff on the process and factors to consider when assessing and providing advice to the Minister on whether an application for a mātaītai reserve meets the requirements of the customary fishing regulations relating to the impact of the proposed reserve on non-commercial and commercial fishers.

The Minister was sent a briefing on issues regularly raised in submissions on mātaītai reserve applications. The briefing also contained a summary of the changes the Ministry intended to make to the guidelines to make it clear to staff what the regulations require in assessing applications. The Mātaitai Reserve Guidelines were not provided to the Minister, but please let us know if you want us to provide a copy of the briefing paper.

As the Mātaitai Reserve Guidelines are internal Ministry guidelines relating solely to operational matters, the Chief Executive will sign them off. This is being done, and a copy will be provided within the next two weeks.

2. It is our understanding that MFish officials recently recommended a mātaītai application in the Hawke Bay be declined on the basis that it would have adverse impacts on local commercial fishery. Would MFish confirm the prevent test was triggered by this application and the basis for their recommendations to the Minister?

The Ministry has communicated its view on this application for applicants to consider. There has not yet been an opportunity to meet to discuss the application. The Ministry cannot, therefore, comment further on this application.

3. Is the purpose of a mātaītai a means to fulfil the Crown's Treaty obligations or on the basis of the information above, to comply with commercial fishing interests? It is our understanding that part of the Treaty Settlement was to enable the protection and provision for customary fishing

practices. Clearly tangata whenua cannot provide for their customary interests or exercise tino rangatiratanga in their rohe if MFish are focussing purely on the effect on commercial fishing interests.

The Ministry assesses mātaimai reserve applications against the criteria set out in regulation 23(1) of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and regulation 20(1) of the Fisheries (South Island Customary Fishing) Regulations 1999. The Ministry does not focus purely on those criteria that pertain to the effects a proposed reserve would have on commercial fishing interests. However, for some applications the level of effect on commercial fishing can be substantial. The Ministry must undertake the level of analysis required in the circumstance and advise the Minister of Fisheries accordingly.

4a. It is our understanding that there are at least 16, possibly 20, mātaimai applications and commercial fishing closures from Ngai Tahu. The Minister has advised there are currently six mātaimai and eight taiapure in place nationwide. These have taken ten years to come to fruition. At this rate what chance have other iwi got to successfully implement customary area management tools?

As of 12 May 2008, eight mātaimai reserves have been established, including one that has had boundaries subsequently expanded. As you have noted, eight taiapure-local fisheries have also been established.

The Ministry is currently progressing all applications received except those that require further responses from or information supplied by applicants. Applications are considered on a case-by-case and first-in-first-served bases. The timeframe required for the application process varies considerably between applications.

4b. How long will Ngapuhi and Ngati Whatua have to wait to see some tangible outcomes from the Deed of Settlement implementation programme?

In terms of commercial outcomes, iwi are increasingly benefiting from the allocation of quota to iwi. In terms of non-commercial outcomes, Ngapuhi and Ngāti Whātua need to consider how they intend to take up the customary tools that are available to tangata whenua. If the intention is to establish mātaimai reserves they need to firstly notify their Tangata Kaitiaki and, after a prescribed process, have their appointments confirmed by the Minister of Fisheries. Pou Hononga and Pou Takawaenga have been working with hapū and iwi within Tai Tokerau to help them with their fisheries management aspirations. With recent new appointments to these teams, the Ministry is now able to offer more resources to work with hapū and iwi within Tai Tokerau.

4c. How is MFish planning to resolve this increasing demand for local area management? Clearly increasing staff numbers and establishing the Pou Hononga and Pou Takawaenga teams four years ago has done little for mid-north iwi fishing interests.

There is a suite of tools available to tangata whenua that can address customary fisheries concerns at a local level — it is a matter of identifying / quantifying the issue(s) and applying the most appropriate tool. The Ministry is able to assist with this process and, indeed, has assisted numerous hapū and iwi around the country. There are also general local-area management tools available. The most appropriate forum for discussing use of these tools is the relevant Fish Plan Advisory

Group (FPAG) where participants can table and discuss their concerns, not only about the management of fisheries at a QMA level but also in respect to local area management.

5a. A Mataitai may sound like an inviting local seafood basket, but if empty it is useless. This fraud is being perpetrated right around the coastline, and particularly so North of Auckland. How does MFish intend to raise abundance of species important to customary fishers, and in particular, species that would make a Mataitai effective? Or is it MFish' intention that Mataitai are shellfish-gathering areas alone?

Under the Quota Management System (QMS) fish stocks are managed at the level of Quota Management Areas (QMAs). The QMS is designed to ensure that fishing is sustainable at the QMA or stock level. Therefore, QMAs need to be substantially larger than mātaimai reserves as fish populations move over much larger distances than any single reserve could cover.

The Ministry actively monitors the sustainability of fish stocks to ensure they remain sustainable for future generations. Where evidence of declines in stock abundance has been apparent, the Minister has taken action to reduce Total Allowable Catch limits to help rebuild the stocks concerned. For the future, the Ministry is working with tangata whenua and stakeholders to develop objective-based fisheries management plans that will manage the key fish stocks in an area towards agreed and sustainable abundance targets. Within Fisheries Plans, tangata whenua and stakeholders will have the opportunity to identify stocks that are particularly important in their area, and this can be taken into account when goals and objectives are set for those stocks.

Mātaimai reserves are established under customary fishing regulations and recognise traditional Māori fishing-grounds that are important for customary food-gathering. They also allow tangata whenua to advise the Minister of Fisheries directly on how best to manage fishing in the area. Management controls developed through reserves can improve fish abundance, notably for shellfish, in the local area. Mātaimai reserves are not designed to manage fish populations as a whole.

5b. Does MFish have intent or a strategy to make more fish available to non-commercial fishers? Or does MFish consider that current fishing success for non-commercial fishers is adequate, or in some cases even generous?

The Ministry's strategy, as stated in its Statement of Intent (2007-2008), is based around maximising the value all New Zealanders obtain through the sustainable use of fisheries resources and the protection of the aquatic environment. In this context the Ministry would like to see more fish being made available to both non-commercial and commercial fishers.

Fishing success (amount and rate of catch and size of fish) is an important part of the value people obtain from fishing. Appropriate amounts and rates of catch and fish size can be addressed in the development of Fisheries Plans by the relevant FPAG.

Deed of Settlement Spending

6. In November 2007 the Hokianga Accord hui put a list of ten questions to MFish and expected some straight answers. No straight answers were received on where \$17 Million has been spent. What we got instead was a series of benign statements and worse still, a response to some of

our concerns by way of an article to the NZ Fishing News magazine from the Minister himself. The Minister is being poorly advised if he thinks that is an appropriate way to respond to the largest collective of Maori commercial and non-commercial fishing interests in the country, through the Hokianga Accord. The Hokianga Accord wants a spreadsheet format explaining how the \$17.045 million from the Deed of Settlement Implementation Programme has been spent. Included in this should be a breakdown of how much has been spent regionally and more specifically in Tai Tokerau.

Comment: The Ministry responded to the ten questions in full on 7 March 2008. Jonathan Dick also addressed some of the questions at the 10th meeting of the Hokianga Accord held in November 2007.

Comment: The Minister was in fact responding to an article that appeared in the January 2008 edition of the New Zealand Fishing News.

In 2003, Parliament allocated approximately \$3.5 M (increasing to \$5 M) per year to implement the Ministry's Treaty Strategy. From 1 July 2008, this funding (Deed of Settlement Programme—DoS) will become part of the Ministry's baseline funding. The breakdown of funding for the Programme for the current year (July 2007 – June 2008) is set out in the table below.

<i>Programme Elements</i>	<i>Amount</i>
<i>Forums</i>	<i>\$290k</i>
<i>Pou Hononga</i>	<i>\$1,069k</i>
<i>Pou Takawaenga</i>	<i>\$1,614k</i>
<i>Inshore Fisheries Management Teams</i>	<i>\$1,038k</i>
<i>Compliance Support</i>	<i>\$225k</i>
<i>Mediation Services</i>	<i>\$199k</i>
<i>Iwi Reference Group</i>	<i>\$64k</i>
<i>Education</i>	<i>\$225k</i>
<i>Kaitiaki Training</i>	<i>\$135k</i>
<i>NABIS</i>	<i>\$28k</i>
<i>Programme Support</i>	<i>\$169k</i>
<i>Total</i>	<i>\$5,056k</i>

As with most new initiatives, it took some time to recruit staff and establish the elements within the DoS Programme. Therefore, expenditure on the different elements has varied over the period of the Programme. The Ministry is accountable to and reports regularly to the Minister of Fisheries in respect to financial performance and outcomes.

Most of the funding in the DoS Programme is not allocated on an area basis. However, Programme elements associated with Tai Tokerau include Pou Hononga and Pou Takawaenga, Inshore Fisheries Management Teams, Compliance, dispute resolution, Kaitiaki training, and support for iwi forums. Since many Ministry staff contribute some of their time to supporting the Programme in different areas, including Tai Tokerau, it would be impractical to determine expenditure by region.

7. We note Carl Ross, MFish' Customary Relationship Manager, has been appearing on the ITM Fishing Show, on TV. Would MFish confirm that Deed of Settlement funding has been spent on this programme? Would MFish confirm how much has been spent and how much is due to be spent on this involvement? Would MFish please explain how this spending fits in with the Deed of Settlement programme?

With the approval of the Minister of Fisheries, the Ministry contributed to 26 episodes of the ITM Fishing Show at a total cost of \$180,000.

The initiative was designed to ensure the message of sustainable utilisation is actively communicated to the fishing public (commercial, recreational and customary – whānau, hapū and iwi), together with the wider community. The message, limiting your catch – not catching your limit, was a consistent catch-phrase throughout the programme. This was used as a plank to educate all New Zealanders on the positive benefits of sustaining our fisheries. Further, the message 'Fish for Tomorrow' was incorporated into sign-offs. Opportunity was also taken to promote the customary fishing regulations, through which the Crown recognises that traditional fisheries are important to Māori and its Treaty duty is to help recognise use and management practices, and provide protection for and scope for the exercise of rangatiratanga in respect to traditional fisheries.

Funding sustainable utilisation messages on the ITM Fishing Show Funding is consistent with the objectives of the Deed of Settlement Programme, along with other programmes; including the development of the Kaitiaki training package and a school development programme 'Fish for Tomorrow' for use in schools.

Foreshore and Seabed Settlements

8. Will these new Foreshore and Seabed Settlements, such as that negotiated with Ngati Porou, circumnavigate or invalidate customary regulations?

No. In the Ngati Porou and Te Whanau a Apanui agreement areas, the new regulatory structure would supersede the 1998 kaimoana regulations. The fisheries components of the foreshore and seabed agreements provide a means to recognise and provide for non-commercial Māori customary use and management of fisheries resources. They are similar in effect to the 1998 kaimoana regulations and are made for the same purposes in accordance with the customary fishing provisions of the Fisheries Act 1996.

9. If these agreements are good enough for East Coast Maori then can Ngapuhi and Ngati Whatua have the same? Can we have it now?

If iwi wish to enter into a foreshore and seabed agreement with the Crown, they would need to approach the Attorney General directly. In the first instance contact the Ministry of Justice's Foreshore and Seabed Unit. Whether the Crown enters into negotiations depends on certain matters in the Foreshore and Seabed Act related to likely court confirmation of previous ownership interests of iwi in the foreshore and seabed (see foreshore and seabed legislation).

If iwi have particular circumstances that are not addressed by current fisheries policies and programmes and related only to fisheries matters, they may request the Minister of Fisheries to

provide different fisheries regulatory provisions for them. The Minister would be required to consider this request and respond. What that response will be depends on the merits and circumstances of the request (see discussion below on the sorts of matters the Minister would likely consider).

10. What do Ngapuhi and Ngati Whatua have to do to achieve a similar agreement?

See answers above and below.

11. Mid-north iwi have achieved little through the implementation of the customary regulations and don't want to be messing around with nonsense if there is a better way to achieve our aspirations.

Whether a new set of regulations is a 'better way' compared with the kaimoana customary fishing regulations, is a judgement to be made by each iwi and the Minister.

It is important to note the fisheries discussions in the foreshore and seabed negotiations have had to address the same issues that have to be addressed by iwi wishing to utilise the 1998 kaimoana customary fishing regulations.

The foreshore and seabed agreement process and the mandating of hapū and iwi to enter into negotiations and agree on redress has been a means by which East Coast iwi addressed the key issues of mandate, rohe moana boundaries, appointment of Kaitiaki, areas of special relationship, making bylaws, etc. Also aiding the practicality of implementation of the mechanism on the East Coast is the large size of the areas that are likely to satisfy the legal tests in the foreshore and seabed legislation (similar mechanisms may not work on smaller sized areas). The Minister would need to be satisfied that the above matters have been addressed before he or she would contemplate proposals from other iwi seeking similar fisheries mechanisms.

From a practical timing perspective, seeking similar regulatory provisions will not be a quick fix as it involves negotiations, developing agreements, securing mandate, drafting new regulations, consultation etc. Note that the Crown and East Coast iwi have been in negotiations for four years, and are only now beginning to get close to drafting regulations.

Impacts of the Orange Roughy 1 Decision

12. Has the Orange Roughy 1 (ORH1) Appeal Court decision has thrown doubt on other TACC decisions already made?

The case addressed the legality of the Total Allowable Catch (TAC) decision for ORH 1 for the 2007/08 fishing year. It did not discuss allocation (TACC and allowances) or other decisions made for the 2007/08 fishing year. However, inferences can be drawn from the Judge's ruling that will affect future advice and decision-making on TACs. Most particularly, the Minister must depend on an assessment of current biomass, and target biomass, (however uncertain) in order to set a TAC.

13. Does this decision throw open all MFish advice to the Minister since the introduction of the Quota Management System or does this purely apply to Adaptive Management Programmes?

Neither. The decision will influence all TAC advice from this point forward, irrespective of whether the stock is managed under an AMP or not. The Judgement examined the legality of the decision-making process under the Fisheries Act, not what effect a policy-based instrument (the AMP) may have.

14. If so, how far back does MFish envisage TACC decisions will need to be reviewed?

Because of the analysis in response to Questions 12 and 13, The Ministry will not be reviewing previous TAC decisions as a result of the Judgement.

15. Is B_{MSY} a target or a reference point?

*The ORHI case established that B_{MSY} is a reference point, but did not discuss whether B_{MSY} is a target or a **limit**.*