



28 April 2017

Clean Water
Ministry for the Environment

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Clean Water: response to consultation document

Introduction

1. Thank you for the opportunity to comment on the *Clean Water* consultation document.
2. Te Wai Māori Trust (Wai Māori) was established under the Māori Fisheries Act 2004 to implement the agreements made in the Deed of Settlement between the Crown and Māori regarding Māori claims to the fisheries. The purpose of Wai Māori is to advance the interests of Māori in freshwater fisheries through:
 - undertaking or funding research;
 - development and education;
 - promoting the protection and enhancement of freshwater fisheries habitat;
 - promoting the establishment of freshwater fisheries; and
 - using resources to bring direct and indirect benefits to Māori in respect of their freshwater fisheries interests.
3. Freshwater fisheries depend on habitat including the water column, water quality and quantity. A crucial part of advancing Māori interests in freshwater fisheries is promoting the protection and restoration of habitat to ensure quality water and abundant freshwater species.
4. This submission builds on our previous submissions made in April 2016 (Next Steps for Freshwater) and 2014 (Proposed Amendments to the NPS for Freshwater management). It is intended to complement the views iwi might express in their own submissions. Wai Māori offers the following views as a contribution to the development of policy in relation to freshwater without prejudice, and would be happy to participate in further discussions on proposed options.

Our Freshwater Environment 2017

5. This submission was largely complete when we became aware of the latest government report on New Zealand's freshwater: *Our Freshwater Environment 2017*, released yesterday. We are alarmed at the report's finding that nearly three quarters of native freshwater fish species are threatened by or at risk of extinction, as well as a third of native freshwater invertebrates and a third of native freshwater plants, with nitrogen levels trending downwards. We have not had the opportunity to study the report in any detail however we

urge the government to take urgent action to advance the improvements iwi and other New Zealanders expect.

6. While we support the overall direction of the National Policy Statement proposals (see below), we consider that additional resources are urgently required to ensure our freshwater systems and habitats are restored and sustained.

General Comments on the proposals

7. Wai Māori supports the overall approach to the National Policy Statement including the national significance of Te Mana o te Wai, setting limits to ensure water quality (such as levels of nitrogen and phosphorus) and restrictions on grazing by excluding stock from waterways. However, from our perspective the achievement of the NPS objectives will depend on:
 - a. quality communications and engagement between iwi/hapū, councils and the wider community
 - b. iwi/hapū having the capacity to participate in planning and implementation processes
 - c. regional councils having the capacity and capability to engage with iwi/hapū in a meaningful way
 - d. simple and clear directives
 - e. Treaty partnership commitments
 - f. good information for decision-making.
8. The Government and councils need to ensure that the agreements entered into between the Crown and Māori as part of the Fisheries Settlement are recognised and furthered, and not undermined by inadequate planning processes and engagement. The settlement was a full and final settlement of all Māori claims to fisheries, and includes freshwater and marine fisheries. The interests that were settled are of a commercial and non-commercial nature. Commercial interests were settled through the allocation to iwi of commercial fishing assets. Non-commercial interests were settled through a commitment by the Crown to implement regulations for customary – non-commercial fishing. The integrity of the Fisheries Settlement, which affects all iwi, should be protected through appropriate management of fisheries habitat under the Resource Management Act (RMA) and other relevant regimes.

Te Mana o te Wai is central to the management of freshwater fisheries – but iwi and councils will need support to implement it effectively

9. Te Wai Māori supports the proposed clarification of Te Mana o te Wai as a framework for all national values. This means national values are organised for their consistency with Te Hauora o te Taiao, Te Hauora o te Wai and Te Hauora o te Tangata. From a freshwater fisheries point of view, the central national values are ecosystem health, mahinga kai (under both te Hauora o te Wai and te Tangata), natural form and character and fishing. For clarity and further reference, we have summarised this new framework in table 1.
10. Objective AAA1 is “to consider and recognise Te Mana o te Wai in the management of fresh water”. Policy AAA1 requires regional councils to make or change “regional policy statements and plans to consider and recognise Te Mana o te Wai, noting that:

- a. Te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora of te Taiao (health of the environment), Te Hauora of te Wai (health of the waterbody) and Te Hauora of te Tangata (health of the people)
 - b. Local and regional values identified through engagement and discussion with the community, including tangata whenua must inform the setting of freshwater objectives and limits.”
11. This obligation to engage with iwi has been strengthened by the recent amendments to the RMA which provide for Mana Whakahono-ā-Rohe: Iwi participation arrangements. Councils must negotiate with those iwi who are ready to enter into an arrangement.
12. The move to establish a formal mechanism for engagement between iwi/hapū and councils is an encouraging one. However the capacity of most iwi to enter into such arrangements is very stretched and demands on their time can be overwhelming, particularly as many iwi and hapū have yet to negotiate their individual Treaty settlements.
13. Wai Māori is completing an environmental scan to assist us to develop our next strategic plan. A key concern raised by iwi and hapū is the lack of technical skill, personnel and time available to them to participate in planning and policy processes at a regional level. There are many competing demands on their time, including the need to respond to other policy processes. We also understand that in many instances regional councils lack the capacity and in some instances the capability they need to give effect to Te Mana o Te Wai.
14. The proposed criteria for the Freshwater Improvement Fund include proposals that will *“increase iwi/hapū, community, local government or industry capability and capacity in relation to freshwater management”*. While this criterion can be supported, the outcomes in terms of funded projects will relate only to parties with an interest in vulnerable catchments. The fund does not take a strategic approach to capacity and capability.
15. We recommend the Government resource a team of specialists to work with iwi and regional councils to enable Objective AAA1 to be defined and implemented. We cannot see how Te Mana of Te Wai and the national values it incorporates can be realised without this critical investment.

TABLE 1: TE MANA O TE WAI AND NATIONAL VALUES FRAMEWORK

Status/type	Te Hauora o Te Wai (health of the water body)	Te Hauora o te Taiao (health of the environment)	Te Hauora o te Tangata (health of the people)
Compulsory	<ul style="list-style-type: none"> Ecosystem Health see attribute tables for lakes (phytoplankton, total nitrogen, total phosphorus, ammonia). Rivers (periphyton, nitrate, ammonia, dissolved oxygen) 		<ul style="list-style-type: none"> Human health for recreation See attributes for lakes and rivers (<i>E. coli</i>, cyanobacteria – planktonic) See also monitoring methodologies for <i>E. coli</i>
Additional National Values	<ul style="list-style-type: none"> Wahi tapu 	<ul style="list-style-type: none"> Natural form and character (includes several aspects including culturally significant species) 	
	<ul style="list-style-type: none"> Mahinga kai – kei te ora te mauri (the mauri of the place is intact) 		<ul style="list-style-type: none"> fishing
			<ul style="list-style-type: none"> Mahinga kai – kai are safe to harvest and eat
			<ul style="list-style-type: none"> Transport and Tauranga waka
Extractive uses			<ul style="list-style-type: none"> Water supply
			<ul style="list-style-type: none"> Animal drinking water
			<ul style="list-style-type: none"> Irrigation and food production
			<ul style="list-style-type: none"> Hydro-electric power generation
			<ul style="list-style-type: none"> Commercial and industrial use

Freshwater management units as the basis for establishing objectives

16. Freshwater Management Units (FMUs) are defined as ...“the water body, multiple water bodies or any part of a water body determined by the regional council as the appropriate spatial scale for setting freshwater objectives and limits and for freshwater accounting and management purposes.”
17. The definition is very broad and the creation of FMUs will be challenging given the range of values and potential objectives to be addressed.
18. Wai Māori supports the more focussed proposal in Objective A2, to manage the overall quality of freshwater within freshwater management units as opposed to a region as a whole. This, in combination with the requirements proposed in Policy CA2 (e) (iia) to at least maintain water quality within a unit, should reduce the danger that water quality will be allowed to diminish to the lowest common denominator. Nevertheless, we reiterate what we said in our last submission, which is that we are concerned waterbodies within proposed FMUs will not be provided with their own level or significance and, potentially, the values iwi and hapū hold for them will be eroded by management over different waterbodies within FMUs.
19. Councils will need to carefully consider the appropriate scale for managing the effects of all activities on fisheries and fishing. The proposed value for fishing describes the FMUs as supporting fisheries of species allowed to be caught and eaten. Amongst other things, “the numbers of fish would be sufficient and suitable for human consumption”.
20. There are two factors that affect whether the numbers of fish will be sufficient. The first is harvesting pressure, which is managed under the Fisheries Act 1996. The second involves the effects of other activities such as discharges, water abstraction and habitat destruction, which are managed under the RMA. It is the second that concerns councils, who will need to consider the overall range and biology of fish stocks to determine the spatial scale necessary to ensure sufficient quantities of fish. For example, tuna/eels are managed within broad quota management areas many of which span more than one region. A region-wide view will be needed to ensure there is sufficient good quality habitat to sustain tuna/eel stocks and other fisheries
21. While fishing is identified as a national value, native freshwater species as a whole – including those not fished – must also be sustained and restored consistent with Te Hauora o Te Wai.
22. Taking these matters into account, a creative and flexible approach is likely to be required to the establishment of FMUs. Strong collaborative processes will be needed between councils, iwi and the wider community to ensure that the establishment of FMUs takes into account the habitat needs (including freshwater quality and quantity) of freshwater fishstocks. This might require identification of linked FMUs for the purpose of ensuring sufficient habitat for fishstocks, or the creation of overlapping FMUs that are created to achieve complementary objectives.
23. Ultimately, the success of such initiatives will rest on strong engagement, full information, clear communication processes and respectful relationships. We reiterate our concerns

about the findings of *Our Freshwater Environment 2017* in relation to native species, and our recommendation in paragraph 15.

Proposals to include “economic well-being” are confusing and unjustified

24. Section 3.5 of the consultation document states “concerns have been raised that the Freshwater NPS does not specifically oblige councils to consider implications for economic well-being before they establish environmental limits.” To address these concerns, it is proposed that councils must consider the community’s economic well-being when making decisions about water quantity, deciding what level or pace of water quality improvements will be targeted, and when establishing freshwater objectives”. It is proposed that:
- a. Objective A2 be amended to require councils to consider economic opportunities when deciding on what level of water quality improvements to aim for
 - b. Objective B1 be amended to require councils to consider economic opportunities when making decisions about water quantity
 - c. Councils be required to consider people’s economic well-being when setting freshwater objectives.
25. While the proposed amendments may be intended to ensure councils are reminded of the need to consider economic well-being in achieving the purpose and principles included in Part 2 of the RMA, good participation and engagement should ensure that relevant economic interests are identified and considered along with other Part 2 matters the councils are required to consider. We consider the proposed amendments have the effect of “screwing the scrum” in favour of economic well-being over social and cultural wellbeing, whether or not the circumstances can justify it. We oppose these amendments as unnecessary and unjustified.

Monitoring and Mātauranga Māori

26. We support the inclusion of Mātauranga Māori in monitoring methods as proposed. However, understanding what this will mean for iwi in each region will, again, require strong engagement in order to understand what needs to be implemented in practical terms. We refer back to paragraph 13 and our recommendation for a resourced and targeted support process.

Effect of national bottom lines on infrastructure

27. The proposals incorporate additional matters that affect the ability of councils to set freshwater objectives below national bottom lines. These are intended to better define where and in what circumstances such objectives can be set to realise the benefits of infrastructure listed in Appendix 3.
28. We commented in our previous submission that as a principle, we would not support exceptions to national bottom lines where they lead to a detrimental effect on fisheries and their habitats. Any such proposals should involve iwi and hapū so that they have access to all relevant implications for their fisheries. In addition, to gain an exception, a consent holder should have a duty to provide some form of mitigation (consistent with the duty to avoid, remedy or mitigate adverse effects). This could be in the form of a contribution to improving

water quality elsewhere within a relevant FMU, or some other measure designed to improve freshwater fisheries habitat.

29. In practical terms it is not clear how Appendix 3 will be populated, or whether there has been any assessment to date on the circumstances in which listing may be required. Care should be taken to ensure that by providing the opportunity for infrastructure to be listed, owners do not lack the incentive to maintain and upgrade their facilities.

Water quality: stock exclusion

30. Wai Māori supports the proposal to exclude stock from waterways. Exclusion of stock will have benefits not only for water quality, but will also create the opportunity to restore the margins of waterways as part of freshwater fisheries habitat and mahinga kai. An added benefit of stock exclusion is preventing loss of stock in waterways.

Swimming and recreational values

31. We observe that the proposed amendments to attributes for contact recreation are intended to clarify that rivers suitable for immersion, not just wadeability. The new proposed bottom line is higher than the current level of 1000 E.coli per 100ml.
32. While we support a higher threshold, it is only clear from the fine detail of the amendments that the new bottom lines are only intended to focus on “large rivers and lakes” defined as “rivers that are fourth order or above, and lakes larger than 1.5kms in perimeter on average. With the removal of the current bottom line for all rivers, a gap is created and for many smaller waterbodies there will be no bottom line.

Freshwater improvement fund

33. Wai Māori supports the establishment of a Freshwater Improvement Fund and the commitment of government funds to projects to improve the management of freshwater bodies.
34. The consultation material illustrates examples of significant Government investment in freshwater protection and clean-ups. It includes the Te Mana o Te Wai Fund in which the government committed \$5 million (over two years) for projects targeting Māori initiatives. All this funding has now been awarded through a one-off funding round, and the fund is now closed. We recommend the proposed funds contain a separate allocation specifically for Māori. There is a precedent for a specialist fund of this kind in the Te Mana o Te Wai Fund, and other funds such as Ngā Whenua Rāhui, which complements the Nature Heritage Fund. Wai Māori would be prepared to work with iwi to contribute funding to applications where they contribute to freshwater fisheries, consistent with our strategic plan and purpose.

35. Wai Maori welcomes the opportunity to engage further as the proposals for freshwater management are developed. Please contact Dianne Brown or Kirsty Woods at Te Ohu Kaimoana in the first instance.

Naku iti noa

A handwritten signature in blue ink, appearing to read 'Ken Mair', written in a cursive style.

Ken Mair
Chairperson
Te Wai Māori Trust