

# Hokianga Accord

*“More fish in the water/Kia maha atu nga ika i roto i te wai”*

**Proposed Amendment to the Fisheries (Kaimoana Customary Fishing)  
Regulations 1998**

**SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS**

**22 November, 2007**

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Non-commercial submission

Proposed Amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998

Date: 23 November 2007

## Introduction

1. The Ministry of Fisheries (MFish) has proposed an amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998 to extend the application of the regulations to freshwater systems. If approved by the Minister of Fisheries and Cabinet, the proposal will take effect as of 1<sup>st</sup> April 2008.
2. The Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the Kaimoana Regulations) are designed to allow tangata whenua to exercise customary management of fisheries in their area. However, the Kaimoana Regulations exclude fisheries taken from freshwater systems in the North Island and Chatham Islands. The proposed amendment seeks to align the North Island regulations with those that apply in the South Island - the Fisheries (South Island Customary Fishing) Regulations 1999.
3. Customary fishing in the North and Chatham Islands is currently regulated by two sets of regulations:
  - The Fisheries (Kaimoana Customary Fishing) Regulations 1998; and
  - Regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986.
4. MFish considers that regulations 27 and 27A do not adequately recognise and provide for customary food gathering to the extent required by sections 10(b) and (c) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act), because they were interim measures to allow for some aspects of customary non-commercial fishing rights until regulations consistent with section 10 of the Settlement Act were made and in use by tangata whenua.
5. A letter dated 29<sup>th</sup> August 2007 was sent to stakeholders asking for input, providing background information and outlining the proposed amendment.
6. The deadline for submissions is 23<sup>rd</sup> November 2007.
7. The proposed MFish amendment was discussed at length at the tenth Hokianga Accord hui held at Waipapa marae, Auckland University, on the 9<sup>th</sup> and 10<sup>th</sup> November 2007. A draft submission was widely distributed for feedback before this document was finalised.
8. This document comprises the submission from the Hokianga Accord, the mid north regional iwi fisheries forum, which represents around 200,000 non-commercial fishers. Both option4 and the New Zealand Big Game Fishing Council support the Forum. The Accord advocates for *“more fish in the water/ kia maha atu nga ika i roto i te wai”* to enable all New Zealanders to provide for their social, economic and cultural wellbeing.
9. The Hokianga Accord endorses the submission from Te Kupenga Whiturauroa a Maui, the regional Kaitiaki fisheries forum, including their concerns and recommendations.

## Recommendations:

- Amend the Fisheries (Kaimoana Customary Fishing) Regulations 1998 as proposed; and
- MFish address the concerns raised in this submission
- MFish address the concerns raised in the submission from Te Kupenga Whiturauroa a Maui.

## **Submission**

10. The Hokianga Accord supports the proposed amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998 to provide for tangata whenua's non-commercial fishing interest in freshwater fisheries including both shortfin and longfin tuna (eel).
11. The Accord notes that section 10(c) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 imparts an active obligation on the Minister of Fisheries to recommend regulations to recognise and provide for customary food gathering by Maori providing it is not for sale or trade, and also to recognise the special relationship between tangata whenua and those places which are of customary food gathering importance.
12. The Accord also notes that the obligation to make customary regulations only applies to species subject to the Fisheries Act 1996 and does not include some freshwater species governed by other legislation such as the Conservation Act 1987.
13. Following the amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998 tangata whenua will be able to:
  - Notify Tangata Kaitiaki who, once their appointments have been confirmed by the Minister, will be able to issue permits to take fisheries for customary purposes;
  - Apply for mataitai reserves; and
  - Have the ability to propose by-laws in mataitai reserves to manage non-commercial fishingin both the marine and freshwater environments.

## **Consultation**

14. The Hokianga Accord appreciates the opportunity to have input into this process and notes that MFish has provided for an extended submission period of three months.
15. We also appreciate the effort made by both Jonathan Dick (MFish Extension Services Manager) and George Riley (MFish Pou Hononga, Te Hiku O Te Ika) to attend the recent Hokianga Accord hui and explain the intricacies of the proposed amendment.
16. The Accord understands that the MFish policy team has attended various 'MFish-approved' iwi forums to discuss this proposed amendment. In addition the MFish Pou Takawaenga, Extension Services Team, has been assisting iwi forums to draft submissions in response to the proposed amendment.
17. In contrast, the Hokianga Accord has had to draft and submit without having enjoyed the assistance of the Pou Takawaenga team in drafting this submission or benefit from discussions with the policy team.
18. MFish' behaviour towards the Hokianga Accord is unacceptable. As a Crown agency MFish does not have the right to be selective about who they apply resources to when dealing with Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 appropriated funds. Those funds are to better provide for Maori's involvement in fisheries management. When Cabinet approved the \$17.045 million in the Vote Fisheries Bid 2004, it was given on the basis that MFish would apply those funds to fulfill agreements and provide a broad base for engagement of Maori in fisheries management processes.

The longer MFish continues to ignore their (and the Minister's) responsibilities to mid north iwi, the greater the grievance will be when a settlement is finally reached.

19. It must be noted that mid north iwi feel very frustrated about how the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 is being applied.

### ***Proposed Amendment***

20. The Hokianga Accord supports the amendment to enable a fully integrated mountains-to-sea approach as we recognise that land use affects water quality in both freshwater systems and the marine environment.

### ***Current Legislation***

21. The Fisheries Act 1996 (the Act) specifically provides for:
  - 'Input and participation' of tangata whenua into fisheries management processes – sustainability measures, in particular contained in Part 3 of the Act; and
  - The statutory obligation of the Minister of Fisheries (the Minister) to *have particular regard to kaitiakitanga* when making decisions on sustainability measures.
22. Sustainability measures are those fisheries management decisions relating to the setting or varying of catch limits including total commercial catch, areas that can be fished, the size of fish, methods and seasons of fishing. The Minister, on the advice of MFish, makes these decisions.
23. In July the Hokianga Accord made a submission to MFish on the proposals for the management of North Island tuna (eels)<sup>1</sup>. The Hokianga Accord appreciates the Minister's decision to manage tuna cautiously in reducing the TACC for both LFE20 (longfin) and SFE20 (shortfin) eel by 60 percent and 42 percent respectively.
24. In the marine environment most of the options available to give effect to achieving kaitiakitanga have been eroded in effectiveness by the priority given to competing legislation that affects the same water space, such as marine reserves, and the lack of resources available to tangata whenua to implement customary management tools.
25. Given the importance of having healthy freshwater systems to both inland and coastal regions, MFish will need to invest more resources into ensuring the statutory obligation to *have particular regard to kaitiakitanga* is given full effect.
26. MFish define kaitiakitanga as,

The exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori.<sup>2</sup>
27. The Reverend Maori Marsden explains kaitiakitanga as,

"The word used by Maori to define conservation customs and traditions, including its purpose and means, through rahu".

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<sup>1</sup> [http://www.option4.co.nz/Fisheries\\_Mgmt/documents/Hokianga\\_Accord\\_Eel\\_submission\\_707.pdf](http://www.option4.co.nz/Fisheries_Mgmt/documents/Hokianga_Accord_Eel_submission_707.pdf)

<sup>2</sup> Fisheries Act 1996, Section 2 (1).

Rahui was designed to prohibit the exploitation, depletion or degeneration of a resource and the pollution of the environment<sup>3</sup>.

This definition is from a paper, *Kaitiakitanga: A definitive introduction to the holistic world view of the Maori*, that Rev. Maori Marsden wrote and produced in 1992. The paper discusses kaitiakitanga in the context of resolving, “*The rights of tangata whenua and their role in determining how environmental and conservation policies may be applied to achieve positive results*”. The paper was to help decision makers to determine how kaitiakitanga may be expressed and applied in management decisions for the benefit of everyone.

## Concerns

28. The Accord has reservations about the current customary management tools implementation process. Rahui, taiapure and mataitai are the only mechanisms available to tangata whenua to manage areas on scale of interest to hapu and local communities. Some of the most prominent concerns are:
  - The lack of MFish support for kaitiaki implementing customary management tools. For example, the experience of Ngati Rehia kaitiaki in trying to implement the Marangai Taiamai management plan in the northern Bay of Islands is unsatisfactory. Despite their effort over the past decade, this situation remains unresolved. Hence these kaitiaki have been denied the opportunity to meet their social and cultural needs.
  - This process could be misconstrued as tangata whenua conceding authority of our freshwater environment to the Crown in exchange for guardianship of a portion of the waterways. This is clearly not so.
29. Without addressing quota issues for tuna (eel) there is a risk that commercial fishing effort from one mataitai will be displaced to surrounding waterways of other iwi/hapu, thus depleting their resource. Each process will need to be carefully managed to ensure this does not occur.
30. The lack of clarity of management roles is an impediment to management initiatives now. We understand the Department of Conservation (DoC) has management responsibilities for other species within the freshwater systems.
31. The interaction and role of DoC once a mataitai is applied is unclear. This is particularly important for waterways that are surrounded by DoC controlled land. There will need to be adequate engagement with DoC so management of land or pest eradication programmes does not interfere with tangata whenua’s aspirations to manage their customary areas according to tikanga Maori. We all understand that what happens upriver is likely to have an impact downstream.
32. If a management plan is developed for an area of significance to tangata whenua there is no obligation on other agencies, government or local territorial authorities (regional or local) to give effect to that management plan. MFish’ role in establishing and maintaining customary area management plans needs to be clarified.

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<sup>3</sup> Kaitiakitanga: A Definitive Introduction to the Holistic World View of the Maori, Rev. Maori Marsden, November 1992, page 19.

33. It is inevitable that negotiations regarding freshwater systems will be complex due to the multitude of agencies with an interest in the same environment. MFish' role in assisting tangata whenua to form and maintain links with DoC, territorial authorities, power companies, other extractive users and farmers groups also needs to be clarified.
34. Water rights issues will also need to be clarified to ensure adequate water flow to customary management areas is maintained.

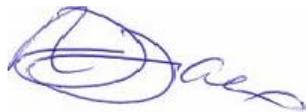
### **Benefits**

35. Increased awareness of the environment surrounding freshwater systems is a positive step to encouraging more sustainable use of that adjacent land.
36. Developing management plans for fresh waterways presents an opportunity for local communities, both tangata whenua and non-Maori, to work constructively together.
37. Registering those management plans with government and other agencies reinforces the need to consider what is being fed into freshwater systems.
38. Currently a special permit is required to relocate elvers. Under the amended regulations Tangata Kaitiaki can issue customary permits to relocate, repopulate or replant surrounding freshwater areas.
39. Regulations 27 and 27A specify kaimoana taken using a customary permit is to be consumed at a special function. The proposed amendment provides for wider use, as mentioned in paragraph 30 above.
40. Mataitai reserves recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering. The ability of a local management committee to make bylaws that apply equally to all individuals is welcomed; as is the ability to prohibit commercial fishing, unless a special application is made to allow it to occur within the mataitai.

### **Conclusion**

The Hokianga Accord appreciates the opportunity to make comment on the proposed amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and wants to be kept informed of further progress.

Mauri Ora



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