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28 February 2007

Shared Fisheries Consultation
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Shared Fisheries Discussion Document

This submission is made by the New Zealand Business Roundtable, an organisation comprising primarily chief executives of major New Zealand business firms. The purpose of the organisation is to contribute to the development of sound public policies that reflect overall New Zealand interests.

We are interested in this issue because of the principles involved. We recognise the legitimate interests and rights of customary, recreational and commercial fishers and the need to reconcile them in the context of the total allowable catch (TAC). We support the principles of the Individual Transferable Quota system of fisheries management. Any changes to the allocation of the TAC between competing users, and in particular any decision to allocate a larger share to recreational fishers, should, we believe, be considered within this framework.

As we see it, the issues discussed in *Shared Fisheries* essentially concern property rights. Secure property rights are vital to economic prosperity and social harmony. In this case an additional factor is the 1992 Deed of Settlement with Maori. This too needs to be respected. Coming after the foreshore and seabed dispute, any action that failed to respect property rights and the Fisheries Settlement would seem recklessly divisive.

Any likely action by the government to alter existing rights would take the form of regulation. Therefore it should be considered within the framework of the regulatory impact statement (RIS) procedures laid down in the Cabinet Manual. Among other things these require:

- a statement of the nature and magnitude of the problem and the need for government action;
- a statement of the public policy objective(s);
- a statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving desired objective(s);
- a statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits of the proposal; and
- a statement of the consultation undertaken.

Shared Fisheries fails to meet most, if not all, of these requirements. In the context of the government's Quality Regulation Review, the minister of commerce Lianne Dalziel has been making much of the government's commitment to good regulatory processes, and in particular to strengthening the RIS disciplines. Even though the document does not constitute a specific set of proposals for legislation, its contents have been considered by Cabinet and analysis comparable to that required in an RIS should have been presented. (The minister of commerce has announced that from 1 April of this year departmental discussion papers must contain "questions around the substantive RIS sections (or contain a draft RIS), so that the assumptions are open to scrutiny prior to Cabinet decisions".)

In our view, if the government wishes to continue to explore the issues raised in *Shared Fisheries*, the Ministry of Fisheries should be required to conduct an analysis within the RIS framework for further public discussion. If the government wishes to transfer a larger share of the TAC to recreational fishers, the mechanisms of the Quota Management System are available. Ideally, organised recreational fisher interests could buy quota from other holders on a willing seller/willing buyer basis. In the absence of suitable representative organisations, the government could do the same on their behalf. In assessing that option, however, we would make the following points:

- the government would need to justify the use of taxpayers' money for this purpose (to benefit a particular group in the community) in relation to competing priorities (including lower taxes);
- such transactions should be on a willing seller/willing buyer basis and on the condition that the principles of relevant undertakings (eg the Deed of Settlement) were respected.
- any suggestion that the power of eminent domain should be invoked to force such a transfer should be approached with great care. This is a power that should only be used for an essential public purpose. That is a very stringent test.

The discussion document clearly proposes expropriation of property rights but it does not discuss relevant principles and tests and speaks only loosely about "redress". If anything other than voluntary transactions were to be contemplated, the essential public purpose test for intervention should be met and in that event there should be full compensation for regulatory takings.

Finally, we think the process for considering this issue, including the lack of proper consultation, has been woefully inadequate. In some respects the defects are similar to the shortcomings of the earlier proposals regarding public access to private land, another property rights issue. This has benefited from reconsideration and more extensive consultation. We understand commercial fishing interests are willing to engage in constructive discussion of what is acknowledged to be a complex issue and recommend such a process as a way forward. Voluntary measures should be considered as a first step. If any regulatory proposals emerge, we submit that they should be formulated within the framework of the Cabinet Manual requirements for regulatory impact statements and on the basis of the principles in this submission.

Yours faithfully

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