

## **KEY ISSUES FOR IWI/MAORI IN DEVELOPING AN OCEANS POLICY**

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This paper prepared by Te Ohu Kaimoana Trustee Ltd addresses four key issues for Maori in developing an Oceans Policy for New Zealand. While it is difficult to attempt to provide a current or comprehensive agreed set of key issues for Maori without consulting iwi and their hapu, which we have done before as part of the Government's previous attempt to develop an Oceans Policy (Te Ohu Kaimoana 2001), we propose that there is a set of high level issues that remain relevant despite evolving marine management legislation or changing governments.

Four key high level issues are:

1. Treaty of Waitangi rights and obligations are ongoing
2. Allocation decisions and priorities should be based on a Treaty Framework
3. Fair, equitable and lasting solutions need to be developed to address competition for resource use and spatial allocation
4. Maori wish to work with governments in a cohesive not disparate way.

### **New Zealand in Context**

If we look broadly at the global scale and unique position of New Zealand in the South Pacific Ocean we should appreciate why it is important for New Zealand to have an Oceans Policy. We are a watery nation and as will be discussed we have the increasing problem of the "Race for Space". From a geographical perspective we have a land mass of approximately 270,000 km<sup>2</sup>, a coastline of approximately 15,000 km and a marine area out to our EEZ of approximately 4.4 million km<sup>2</sup> (Seafood Industry Council, 2010). This is four times the size of our landmass, consisting of large shallow continental plateaux, volcanic arcs and deep ocean basins (National Institute of Water and Atmosphere 2008). These diverse habitats and ecosystems provide for just as diverse an array of species.

Our seafood industry is important to the economic prosperity of New Zealand. We harvest 570,000t each year across all species and export 90% of this to the value of NZD\$1 -1.4 billion per annum (Ministry of Fisheries, 2010). Seafood is New Zealand's 4th largest export earner behind the tourism, dairy and agriculture industries. We also have the good fortune to have an international reputation that brings many tourists here to experience our "clean green" country, to swim in our seas, to eat seafood, to ride around watching whales and dolphins, and generally to enjoy the pleasures of interacting with our oceans.

We have always been farmers in both the dairy and agricultural industries. These and other land use activities have the ability to impact upon our oceans and we must find ways of mitigating their adverse effects if we are to maintain our "clean green" reputation.

### **Maori in Context**

New Zealand has a unique indigenous culture. In New Zealand, tribal identity is what sets us apart as Maori or tangata whenua. Our tribal identity is based partly on:

- where we come from, for example our marae which embody our ancestral ties through the tupuna whare and provide the venue for tribal gatherings, and our rohe (tribal territories) about which we exchange knowledge in our greetings which describe our Maunga (Mountain), Awa (River) and Moana (Sea or Lake) and
- who we connect with - our genealogy or whakapapa, which is passed on through the art of oratory describes how we are tied together at the whanau (family), hapu (extended family) and iwi (wider tribal) level. We also refer to our Waka (or canoe)

representing the waves of migration that saw Maori settle New Zealand and the internal travel that continued once we made landfall.

Sadly, Maori tribal structures - like many other indigenous cultures throughout the world - have been affected by urban drift with many tribal members moving away from their traditional tribal territories to the cities to find employment. The Maori population is approximately 600,000 which is 7.25% of the total New Zealand population of around 4,365,000. Eighty seven percent of Maori live in the North Island and 25% live in Auckland. Overall 84% of the Maori population live in urban areas. There are two regions in which Maori populations have tended to remain strong, notably the east coast of the North Island and the far north of the North Island (Statistics New Zealand 2006).

New Zealand has a unique colonial history that set in place the Treaty of Waitangi in 1840 and - some time later - a process that accepted that the Treaty was not honoured as intended. The creation of the Waitangi Tribunal and the Office of Treaty Settlements was intended to help find full and final settlements to Maori grievances, through the handing back of tribal resources (although in many cases not in their original form such as quota under the quota management system) - only to find that new government policies that are not carefully developed and applied can have the negative effect of driving a wedge between tribal structures and clawing back the very compensation that was provided through Treaty Settlements – which we elaborate on further in this paper.

### **The Fisheries and Aquaculture Settlements**

The 1992 Fisheries Settlement settled Maori commercial fishing claims by allocating 10-20% of quota for species entering the QMS to iwi, along with cash and shares in commercial fishing companies. It also provided for claims relating to Maori non-commercial fishing by promulgating regulations that provide for the customary use and management practices of Maori. These regulations can be used to manage traditional fishing grounds by tangata whenua who are the whanau or hapu or iwi of a particular area. Finally it provided for the right for Maori to have input and participation in the management and conservation of New Zealand's fisheries resources.

However, in the process of implementing the fisheries settlement the Crown created two quite separate delivery mechanisms that saw the commercial component of the settlement delivered through Mandated Iwi Organisations while the non commercial component was predominantly delivered at the marae or hapu level. This process has been unsatisfactory as it has driven a wedge between iwi and their hapu or marae (Te Ohu Kaimoana, 2011). Given the lessons gained from this process, we propose that the Crown should work with Maori in a more cohesive and constructive way by helping Mandated Iwi Organisations facilitate discussions with their marae and hapu rather than providing a separate process that fails to encourage such discussion and as a consequence, a Maori collective voice is stifled.

The Aquaculture Settlement 2004 emerged from the Government's reform of the law relating to the allocation and management of marine farming or aquaculture rights. The Government settled outstanding claims by Maori to marine farming rights by providing for iwi to have access to 20% of all new space created for aquaculture. The government is – once again – reforming the aquaculture law. While claims to pre-commencement space (that is marine farming space that was approved between 1992 and 2004) have largely been settled through a cash settlement, a regime for the delivery of new space under the new regime has yet to be resolved.

Together, the Fisheries and Aquaculture Settlements provide an opportunity for Maori to take an active part in the seafood industry and to concentrate their efforts on activities that will

provide them with the greatest overall benefit. It is in this context that we propose the four key issues for Maori in developing an Oceans Policy for New Zealand.

### **Rights and Obligations Contained in the Articles of the Treaty of Waitangi**

In 1840, the Crown and Chiefs of the tribes of New Zealand signed the Treaty of Waitangi Treaty of Waitangi Act (1975), which consisted of three “Articles”. According to Article I, the Crown gained the right to govern. In today’s terms, this includes the right or indeed the duty to make laws to ensure that human activities do not undermine the sustainability of natural resources and ecosystems. Under Article II, the Crown guaranteed to protect *tino rangatiratanga* - tribal authority over tribal resources. This authority and the resources over which it is exercised can be described as a “bundle” of rights including ownership and rights of access, use and management of natural resources. This authority is exercised by the collective groupings of whanau, hapu and iwi as opposed to individuals. Under Article III, Maori as individuals are guaranteed rights of citizenship. These include the rights to be treated equitably and fairly alongside all other citizens of New Zealand.

In this context, the place of modern Treaty Settlements secured under Article II such as the Fisheries and Aquaculture Settlements, must be protected by the Crown from unnecessary interference when making laws for all citizens, including Maori under Article III. It is not appropriate for the Crown to allocate new use rights in a way that will have an adverse effect on Article II rights and subsequent Treaty Settlements. For instance, when deciding to allocate the use of an area of marine space to a marine reserve, the Government’s environmental objectives of doing so must be clear. As such, it should not reallocate use rights under the guise of environmental sustainability (under the authority contained in Article I of the Treaty) for the public to enjoy themselves under Article III. Any Oceans Policy must have clearly defined purposes and processes that separate environmental sustainability decisions from new use rights or allocations under Article III.

Article II of the Treaty provided for tribal authority over tribal resources and along with it tribal practices. Maori customary lore contains values and principles that need to be taken seriously by decision makers when exercising their authority under Article I. Maori customary lore is made up of values and principles that we refer to as tikanga. Some of these may be known to you (such as kaitiakitanga) while others may be less so. However it is the sum total of these component parts that make up a body of tikanga. When looking to develop an Oceans Policy care should be taken to develop a principled approach to decision making that enables decisions to be made that are consistent with relevant tikanga.

### **A Principled and Consistent Approach to Resource Use and Spatial Allocations**

The first question for any decision that affects the allocation of resources must be: what is the purpose of the decision? This means that if a decision is to be made for a biodiversity or sustainability purpose under Article I of the Treaty, the Crown must justify the decision in terms of risks to sustainability/biodiversity and apply the “best method - least cost” tool to achieve it. In addition, it should take an adaptive management approach in light of any new information that comes to light over time. This course would lead to an assessment of the effectiveness of any measures applied in any given situation, followed by consideration of alternative or additional measures that may help achieve the biodiversity or sustainability outcome sought.

However if the purpose of the decision is to allocate new rights to use the coastal marine area, the effect of that allocation decision on existing rights such as fishing or aquaculture rights should be assessed and the impacts identified. This process should include:

- consultation with potentially affected parties,

- incentives for all parties to provide the best possible information on the likely effects of the decision,
- independent scrutiny of decisions, along with dispute resolution procedures that can help to create incentives for parties to “come to the table”. In the absence of such incentives, existing users may be able to veto a new proposal without any requirement to demonstrate an adverse effect.

If the process includes the above elements, we believe there will be greater incentives for the “new users” to address any adverse effects on existing users by avoiding, remedying or mitigating those effects. This would encourage new activities to co-exist alongside existing uses where possible or for those who will cause an adverse effect on existing users to offer options such as compensation (Te Ohu Kaimoana, 2006).

### **The Race for Space – Clarifying the Problem**

We have all been hearing about the increasing number and type of activities that are demanding a share of coastal marine space. This increasing demand has resulted in the problem that we refer to as “the race for space”.

Examples of provisions that provide for competing spatial uses include:

- customary fisheries provisions such as mataitai, rahui and taiapure (local area management tools),
- commercial fisheries Individual Transferable Quota rights that provide a perpetual right to harvest fishstocks within broad Quota Management Areas,
- aquaculture
- recreational rights that provide for recreational only zones,
- marine reserves that provide for scientific study or special and representative areas of biodiversity,
- coastal developments such as marinas, pipelines, discharge and
- the Coastal and Marine Area Act (2010) that provides for protected customary rights and customary marine title.

Looking back over the last decade of marine policy reform it is clear that some marine management problems appear to have been resolved while others have either lingered or “morphed” into new sub reforms. Examples include the Marine Reserves Bill, Marine Protected Areas Strategy, Marine Protected Areas Implementation Plan, the Aquaculture reforms, the Oceans Policy and the Exclusive Economic Zone legislation. Very few have actually been resolved in a robust form. This is not surprising given there is no overarching strategy for dealing with allocating space to different uses. In the absence of such an agreed strategy, we are all subject to political whim, as each sector continues to lobby Ministers to further their own aims. Against this backdrop iwi are concerned about the durability of their fisheries and aquaculture settlements and the creeping erosion of the rights that they guaranteed. There is still disquiet among Maori communities about the future of New Zealand’s marine management reforms.

We can only conclude that there is a lack of:

- clear overarching goals – we are behaving reactively and not looking to the future
- clear priorities between different uses and values
- consistent principles and processes to direct decision making
- co-ordination between decision-makers who operate in isolated organizational silos
- best method / least cost adaptive management approaches
- capacity for Maori to respond - given information overload and *ad hoc* marine management reform processes

**So what are Maori seeking?**

In concluding we consider that Maori would expect the following matters to underpin the development of an Oceans Policy for New Zealand:

- The Treaty of Waitangi established a unique and special relationship between the Crown and Maori – this is poignantly illustrated in the Crown Crest. There are separate obligations upon the Crown in relation to Maori rights: The first relate to Maori collective rights guaranteed under Article II of the Treaty and recognised through subsequent Treaty Settlements. The rights of Maori as individuals under Article III along with all other citizens must be checked against Article II rights that must be given priority with the exception of providing for sustainability purposes under Article I of the Treaty.
- Through the Treaty partnership a relationship of trust and cooperation can exist. Part of this is contingent upon the clarification and recognition of tikanga when working with Maori to develop an Oceans Policy. Part of this is also having confidence that that Crown will not act to dismantle existing settlements
- In this context Maori could expect a “Treaty Based Decision Framework” that provides for: high level Treaty principles (protecting Article II rights ahead of new uses), decision making mechanisms (such as a consistent approach to protecting the value of existing settlements)
- An approach to working with Maori that encourages tribal unity as opposed to tribal fragmentation.

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