

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR PRIMARY INDUSTRIES WITH NGAI TĀMANUHIRI ON FISHERIES ISSUES

1 INTRODUCTION

- 1.1 The Crown, through the Minister and Director-General, recognises that Ngai Tāmanuhiri as tangata whenua are entitled to have input and participation in fisheries planning processes that affect fish stocks in the Ngai Tāmanuhiri Fisheries Protocol Area (the "**Fisheries Protocol Area**") and that are managed by the Ministry for Primary Industries (the "**Ministry**") under the Fisheries Act 1996.
- 1.2 Ngai Tāmanuhiri has a special relationship with all species of fish, aquatic life and seaweed found within the Fisheries Protocol Area, and an interest in the sustainable utilisation of all species of fish, aquatic life and seaweed.
- 1.3 Under the Deed of Settlement dated 5 March 2011 between Ngai Tāmanuhiri, the Governance Entity and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister for Primary Industries (the "**Minister**") would issue a Fisheries Protocol (the "**Fisheries Protocol**") setting out how the Ministry will interact with the Governance Entity in relation to matters specified in the Protocol. These matters are:
- 1.3.1 recognition of the interests of Ngai Tāmanuhiri in all species of fish, aquatic life or seaweed that exist within the Fisheries Protocol Area that are subject to the Fisheries Act 1996;
 - 1.3.2 input into and participation in the Ministry's national fisheries plans;
 - 1.3.3 iwi fisheries plan;
 - 1.3.4 participation in iwi fisheries forums;
 - 1.3.5 customary non-commercial fisheries management;
 - 1.3.6 contracting for services;
 - 1.3.7 employment of Ministry staff with customary non-commercial fisheries responsibilities;
 - 1.3.8 information exchange;
 - 1.3.9 rāhui; and
 - 1.3.10 changes to policy and legislation affecting this Protocol.
- 1.4 For the purposes of this Fisheries Protocol, the Governance Entity is the body representative of the iwi of Ngai Tāmanuhiri who have an interest in the sustainable utilisation of fish, aquatic life and seaweed that exist within the Fisheries Protocol Area. Ngai Tāmanuhiri has a responsibility in relation to the preservation, protection, and management of its customary non-commercial fisheries in the Fisheries Protocol Area.

This is inextricably linked to whakapapa and has important cultural and spiritual dimensions.

- 1.5 The obligations of the Ministry in respect of fisheries are to ensure 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.
- 1.6 The Ministry and Ngai Tāmanuhiri 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. 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. Ngai Tāmanuhiri consider that this Fisheries Protocol provides a process or opportunity by which the Crown seeks to restore its reputation as a Treaty partner.
- 1.7 The Minister and the Director-General of the Ministry (the “**Director-General**”) have certain functions, powers and duties in terms of the Fisheries Legislation. With the intention of creating a relationship that achieves, over time, the fisheries policies and outcomes sought by both Ngai Tāmanuhiri and the Ministry consistent with the Ministry’s obligations as set out in clause 1.5, this Fisheries Protocol sets out how the Ministry, the Minister and the Director-General will exercise their functions, powers and duties in relation to matters set out in this Fisheries Protocol. In accordance with this Fisheries Protocol, the Governance Entity will have the opportunity for meaningful input into the policy and planning processes relating to the matters set out in this Fisheries Protocol.
- 1.8 The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngai Tāmanuhiri or with another iwi or hapū with interests inside the Fisheries Protocol Area on matters that could affect the interests of Ngai Tāmanuhiri.

2 FISHERIES PROTOCOL AREA

- 2.1 This Fisheries Protocol applies across the Ngai Tāmanuhiri Fisheries Protocol Area which means the area identified in the map included as Attachment A of this Protocol.

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section 18 of the Ngai Tāmanuhiri Claims Settlement Act 2012 (the “**Settlement Legislation**”) and clause 5.11 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 issue set out in Attachment B.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Ministry will meet with the Governance Entity to agree a strategy to implement this Fisheries Protocol within 12 months of this Fisheries Protocol being issued. The strategy may include:
 - 4.1.1 any matters raised in this Fisheries Protocol;

- 4.1.2 reporting processes to be put in place, for example an annual report to be provided by the Ministry to the Governance Entity;
 - 4.1.3 the development of an implementation plan that sets out the Ministry's obligations to the Governance Entity arising from this Fisheries Protocol. The implementation plan would identify the relevant Ministry business group responsible for delivering each obligation, and any agreed actions and timeframes; and
 - 4.1.4 review processes for this Fisheries Protocol.
- 4.2 The implementation strategy described in clause 4.1 of this Protocol will have effect from the date specified in the strategy.
- 4.3 The Ministry will establish and maintain effective consultation processes and communication networks with the Governance Entity by:
- 4.3.1 maintaining, at national and regional levels, information provided by the Governance Entity on the office holders of the Governance Entity, addresses and contact details;
 - 4.3.2 providing reasonable opportunities for the Governance Entity to meet with Ministry managers and staff (as might be agreed in the implementation plan); and
 - 4.3.3 providing reasonable opportunities for the Governance Entity 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.
- 4.4 The Ministry will:
- 4.4.1 consult and involve the Governance Entity in the training of relevant staff on this Fisheries Protocol and provide on-going training as required; and
 - 4.4.2 as far as reasonably practicable, inform fisheries stakeholders about this Fisheries Protocol and the Deed of Settlement, and provide on-going information as required.

5. NGAI TĀMANUHIRI TIKANGA AND OBJECTIVES

- 5.1 The vision of Ngai Tāmanuhiri for the Fisheries Protocol Area and taonga species (listed in clause 5.4) is: *Abundant fish species and stocks in pristine waters to sustain our customary and commercial interests.*
- 5.2 The objectives to achieve the vision of Ngai Tāmanuhiri as set out in clause 5.1 is guided by Ngai Tāmanuhiri Tikanga and include:
- 5.2.1 Mana Tangata to achieve improved customary and commercial outcomes for Ngai Tāmanuhiri through actions that include implementing effective planning, management and monitoring systems;
 - 5.2.2 Mana whenua to achieve improved and sustainable fish habitats through actions that include developing and implementing strategies to minimise the impact of land based strategies on Tūranga waterways;

- 5.2.3 Mana moana to achieve improved moana, estuarine and freshwater customary and commercial outcomes through actions that include the development and implementation of an effective Ngai Tāmanuhiri fisheries management plan as set out in clause 7;
 - 5.2.4 Mana Rangatira to achieve improved input by Ngai Tāmanuhiri at the highest level through actions that include engaging in developing and implementing Ministry national policies, strategies and programmes; and
 - 5.2.5 Mana Tipuna to uphold tikanga principles and to attain the vision of Ngai Tāmanuhiri that includes the achievement of pristine waters and abundant fish species and stocks through the protection and sustainability of the domains of Tangaroa me ona uri.
- 5.3 The fisheries management objectives of Ngai Tāmanuhiri in relation to the Fisheries Protocol Area include:
- 5.3.1 an increased abundance of all species of fish, aquatic life and seaweed to better enable manaakitanga, including the provision for pātaka kai;
 - 5.3.2 improved access to key fisheries, both commercial and non-commercial fishers;
 - 5.3.3 more effective measures to address localised depletion of fisheries resources particularly in easily accessible areas;
 - 5.3.4 better management of spatial conflicts between commercial, recreational and customary fishers;
 - 5.3.5 improved coordination across agencies on issues affecting fisheries (including those responsible for land-based effects) in order to provide a holistic approach consistent with Ngai Tāmanuhiri tikanga;
 - 5.3.6 better integration in the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998;
 - 5.3.7 priority for management of freshwater fisheries and aquaculture; and
 - 5.3.8 research planning that increases the knowledge base of Ngai Tāmanuhiri to inform future planning and management decisions.
- 5.4 Ngai Tāmanuhiri have a strong traditional association with:

Freshwater Species	Moana
eel (all species)	rock lobster
freshwater crayfish (koura)	flounder (all species)
galaxid species (whitebait)	hapuka
Kahawai	kahawai
Koaro	karengo
kokopu species	kina
Lamprey	kingfish
Mullet	mullet
yelloweye mullet	moki
yellowbelly flounder	mussels
	orange roughy
	paua
	pipi
	pupu (several species)
	shark
	snapper
	terakihi
	tuangi/kakahi
	whale
	wheke (octopus)
	whai (stingray)
	ngoiro (conger eel)
	whetiko (mud bubu)

5.5 The objectives of Ngai Tāmanuhiri will be developed within 12 months of the signing of the Deed of Settlement.

5.6 The Crown and Governance Entity agree that the Ngai Tāmanuhiri vision and objectives set out in clauses 5.1-5.3:

5.6.1 do not affect how the Minister, Director-General and the Ministry will exercise their powers, functions and duties in relation to the matters specified in this Fisheries Protocol; and

5.6.2 do not prevent the Minister, Director-General and the Ministry from interacting with other iwi or hapū with interests in the Fisheries Protocol Area.

5 INPUT INTO AND PARTICIPATION IN THE MINISTRY'S FISHERIES PLANS

6.1 Ngai Tāmanuhiri are entitled to input into and participation in the Ministry's national fisheries plans, where these are being developed that affect the Fisheries Protocol Area. The Ministry's national fisheries plans will reflect the high level goals and outcomes for a fishery. The plans will guide annual identification of the measures (which may include catch limits, research and compliance services) that are required to meet these goals and outcomes.

6.2 Ngai Tāmanuhiri input and participation will be recognised and provided for through the iwi fisheries plan referred to in clause 7, which the Ministry must have particular regard to when developing fisheries plans that relate to the Fisheries Protocol Area.

- 6.3 Where it is intended that any sustainability measures will be set or varied that relate to the Fisheries Protocol Area and are not addressed in any Ministry national fisheries plan, the Ministry will ensure that the input and participation of Ngai Tāmanuhiri is provided for. This will include consulting the Governance Entity on those proposed sustainability measures.

7 IWI FISHERIES PLAN

- 7.1 The Governance Entity will develop an iwi fisheries plan that relates to the Fisheries Protocol Area.
- 7.2 The Ministry will assist the Governance Entity, within the resources available to the Ministry, to develop an iwi fisheries plan that relates to the Fisheries Protocol Area.
- 7.3 The Ministry and the Governance Entity agree that the iwi fisheries plan will address:
- 7.3.1 the objectives of Ngai Tāmanuhiri for the management of their customary, commercial, recreational, and environmental interests in fisheries resources within the Fisheries Protocol Area;
 - 7.3.2 how Ngai Tāmanuhiri will exercise kaitiakitanga in the Fisheries Protocol Area;
 - 7.3.3 how the Governance Entity will participate in fisheries planning processes in the Fisheries Protocol Area; and
 - 7.3.4 how the customary, commercial and recreational fishing interests of the Governance Entity will be managed in an integrated way.
- 7.4 The Ministry and the Governance Entity agree to meet, within 12 months of this Fisheries Protocol being issued, to discuss:
- 7.4.1 the content of the fisheries management plan, including how the plan will legally express, protect and recognise the mana of Ngai Tāmanuhiri me ōna tikanga; and
 - 7.4.2 ways in which the Ministry will work with the Governance Entity to develop and review the fisheries plan.

8 PARTICIPATION IN IWI FISHERIES FORUMS

- 8.1 The Ministry will provide opportunities for Ngai Tāmanuhiri to have input and participate in Fisheries Forums relating to the Fisheries Protocol Area, where the Ministry will engage with parties including iwi on fisheries management activities. The Ministry will provide assistance, within the available resources, to develop forum fisheries plans.

9 MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

9.1 The Ministry undertakes to provide the Governance Entity with such information and assistance (within its resource capabilities) as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include, but is not limited to:

9.1.1 discussions with the Ministry on the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the Fisheries Protocol Area;

9.1.2 making available existing information, if any, relating to the sustainability, biology, fishing activity and fisheries management within the Fisheries Protocol Area; and

9.1.3 training the appropriate representatives of Ngai Tāmanuhiri to enable them to administer and implement the Fisheries (Kaimoana Customary Fishing) Regulations 1998, including any specific Ministry training programmes.

10 CENTRAL LEADERSHIP GROUP

10.1 It is acknowledged that the relationship between the Ministry and the Governance Entity will also be through the Central Leadership Group as provided for in clauses 5.29 to 5.35 of the Deed of Settlement. The purpose of the Central Leadership Group is to:

10.1.1 provide Tūrangānui a Kiwa with a forum to engage with central government departments into the future; and

10.1.2 ensure that the principles of the Treaty of Waitangi are implemented in a co-ordinated manner within the Tūrangā region to the extent consistent with relevant legislation.

11 CONTRACTING FOR SERVICES

11.1 The Ministry will consult with the Governance Entity 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.

11.2 The level of consultation shall be relative to the degree to which the contract impacts upon the interests of other iwi as well as those of Ngai Tāmanuhiri, and may be achieved by one or more of the following:

11.2.1 the Ministry may notify the Governance Entity of a contract for fisheries services;

11.2.2 the Ministry may notify the Governance Entity of an invitation to tender for fisheries services; and

11.2.3 the Ministry may direct a successful contractor to engage with the Governance Entity as appropriate, in undertaking the relevant fisheries services.

11.3 If the Governance Entity is contracted for fisheries services then clause 11.2.3 will not apply in relation to those fisheries services.

12 EMPLOYMENT OF STAFF WITH CUSTOMARY FISHERIES RESPONSIBILITIES

12.1 The Ministry will consult with the Governance Entity on certain aspects of the employment of Ministry staff if a vacancy directly affects the fisheries interests of Ngai Tāmanuhiri 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 Ngai Tāmanuhiri, 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 in relation to this Fisheries Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity will be consistent with Te Tiriti o Waitangi/the Treaty of Waitangi principles by respecting and upholding the mana of Ngai Tāmanuhiri which includes Ngai Tāmanuhiri tikanga, and in all cases will include:

13.1.1 ensuring that the Governance Entity is contacted 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 Governance Entity with sufficient information to make informed decisions 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 Governance Entity in decision making process including the preparation of submissions 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 Governance Entity with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation.

13.2 Where the Ministry has consulted with the Governance Entity, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

14 RĀHUI

- 14.1 The Ministry recognises that Ngai Tāmanuhiri tikanga such as rāhui guides traditional use and management practice of Ngai Tāmanuhiri and supports their rights to practice their tikanga.
- 14.2 Ngai Tāmanuhiri believe that tikanga such as rāhui is an effective expression of best practice fish management, and wish to explore with the Ministry how such tikanga can be given legal effect through regulation.
- 14.3 Ngai Tāmanuhiri undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngai Tāmanuhiri over their customary fisheries, and also the reasons for the rāhui.
- 14.4 The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngai Tāmanuhiri, over their customary fisheries.
- 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 rāhui proposed by Ngai Tāmanuhiri 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 rāhui placed in the event of a drowning.

15 INFORMATION EXCHANGE

- 15.1 Ngai Tāmanuhiri and the Ministry recognise the benefit of mutual information exchange. To this end, the Ministry and Ngai Tāmanuhiri will as far as possible exchange any information that is relevant to the management of the Fisheries Protocol Area.
- 15.2 The Ministry will make available to Ngai Tāmanuhiri all existing information held by, or reasonably accessible to, the Ministry where that information is requested by Ngai Tāmanuhiri for the purposes of assisting them to exercise their rights under this Fisheries Protocol.
- 15.3 The Ministry will provide to the Governance Entity any reasonably available information concerning the management of species or stocks that are of significance to Ngai Tāmanuhiri.

16 PAYMENT OF COSTS

- 16.1 Should Ngai Tāmanuhiri agree to undertake cultural and/or spiritual practices within the Fisheries Protocol Area upon a formal written request by the Ministry, the Ministry will make a payment to the Governance Entity for the costs of undertaking those practices on an actual and reasonable basis.

17 DISPUTE RESOLUTION

17.1 If either the Ministry or the Governance Entity considers there has been a problem with the implementation of this Fisheries Protocol, then that party may give written notice to the other party that they are in dispute. The following process will be undertaken once notice is received by the other party to this Fisheries Protocol:

17.1.1 within 15 working days of being given written notice, the relevant contact persons from the Ministry and the Governance Entity will meet to work in good faith to resolve the issue;

17.1.2 if the dispute has not been resolved within 30 working days of receipt of the notice referred to in clause 17.1, the Director-General of the Ministry and representative of the Governance Entity will meet to work in good faith to resolve the issue;

17.1.3 if the dispute has not been resolved within 45 working days despite the process outlined in clauses 17.1.1 and 17.1.2 having been followed, the Ministry and Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

17.2 In the context of any dispute that has been initiated under clause 17.1, the Ministry and the Governance Entity will place utmost importance on the fact that the Ministry and Ngai Tāmanuhiri are, in accordance with clause 1.6 of this Fisheries Protocol, seeking a relationship consistent with Te Tiriti o Waitangi/Treaty of Waitangi and its principles, and such a relationship is intended to assist both parties to exercise their respective responsibilities with the utmost cooperation to achieve the outcomes sought by both over time.

18 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS FISHERIES PROTOCOL

18.1 If the Ministry consults with iwi on policy development or any proposed legislative amendment to the Fisheries Act 1996, which impacts upon this Fisheries Protocol, the Ministry shall:

18.1.1 notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which iwi will be consulted;

18.1.2 make available to the Governance Entity the information provided to iwi as part of the consultation process referred to in this clause; and

18.1.3 report back to the Governance Entity on the outcome of any such consultation, either in writing or in person.

19 DEFINITIONS

19.1 In this Fisheries Protocol:

Crown means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Fisheries Legislation means the Fisheries Act 1983, 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, and any regulations made under these Acts;

Governance Entity has the meaning given to it in the Deed of Settlement;

Ngai Tāmanuhiri has the meaning given to it in the Deed of Settlement;

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

Settlement Date means the date that is 20 business days after the date on which the Settlement Legislation comes into force.

ISSUED on 28. August 2012

SIGNED for and on behalf of THE SOVEREIGN in right of New Zealand by the Minister for Primary Industries

WITNESS



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ATTACHMENT A – FISHERIES PROTOCOL AREA



ATTACHMENT B – TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

- 1.1 The Minister may amend or cancel this Fisheries Protocol, but only after consulting with the Governance Entity and having particular regard to its views (section 18).

2. Noting

- 2.1 A summary of the terms of this Fisheries Protocol must be noted in the fisheries plans affecting the Fisheries Protocol Area, but the noting –

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the fisheries plans for the purposes of the Fisheries Act 1996 (section 23).

3. Limits

- 3.1 This Fisheries Protocol does not –

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including –

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tangata whenua (section 19); or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngai Tāmanuhiri (section 19); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, assets or property rights (including in relation to fish, aquatic life, or seaweed) under–

(a) the Fisheries Act 1996; or

(b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(c) the Maori Commercial Aquaculture Claims Settlement Act 2004; or

(d) the Maori Fisheries Act 2004 (section 23).

4. Breach

- 4.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Fisheries Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 20).

4.2 A breach of this Fisheries Protocol is not a breach of the deed of settlement (clause 5.14).