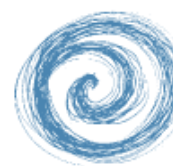


# OCEANS POLICY SECRETARIAT

WORKING PAPER THREE  
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**OCEANS POLICY**

## **MAORI AND OCEANS POLICY**

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## **Introduction**

1 The overall objective of the Oceans Policy process is to develop comprehensive policies for the protection and wise management of our marine environment, and to ensure a sustainable development approach to oceans management. A vital part of that work is to ensure that there is appropriate consideration of Maori interests and Treaty of Waitangi responsibilities as those policies are developed.

## **Desired outcomes**

2 In practice, this means that an Oceans Policy must develop an overall framework for thinking about the management of oceans that gives useful guidance on the types of matters that need to be considered from a Treaty perspective, and on the range of practical tools available to address them.

3 This issues paper begins that work. The essential challenge that it poses is how to develop policy in this area that is sufficiently flexible to enable practical and effective working relationships to develop that are appropriate for the issue and the people involved, while giving sufficient certainty to ensure that the relationships do in fact develop.

## **Background**

4 Stage One of the oceans policy process identified the following vision:

New Zealanders understand marine life and marine processes and, accordingly take responsibility for wisely managing the health of the ocean and its contribution to the present and future social, cultural, environmental and economic wellbeing of New Zealand.

5 This vision is consistent with the Government's commitment to sustainable development in policy making and practice. One of the Government's key goals, in achieving sustainable development, is to strengthen national identity and uphold the principles of the Treaty of Waitangi. The Government has also signalled that it aims to build and support co-operation between management agencies and iwi and hapu in relation to the management of habitat and native species.

6 Considering how the principles of the Treaty of Waitangi should inform Oceans Policy development, and in particular how the Policy can support the development of collaborative relationships, is therefore an important part of this phase of Oceans Policy development.

7 It is in the interests of all New Zealanders that we develop comprehensive policies for the protection and wise management of our marine environment, and ensure a sustainable development approach to oceans management. This needs to acknowledge that sustainable development is about looking after people and taking account of the social, economic, environmental and cultural effects of our decisions.

8 In the Oceans Policy context it is important to recognise that the Government has comprehensively settled all Maori claims in respect of commercial fishing through

the Maori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This settlement places a range of legal rights and obligations on the Crown that must be acknowledged in any Oceans Policy, and it also incorporates a range of mechanisms making better provision for Maori non-commercial customary rights and interests. The regulatory framework for customary non-commercial fishing devolves responsibility for the management of customary fishing to kaitiaki (guardians) appointed by tangata whenua, and includes provisions for mahinga mataitai reserves over traditional fishing grounds that allow kaitiaki to manage all fishing activity within these areas once a mataitai reserve has been approved. Importantly the regulations are as much about the right to manage as they are about the right to take fish.

9 The Crown has also settled Treaty claims by entering into comprehensive deeds of settlement with a range of iwi and hapu groups including Ngati Ruanui, Te Uri o Hau and Ngai Tahu. In general, historical Treaty settlements settle all the claims of a claimant group, including any claims to the oceans. The redress contained in a deed of settlement (including any oceans-related redress) is often given effect to by legislation.

10 It is significant that New Zealand is not alone in working through these issues. Internationally, countries such as Canada and Australia are grappling with how to recognise indigenous peoples' interests in fisheries and marine management. Although both countries are at different stages in their relationships with indigenous people, there is a clear acceptance that indigenous people have a important role to play in relation to the planning for, and management of, marine resources.

## **Perspectives from Maori**

11 Maori have a particular and unique standing as the Crown's Treaty partner, and the depth of connection between Maori and the sea must not be ignored. The Maori connection with the ocean permeates many aspects of Maori life – it is cultural and spiritual, as well as practical and economic.

12 In Stage One, the Ministerial Advisory Committee found that in the case of tangata whenua there is a well established set of relevant values, with a number of key concepts spoken of consistently as essential to meeting Maori standards with regards to a successful Oceans Policy. Viewed holistically, these concepts form the basis of a Maori value and management system, although they may vary in application or name for different iwi and hapu. The concepts are:

- kaitiakitanga – the obligation of whanau, hapu and iwi to protect the physical and spiritual well-being of taonga (things of value) within their mana (control)
- mana – authority which, when manifested in spiritual authority, is referred to as mana atua. When derived through birth right it is referred to as mana tipuna. When derived through sheer personality, leadership qualities or achievements it is referred to as mana tangata. In reference to the marine environment, it denotes the authority for the exercise of the stewardship obligation as deriving from atua, ancestors and confirmed by the Treaty of Waitangi

- manaakitanga – an obligation to provide guests with care and kindness in the knowledge that some day that care and kindness will be reciprocated
- mauri – the life force and unique personality of all things animate or inanimate. It is a divine force that in the creation process entered into the realm of atua giving them a life force. In *Te Ao Turoa* (the natural world), mauri binds all things to their spiritual source in atua. A key consideration of resource management practices (tikanga) is the maintenance and protection of mauri
- noa – to be free or made free from the restrictions associated with tapu
- rahui – a form of tapu set up over a resource (for a period of time) by a hapu or its chief for spiritual, social or economic reasons
- tapu – the mana of atua (gods). Things that are tapu or made tapu are perceived as having the investiture of the atua
- tino rangitiratanga – the exclusive control of tribal taonga (all those things important, both tangible and intangible) for the benefit of the tribe, including those living and those yet to be born
- utu – a general principle that for every thing gifted another of at least equal value should be returned. Utu also denotes reciprocity between the living and the departed. In traditional Maori terms, mana is not achieved through acquisition of material but rather by distributing wealth to others. It is through the ritual gift distributions that reciprocal obligations are established and balance achieved
- whakapapa – (genealogy) transcends the Maori world and evidences the relatedness (the whanaungatanga) of all things. For Maori, whakapapa demonstrates the linkages between the transcendental realm of *Te Kore*, *Te Po* (the world of the night) where atua and ancestors dwell and the material-physical world of *Te Ao Marama* (the world of light or the natural world)
- whanaungatanga – denotes the view that, in the Maori world, relationships are everything. From the Maori perspective, humans are not considered superior, but an equal part of life in the natural world.

13 An Oceans Policy should endeavour to embrace and recognise these important concepts, and discuss how they might best be woven into the fabric of resource management rules and practice in this area. As the brief discussion of the concepts shows, there is already significant overlap between these values and the values that underpin the Crown's sustainable development approach to its responsibility to protect and manage the natural environment.

## **Current management tools**

14 The Crown currently gives effect to the principles of the Treaty of Waitangi in two main ways. First, it has accepted an obligation to resolve historical grievances in accordance with the principles of the Treaty of Waitangi. It does this through the Treaty settlement process in which it works with claimant groups to identify and resolve well-founded historical grievances. Through this process, the Crown has

settled claims relating to Maori fishing rights generally. It has also settled the historical claims of a number of iwi and hapu, including claims to the oceans.

15 The second way in which the Crown gives effect to the principles of the Treaty of Waitangi is to incorporate them into its policy frameworks through strategies, plans or other means. One option that has been used is incorporating reference to the principles in legislation that agencies are then required to consider in carrying out their functions.

16 The Crown has incorporated the need to consider the principles of the Treaty of Waitangi in much of the legislation relating to natural resource management in New Zealand. Specific references to the Treaty that affect oceans management are included in the Resource Management Act, the Conservation Act, the Crown Minerals Act, and the Fisheries Act. In some cases the legislation sets out specific tools and guidance for implementing these principles: for example, the new Local Government Act sets out specific principles and requirements for local authorities to implement as a means of taking appropriate account of the principles of the Treaty and to maintain and improve opportunities for Maori to contribute to local government decision-making. In other cases agencies are required to develop the tools to give meaning to the principles of the Treaty in a practical way.

17 The range of tools available for the recognition of Maori views allow for:

- management by the Crown, informed as necessary by discussion with tangata whenua
- participation by tangata whenua in management decision-making through information, consultation, cooperation, joint planning or negotiation
- advisory committees, (joint) management boards and other structures to enable a level of shared decision-making
- tangata whenua ownership and management of a private resource.

18 A useful analysis can be found in the Department of Conservation's recently released draft Nga Akiakitanga Nuku Kaupapa Maori (Maori Strategic Policy Initiatives). Among other things, it provides guidance on potential ways and means to forge effective and successful partnerships with tangata whenua. It suggests that the nature of the arrangements entered into will vary according to local circumstances.

19 More specifically, on a practical level, this has included (in marine areas):

- statutory protocols entered into through the Treaty settlement process and covering, among other things, marine mammal issues
- Maori committees of conservation boards
- advisory committees to Ministers – for example, 50% Maori representation on Kapiti Island Marine Reserve Committee and the Te Tapuwae Rongokako Marine Reserve Committee.

20 The Ministry of Fisheries is also developing a Treaty Strategy that is looking to achieve, or sustain, the following objectives:

- the Ministry and tangata whenua working in partnership to provide for the utilisation of fisheries resources while ensuring sustainability
- tangata whenua managing customary fishing within their rohe moana
- Maori actively participating in commercial fishing
- tangata whenua actively involved in wider fisheries management
- the Ministry recognising and providing for use and management practices of Maori in the management of fisheries
- active protection of the fisheries taonga.

21 The Ministry of Fisheries has identified a number of tools that might enable these objectives to be better met. These are currently being implemented to various degrees. They are:

- the creation of regional groupings or forums made up of fisheries representatives of the iwi and hapu from a particular region
- the appointment of kaitiaki and the establishment of mataitai reserves
- obtaining meaningful input from tangata whenua into fisheries management plans
- developing policies on how traditional knowledge and customary fishing information will be incorporated within wider fisheries management processes.

22 The Ministry of Economic Development has developed protocols that expand on how the Crown Minerals Act provisions will be administered to meet Maori interests.

23 Likewise, tools available under the Resource Management Act range from:

- the ability to transfer functions to a public authority (including iwi authorities) (section 33)
- being able to recognise tikanga Maori in hearings (section 39)
- having regard to any iwi planning instruments in decision-making processes (section 61)
- requiring regional policy statements to state matters of significance to iwi authorities (section 62)
- consultation with iwi authorities, tangata whenua in the preparation of statutory plans (First schedule to the RMA).

## Issues identified by Maori

24 Although Crown agencies are starting to put in place a range of tools for recognising Maori interests, and although the Treaty settlement process (including commercial fishing) is putting in place mechanisms to resolve historical grievances, Maori still cite a number of barriers to their aspirations.

25 The issues raised by Maori, particularly during Stage One but also in a range of other forums such as the Waitangi Tribunal, include the following:

- management/regulatory interests: this is clearly a large part of Maori concerns. Although some of these are currently provided for, such as customary fishing, these may be hampered by other problems such as capacity
- a perception that Maori views (such as those described in paragraph 11) are not adequately valued by the Crown: for instance, Maori feel that in dialogue with the Crown the parties are talking past one another, or that the Crown does not follow up on Maori input
- governance and mandate: there are no clear rules (except in limited, specific circumstances) that describe where, when, how and who to consult with. Both the Crown and Maori are frustrated with mandate issues. For the Crown, there can be difficulty in identifying who are deemed to be the representatives of certain iwi or hapu. For Maori, this difficulty can be used as an excuse for not ensuring Maori involvement
- capacity: even where both the Crown and Maori are clear about communication, the resources required for Maori to contribute meaningfully can be a significant burden. The most common case is that of consultation, where various government agencies may consult with Maori, with the obligation on Maori to turn up. This creates difficulties for iwi that may not have enough money and people to participate effectively
- protection versus sustainable development: absolute protection of areas of the marine environment in perpetuity would not generally be a feature of the Maori world view. Under that view all resources are managed in a sustainable way, so that absolute restrictions are not required. This debate manifests itself in topics such as marine reserves
- ability to benefit from economic development: part of the reason for Maori interest in various resources stems from a desire of Maori to gain a share of the financial benefits of new space allocations, technologies and so on. In their view recognising Maori in an Oceans Policy is therefore not just about management in accordance with tikanga, but ensuring that Maori receive a share of the benefits too
- traditional tools (for example, rahui): Maori are limited in their application of traditional management tools to the marine environment, particularly at a local level. Where tools are provided, such as under s186(a) and (b) of the Fisheries Act these may be hampered by capacity or governance issues.

## Key issues

26 The Oceans Policy must be inclusive of Maori. Finding a better way to recognise Maori knowledge systems and experience such as those described in paragraph 12 is important for the development of an effective and uniquely New Zealand Oceans Policy. It is also important because of the Crown's Treaty relationship with Maori and the obligations that flow from this. The work must also take account of the legal obligations created through the fisheries Treaty settlement and Treaty settlements with iwi/hapu.

27 The matters that need to be debated, in order to develop an Oceans Policy that takes account of the principles of the Treaty, can usefully be grouped under the following questions:

- How can we ensure that decision-makers have a good understanding of the implications for Maori of a particular decision?

A common response is to impose consultation obligations on decision-makers, or to create participation rights for Maori. As a matter of practice, it may also be important to ensure that the organisation taking those decisions maintains a good level of knowledge of Maori perspectives on its work.

- How can we ensure that decision-makers not only understand, but actually take account of, Maori perspectives?

Statutes often set out the considerations or perspectives that must be considered as decisions are made. These considerations can and do require explicit consideration to be given to Maori perspectives on the issues.

- How can we ensure that settlements of past grievances that have already been achieved are not undermined?

Of prime importance in the oceans context is the need to support rather than undermine the major settlement that was achieved in relation to commercial fisheries, and to maintain strong post-settlement relationships with Maori. The same applies to settlements achieved with individual iwi such as Ngai Tahu. In relation to the arrangements that were entered into to acknowledge Maori customary fishing, the question is probably more focussed on what might be done to support and encourage effective exercise of those customary rights.

- What other resource based interests of Maori may need to be considered?

As new resources and industries emerge, and regulatory regimes are accordingly developed to accommodate these uses, there will be a need to consider whether there is any Maori interest in the activity. There may be an interest that might warrant protection or support because it is a manifestation of an indigenous right, that is not appropriately dealt with through the settlement of historical grievances. Or there may also be a desire to support future economic development for Maori in the activity. In either case, future options should not be foreclosed and consideration will

need to be given to whether those goals need to be reflected in the design of the regulatory regime, or pursued through some other initiative.

28. The discussion above indicates that there is already a wide range of tools and mechanisms being used to ensure that Maori values are incorporated into management and decision-making. However, while there is a range of tools available, there is still not much experience with how and when they should be used. Both the Crown and Maori are still feeling their way, and need to learn more about which tools are best suited for the different needs. So the practical issue is how to provide guidance and improve on what tools and mechanisms should be used in what situation, and how these decisions should be made. Some of the considerations that might be relevant in developing this guidance could relate to:

- the significance of the area to tangata whenua
- the concerns of tangata whenua and whether those concerns are general or specific
- the capacity that iwi/hapu have (different arrangements require more or less time, energy and resources; in some cases the mechanisms might be available and appropriate but the resourcing is not)
- the level of interest in the area by other parties
- the unsatisfactory features of current arrangements
- the statutory obligations in relation to the area.

29 Decision-makers also need to be provided with sufficient flexibility to enable relationships to develop with Maori depending on local contexts, while providing sufficient certainty and guidance to ensure that the use of tools and mechanisms for Maori involvement is not dependent on personalities. In order to include a Maori perspective, it may prove important to consider how concepts such as kaitiakitanga, manaakitanga and rahui can best be given practical effect at both a general and specific level.

## **Conclusion**

30 An Oceans Policy should endeavour to embrace and recognise important concepts in the Maori view of oceans management.

31 There are already legal and policy frameworks available to achieve this – historical Treaty settlements and through incorporation of the principles of the Treaty of Waitangi in natural resource management policy and/or legislation. There is also a range of practical tools that have been developed to involve Maori and incorporate their views in both management and decision-making.

32 These various sources provide the building blocks for constructing an Oceans Policy that takes careful account of the interests of Maori at all levels. Over the coming months the Oceans Policy project will be discussing and developing these ideas further, in order to develop a Policy that contains the tools for the Crown and Maori to continue to develop effective ways of working together for the protection and wise management of this country's marine environment.