

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF FISHERIES REGARDING INTERACTION WITH THE AFFILIATE TE ARAWA IWI/HAPU ON FISHERIES ISSUES

1 INTRODUCTION

1.1 The Crown, through the Minister and Chief Executive, recognises that the Affiliate Te Arawa Iwi/Hapu are entitled to have input and participate in fisheries management processes that affect fish stocks in the Affiliate Te Arawa Iwi/Hapu Fisheries Protocol Area ("the **Fisheries Protocol Area**") and that are managed by the Ministry under the Fisheries Act 1996. The Affiliate Te Arawa Iwi/Hapu have a special relationship with all species of fish, aquatic life and seaweed found within the Affiliate Te Arawa Iwi/Hapu Fisheries Protocol Area, and an interest in the sustainable utilisation of all species of fish, aquatic life and seaweed.

1.2 Under the deed of settlement dated 11 June 2008 between the Affiliate Te Arawa Iwi/Hapu and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Fisheries (the "**Minister**") would issue a protocol (the "**Fisheries Protocol**") setting out how the Ministry of Fisheries (the "**Ministry**") will interact with the trustees of Te Pumautanga Trust (the "**Te Pumautanga Trustees**") in relation to matters specified in the Fisheries Protocol. These matters are:

1.2.1 recognition of the interests of the Affiliate Te Arawa Iwi/Hapu, set out in clause 1.1, in all species of fish, aquatic life or seaweed that exist within the Affiliate Te Arawa Iwi/Hapu Fisheries Protocol Area that are subject to the Fisheries Act 1996;

1.2.2 sustainability measures, fisheries regulations and fisheries plans;

1.2.3 support for customary non-commercial fisheries management;

1.2.4 research planning;

1.2.5 the nature and extent of fisheries services;

1.2.6 contracting for services;

1.2.7 the employment of Ministry staff with customary non-commercial fisheries responsibilities;

1.2.8 rahui; and

1.2.9 changes to policy and legislation affecting this Protocol.

1.3 For the purposes of this Fisheries Protocol, the Te Pumautanga Trustees are the representatives of the whanau, hapu and iwi of the Affiliate Te Arawa Iwi/Hapu who have an interest in the sustainable utilisation of fish, aquatic life and seaweed that exist within the Fisheries Protocol Area. The Affiliate Te Arawa Iwi/Hapu have a responsibility in relation to the preservation, protection

and management of its customary non-commercial fisheries in the Fisheries Protocol Area.

- 1.4 The obligations of the Ministry in respect of fisheries are to ensure ecological sustainability, to meet Te Tiriti o Waitangi/Treaty of Waitangi and international obligations, to enable efficient resource use, and to ensure the integrity of fisheries management systems.
- 1.5 The Ministry and the Te Pumautanga Trustees are seeking a relationship consistent with Te Tiriti o Waitangi/Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/Treaty of Waitangi provide the basis for the relationship between the parties to this Fisheries Protocol, as set out in this Fisheries Protocol. The relationship created by this Fisheries Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
- 1.6 The Minister and the Chief Executive of the Ministry (the "Chief Executive") have certain functions, powers and duties in terms of the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. With the intention of creating a relationship that achieves, over time, the fisheries policies and outcomes sought by both the Affiliate Te Arawa Iwi/Hapu and the Ministry consistent with the sustainable utilisation of fisheries, this Protocol sets out how the Ministry, the Minister and Chief Executive will exercise their functions, powers and duties in relation to matters set out in this Protocol. The Te Pumautanga Trustees will have the opportunity for meaningful input into the policy, planning and decision-making processes relating to the matters set out in this Protocol.
- 1.7 The Ministry will advise the Te Pumautanga Trustees whenever it proposes to consult with an iwi or hapu of the Affiliate Te Arawa Iwi/Hapu or with another iwi or hapu with interests in the sustainable utilisation of fisheries, aquatic life and seaweed in the Fisheries Protocol Area, on matters that could affect the interests of the Affiliate Te Arawa Iwi/Hapu.

2 AFFILIATE TE ARAWA IWI/HAPU FISHERIES PROTOCOL AREA

- 2.1 This Fisheries Protocol applies across the Affiliate Te Arawa Iwi/Hapu Fisheries Protocol Area which means the area defined in section 10 of the Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (the "Settlement Legislation") and identified in the map included as Attachment A of this Protocol together with the adjacent waters.

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section 21 of the Settlement Legislation and clause 9.3 of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issues set out in Attachment B.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Ministry will maintain effective consultation processes and communication networks with the Te Pumautanga Trustees by:
- 4.1.1 maintaining, at national and regional levels, information provided by the Te Pumautanga Trustees on the Te Pumautanga Trustees' office holders, addresses and contact details;
 - 4.1.2 providing reasonable opportunities for the Te Pumautanga Trustees to meet with Ministry managers and staff; and
 - 4.1.3 providing reasonable opportunities for the Te Pumautanga Trustees to participate, if they choose to, in regional forums that are established to interact with the Ministry on fisheries issues that affect the Fisheries Protocol Area.
- 4.2 The Ministry will:
- 4.2.1 meet with the Te Pumautanga Trustees to review implementation of this Protocol at least once a year, unless otherwise agreed, at a location specified by the Te Pumautanga Trustees and agreed to in advance by the Ministry;
 - 4.2.2 consult and involve the Te Pumautanga Trustees in the training of relevant staff on this Protocol and provide on-going training as required; and
 - 4.2.3 as far as reasonably practicable, inform fisheries stakeholders about this Protocol and the Deed of Settlement, and provide on-going information as required.

5 SPECIES OF FISH, AQUATIC LIFE AND SEAWEED

Tuna/Eel

- 5.1 The Ministry recognises that tuna/eel is a taonga species and that the Affiliate Te Arawa Iwi/Hapu have a special relationship with the tuna fishery within the Fisheries Protocol Area.
- 5.2 The Affiliate Te Arawa Iwi/Hapu have indicated that they may wish to enhance the tuna fishery through the transfer of elvers and the possibility of farming tuna.
- 5.3 In each of the three years after the Settlement Date, upon reasonable receipt of notice from the Te Pumautanga Trustees, Ministry staff shall meet with representatives of the Te Pumautanga Trustees at a mutually acceptable venue to discuss whether potential sites within the Fisheries Protocol Area may be viable for undersized tuna extraction and if so the quantum catch of tuna/eel that might potentially be authorised within the Fisheries Protocol Area.

- 5.4 This Fisheries Protocol shall not operate to create any expectation that a special permit or any other authorisation to extract or farm tuna will be granted.

6 MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

- 6.1 The Ministry undertakes to provide the Te Pūmāutanga Trustees with such information and assistance as may be necessary for the proper administration of the Fisheries (Kāi Moana Customary Fishing) Regulations 1998. This information and assistance may include:

6.1.1 discussions with the Ministry on the implementation of the regulations within the Fisheries Protocol Area; and

6.1.2 provision of existing information, if any, relating to the sustainability, biology, fishing activity and fisheries management within the Fisheries Protocol Area.

7 DEVELOPMENT OF SUSTAINABILITY MEASURES, FISHERIES REGULATIONS AND FISHERIES PLANS, MARINE PROTECTION AREAS AND CONSULTATION ON SPECIES WITHIN THE FISHERIES PROTOCOL AREA

- 7.1 If the Ministry is exercising powers or functions, under the Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, relating to the setting of sustainability measures, or the making of fisheries regulations, or the development/implementation of a fisheries plan for the purposes of section 11A of the Fisheries Act 1996 (a "Fisheries Plan"), for any species of fish, aquatic life or seaweed within the Fisheries Protocol Area, or is establishing Marine Protected Areas as defined in the Marine Protected Areas Policy and Implementation Plan December 2005, the Ministry must:

7.1.1 provide the Te Pūmāutanga Trustees with all reasonably available background information in relation to the setting of sustainability measures, the making of fisheries regulations, and the development/implementation of Fisheries Plans;

7.1.2 inform the Te Pūmāutanga Trustees, in writing, of any proposed changes in relation to the Fisheries Protocol Area with regard to:

7.1.2.1 the setting of sustainability measures;

7.1.2.2 the making of fisheries regulations;

7.1.2.3 the development/implementation of Fisheries Plans; and

7.1.2.4 the development of marine protected areas,

as soon as reasonably practicable to enable the Affiliate Te Arawa Iwi/Hapu to respond in an informed way;

- 7.1.3 ~~provide the Te Pumautanga Trustees at least 30 working days from receipt of the written information described in clause 7.1.2 in which to respond, verbally or in writing, to any such proposed changes;~~
- 7.1.4 ~~as far as reasonably practicable, meet with the Te Pumautanga Trustees to discuss any proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, if requested by the Te Pumautanga Trustees to do so;~~
- 7.1.5 ~~incorporate the views of the Te Pumautanga Trustees into any advice given to the Minister or other stakeholders on proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, that affect the Te Pumautanga Trustees' interests and provide a copy of that advice to the Te Pumautanga Trustees as soon as reasonably practicable; and~~
- 7.1.6 ~~report back to the Te Pumautanga Trustees within 20 working days of any final decision in relation to sustainability measures, fisheries regulations, or Fisheries Plans, either in writing or in person.~~

8 REGIONAL IWI FORUMS

- 8.1 ~~The Ministry is working with iwi to establish regional iwi forums to enable iwi to have input into and participate in processes to address sustainability measures, fisheries regulations, fisheries plans and the establishment of marine protected areas. Where the Ministry is seeking to establish a regional iwi forum in an area that will include Fisheries Protocol Area, the Ministry will ensure that the Te Pumautanga Trustees will have an opportunity to participate in the development and operation of that forum. Where a regional iwi forum is established and the Affiliate Te Arawa Iwi/Hapu are members of that forum, both parties acknowledge that the forum will be the venue to address those matters set out in clauses 5 to 15 of this Protocol.~~

9 RESEARCH PLANNING PROCESS

- 9.1 ~~The Ministry will provide the Te Pumautanga Trustees with all reasonably available background information to participate in the processes, timelines and objectives associated with the research planning process of the Ministry.~~
- 9.2 ~~The Ministry will consult with the Te Pumautanga Trustees on all research proposals commissioned by the Ministry having an effect on the Fisheries Protocol Area.~~
- 9.3 ~~The Ministry will provide the Te Pumautanga Trustees, within 30 working days of the execution of the Fisheries Protocol, with information on the requirements for becoming an 'Approved Research Provider'. Should the requirements for becoming and remaining an 'Approved Research Provider' change over time, the Ministry will inform the Te Pumautanga Trustees about those changes.~~

10 NATURE AND EXTENT OF FISHERIES SERVICES

- 10.1 The Ministry will each year consult with the Te Pumautanga Trustees on the Ministry's annual business plan.
- 10.2 The Ministry will provide the Te Pumautanga Trustees with the opportunity to put forward proposals for the provision of services that the Te Pumautanga Trustees deem necessary for the management of fisheries within the Fisheries Protocol Area.

11 CONTRACTING FOR SERVICES

- 11.1 The Ministry will consult with the Te Pumautanga Trustees in respect of any contract for the provision of services that may impact on the management of customary fisheries within the Fisheries Protocol Area, if the Ministry is proposing to enter into such a contract.

12 EMPLOYMENT OF STAFF WITH CUSTOMARY FISHERIES RESPONSIBILITIES

- 12.1 The Ministry will consult with the Te Pumautanga Trustees on certain aspects of the employment of Ministry staff if a particular vacancy directly affects the fisheries interests of the Affiliate Te Arawa Iwi/Hapu in relation to the Fisheries Protocol Area.
- 12.2 The level of consultation shall be relative to the degree to which the vacancy impacts upon the interests of other iwi as well as those of the Affiliate Te Arawa Iwi/Hapu, and may be achieved by one or more of the following:
- 12.2.1 consultation on the job description and work programme;
 - 12.2.2 direct notification of the vacancy;
 - 12.2.3 consultation on the location of the position; and
 - 12.2.4 input into the selection of the interview panel.

13 CONSULTATION

- 13.1 Where the Ministry is required to consult under clauses 4, 7, 8, 9, 10, 11, and 12 of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Te Pumautanga Trustees in each case are:
- 13.1.1 ensuring that the Te Pumautanga Trustees are consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
 - 13.1.2 providing the Te Pumautanga Trustees with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

13.1.3 ensuring that sufficient time is given for the participation of the Te Pumautanga Trustees in the decision making process including the preparation of submissions by the Te Pumautanga Trustees in relation to any of the matters that are the subject of the consultation; and

13.1.4 ensuring that the Ministry will approach the consultation with the Te Pumautanga Trustees with an open mind, and will genuinely consider the submissions of the Te Pumautanga Trustees in relation to any of the matters that are the subject of the consultation.

13.2 Where the Ministry has consulted with the Te Pumautanga Trustees as specified in clause 13.1, the Ministry will report back to the Te Pumautanga Trustees, either in person or in writing, on the decision made as a result of any such consultation.

14 RAHUI

14.1 The Ministry recognises that rahui is a traditional use and management practice of the Affiliate Te Arawa Iwi/Hapu and supports the right of the Affiliate Te Arawa Iwi/Hapu to place traditional rahui over their customary fisheries.

14.2 The Ministry and the Affiliate Te Arawa Iwi/Hapu acknowledge that a traditional rahui placed by the Affiliate Te Arawa Iwi/Hapu over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rahui is a matter of voluntary choice.

14.3 The Affiliate Te Arawa Iwi/Hapu undertake to inform the Ministry of the placing and the lifting of a rahui by the Affiliate Te Arawa Iwi/Hapu over their customary fisheries, and also the reasons for the rahui.

14.4 The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rahui has been applied, to the extent that such groups exist, of the placing and the lifting of a rahui by the Affiliate Te Arawa Iwi/Hapu over their customary fisheries, in a manner consistent with the understandings outlined in clause 14.2 above.

14.5 As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rahui proposed by the Affiliate Te Arawa Iwi/Hapu over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rahui placed in the event of a drowning.

15 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

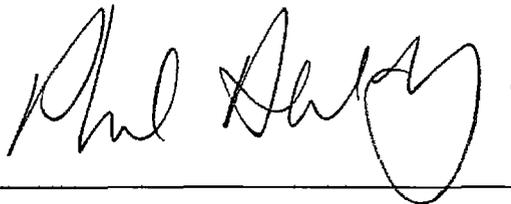
15.1 If the Ministry consults with iwi on policy development or any proposed legislative amendment to the Fisheries Legislation which impacts upon this Protocol the Ministry shall:

15.1.1 notify the Te Pumautanga Trustees of the proposed policy development or proposed legislative amendment upon which iwi will be consulted; and

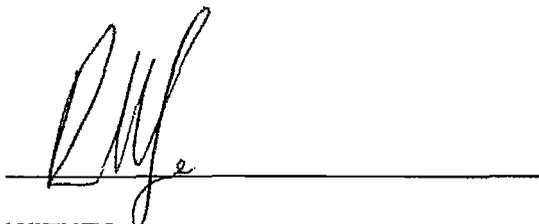
15.1.2 make available to the Te Pumautanga Trustees the information provided to iwi as part of the consultation process referred to in this clause; and

15.1.3 report back to the Te Pumautanga Trustees on the outcome of any such consultation, either in writing or in person.

ISSUED on 14th June 2009



SIGNED for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister of Fisheries



WITNESS

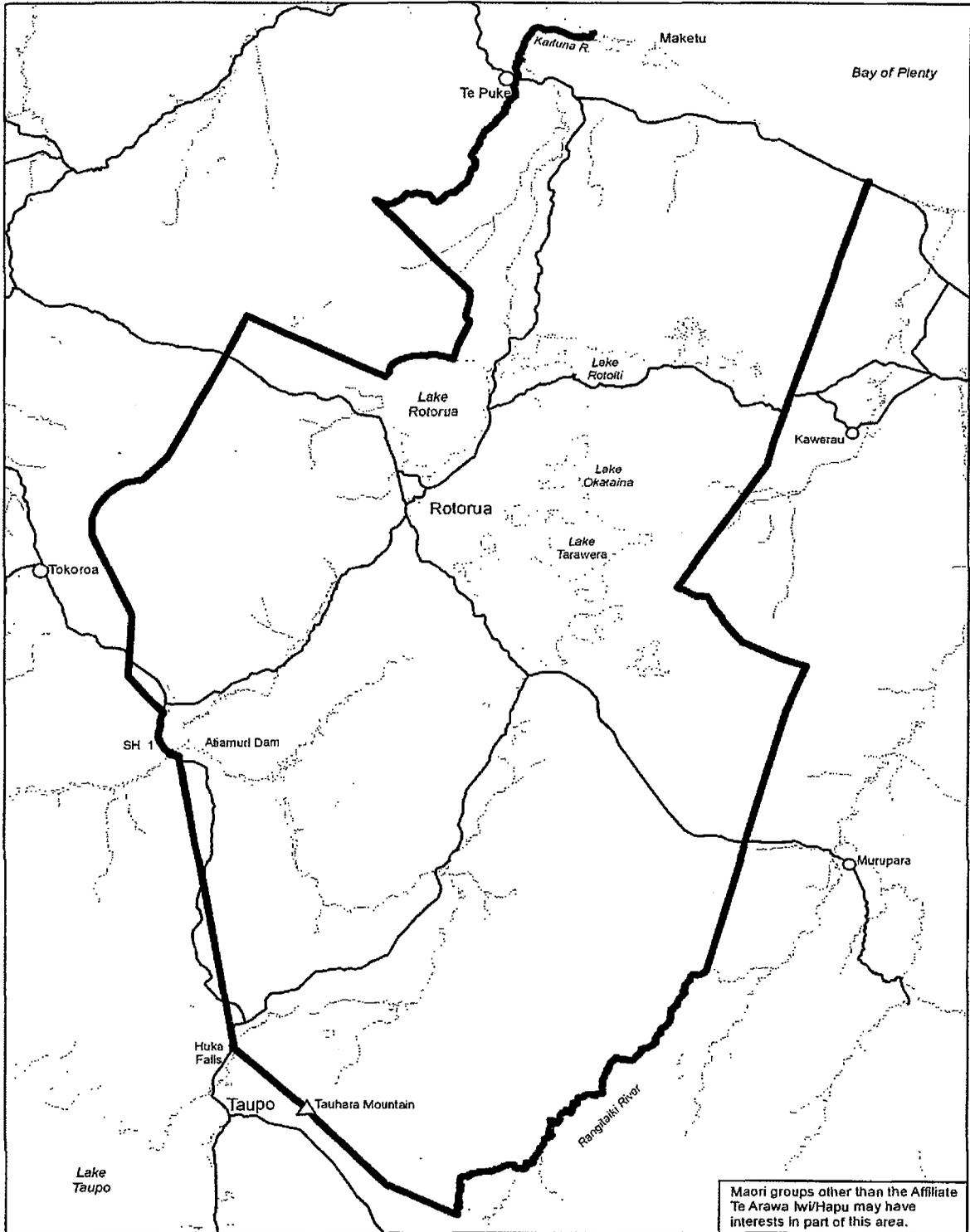
Name: Don Syme

Occupation: Private Secretary (Fisheries)

Address: 9 Durham Crescent
Aro Valley
Wellington.

ATTACHMENT A

FISHERIES PROTOCOL AREA



ATTACHMENT B
TERMS OF ISSUE

1. Definitions

1.1 In this Fisheries Protocol:

Affiliate Te Arawa Iwi/Hapu has the meaning set out in clause 1.5 of the Deed of Settlement;

Crown has the meaning set out in clause 1.4 of the Deed of Settlement;

Fisheries Legislation means the Fisheries Act 1983 and the Fisheries Act 1996;

Affiliate Te Arawa Iwi/Hapu Fisheries Protocol Area has the meaning set out in clause 2.1 of this Fisheries Protocol;

Protocol means a statement in writing, issued by the Crown through the Minister to the Te Pumautanga Trustees under the Settlement Legislation and the Deed of Settlement and includes this Fisheries Protocol;

Te Pumautanga Trust means the Te Pumautanga o Te Arawa Trust, established by the Te Pumautanga o Te Arawa trust deed dated 1 December 2006; and

Te Pumautanga Trustees means the trustees appointed from time to time to the Te Pumautanga Trust.

This Protocol is issued subject to the provisions of the Deed of Settlement and the Settlement Legislation. These provisions are set out below.

2. Authority to issue, amend or cancel Protocols

2.1 Section 21 of the Settlement Legislation provides that:

(1) Each responsible Minister may--

(a) issue a protocol to the trustees in the form set out in Part 1 of Schedule 1 of the Deed of Settlement; and

(b) amend or cancel that protocol.

(2) A protocol may be amended or cancelled under subsection (1) at the initiative of either -

(a) the trustees; or

(b) the responsible Minister.

- (3) The responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees.

3. Protocols subject to rights, functions and obligations

3.1 Section 222 of the Settlement Legislation provides that:

Protocols do not restrict –

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes (without limitation) the ability to –
- i. introduce legislation and change government policy; and
 - ii. interact or consult with a person the Crown considers appropriate, including, without limitation, any iwi, hapu, marae, whanau, or other representative of tangata whenua; or
- (b) the responsibilities of a responsible Minister or a responsible department; or
- (c) the legal rights of the Affiliate or a representative entity.

4. Noting of Fisheries Protocol

4.1 Section 226 of the Settlement Legislation provides that:

- (1) A summary of the terms of this Protocol must be noted in fisheries plans affecting the Fisheries Protocol Area.
- (2) The noting of this Protocol is –
- (a) for the purpose of public notice only; and
 - (b) not an amendment to a fisheries plan for the purposes of section 11A of the Fisheries Act 1996.
- (3) In this section, fisheries plan means a plan approved or amended under section 11A of the Fisheries Act 1996.

5. Enforceability of Protocols

5.1 Section 223 of the Settlement Legislation provides that:

- (1) ~~The Crown must comply with a protocol while it is in force.~~
- (2) ~~If the Crown fails, without good cause, to comply with a protocol, the trustees may, subject to the Crown Proceedings Act 1950, enforce the protocol.~~
- (3) ~~Despite subsection (2), damages or any form of monetary compensation are not available as a remedy for failure by the Crown to comply with a protocol.~~
- (4) ~~To avoid doubt, -~~
 - (a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and
 - (b) subsection (3) does not affect the ability of a court to award costs incurred in enforcing the protocol under subsection (2).

6. ~~Breach of Protocols not a breach of Deed of Settlement~~

- 6.1 ~~The Deed of Settlement provides that a failure by the Crown to comply with its obligations under a protocol is not a breach of the Deed of Settlement.~~

7 ~~Limitation of rights~~

- 7.1 ~~Section 24 of the Settlement Legislation provides that:~~

~~This Protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, assets or other property rights (including in respect of fish, aquatic life, and seaweed) held, managed, or administered under the Fisheries Act 1996, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Maori Commercial Aquaculture Claims Settlement Act 2004, the Maori Fisheries Act 2004, or the Te Arawa Lakes Settlement Act 2006.~~