



24 May 2016

Michael Heron QC
Barrister

Dear Mr Heron

Prosecution decisions in Operations Achilles, Hippocamp and Overdue

This letter sets out the terms of reference for the above review.

Background

Between November 2012 and February 2013, MPI used surveillance cameras on several fishing boats operating out of Timaru and Oamaru ports for the purpose of observing the effects of commercial trawling on Hector's dolphins. In the course of reviewing the footage from these cameras, some suspected breaches of the Fisheries Act 1996 were observed. Ministry staff consequently undertook a more extensive review (Operation Achilles), which led to the drafting of the *Operation Achilles Preliminary Investigation Report July 2013*.

In February/March 2012, MPI also undertook another operation (Operation Hippocamp) to gather information to help determine information on catch mix and fish size. A report, *Operation Hippocamp Investigation Report March 2013*, was produced.

In 2003/04, a Ministry of Fisheries investigation, Operation Overdue, identified that some boats were processing and reporting fish in a way that resulted in understatement of catch weights. A report was prepared for this investigation.

All three of these reports identified suspected breaches of Fisheries law and, after legal input, decisions were made not to prosecute.

In May 2016, copies of the reports into Operations Achilles, Hippocamp and Overdue found their way into the public domain, resulting in criticism of the Ministry's decisions not to prosecute. I place a high priority on the Ministry having strong credibility with the public when it comes to our role as the regulator of fisheries in New Zealand and our role in holding people to account when illegal activity takes place.

As a consequence, I am tasking you with reviewing the circumstances around Operations Achilles, Hippocamp and Overdue, including the decisions not to prosecute.

Terms of reference

Please review the following matters:

1. the appropriateness of the decision of the Ministry not to take prosecution action in relation to Operations Achilles, Hippocamp and Overdue;
2. the adequacy and appropriateness of the Ministry's response to alleged offending identified in Operations Achilles, Hippocamp and Overdue;
3. whether any other prosecution or compliance action should have been taken in respect of Operations Achilles, Hippocamp and Overdue;
4. whether the Ministry is restricted from taking action on your findings, and the appropriateness of any legislative restrictions;

5. any matters that I may refer to you related to other decisions about whether to prosecute suspected fisheries offending; and
6. any related matter that I may refer to you.

You should make any recommendations you consider appropriate.

In carrying out your review, I expect you to take into account:

1. the matters set out in the Solicitor-General's Prosecution Guidelines;
2. the prosecution files prepared by MPI Compliance Branch officers;
3. legal advice provided in relation to the prosecution files;
4. the range of alternative compliance tools relevant to any alleged offending; and
5. any other information or matters relevant to a decision whether to prosecute in Operations Achilles, Hippocamp and Overdue.

I will make my staff available to you, along with any documents or information you require to conduct the review.

Reporting

I intend to publish your review after it is finalised. Any publication would include such redactions as may be necessary to protect the privacy of individuals, future compliance action or any prosecution action, whether related to the matters under review or otherwise.

I look forward to receiving your report.

Yours sincerely



Martyn Dunne CNZM
Director-General