TE OHU KAIMOANA

MĀORI FISHERIES TRUST

28 March 2013

Primary Production Select Committee
PARLIAMENT BUILDINGS

Tena koutou katoa

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill

Introduction

1 Te Ohu Kaimoana (Te Ohu) welcomes the opportunity to make a submission on the above Bill. Te Ohu was established under s.33 of the Maori Fisheries Act 2004 and has a key role in the Maori Fisheries Settlement. Te Ohu is the corporate trustee of the Te Ohu Kai Moana Trust. The purpose of Te Ohu Kai Moana Trust is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:

- ultimately benefit the members of iwi and Māori generally
- further the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
- contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

In carrying out its role, Te Ohu works actively with iwi organisations who have received, or who will receive settlement assets under both the Aquaculture and Fisheries Settlements. We also work actively with the wider seafood industry (both fisheries and aquaculture) and participate in industry organisations to protect the interests of iwi and Māori as the beneficiaries of the settlements.

2 Given the potential consequences of this Bill for iwi interests in commercial fisheries, Te Ohu has assisted in providing technical advice to the Iwi Leaders Group appointed by iwi leaders across New Zealand to engage with Ministers on the implementation of the Government's decisions to require the re-flagging of foreign charter vessels. Our objective in participating in such a process is to support iwi to ensure that the government's decisions are implemented in a manner that deals with the actual problems addressed through the review of foreign charter vessels, while not undermining the ability of iwi to profitably harvest their ACE for stocks currently harvested by foreign charter vessels.

TE OHU KAI MOANA TRUSTEE LIMITED
Trustee for the Māori Fisheries Trust
Protecting Māori fisheries assets for future generations

Level 4 | Revera House
48 Mulgrave Street
PO Box 3277
Wellington | New Zealand

Phone 64 4 931 9500
Fax: 64 4 931 9518
Email: tari@teohu.maori.nz
Web: www.teohu.maori.nz

3 Please note that in finalizing our submission we were made aware that additional briefing papers had just been publicly released by the Ministry for Primary Industries. Should we find after reviewing these papers that there is a need to amend what we have said in our submission, we will provide the Committee with a revised submission as soon as possible.

4 Te Ohu Kaimoana wishes to appear before the select committee. The key contact person is Kirsty Woods, Manager, Fisheries Team, Te Ohu Kaimoana Trustee Ltd (contact details on page 1).

Summary

5 Te Ohu Kaimoana considers that the set of principles developed through the Iwi Leaders Group provides a sound basis for assessing the Government's proposals:

- ***zero tolerance for exploitation or rule breaking*** – mistreatment of workers, unsustainable fishing practices and activities that damage the environment are all contrary to fundamental iwi values and are unacceptable;
- ***protecting rights of due process and natural justice*** – no party accused of wrong-doing should be tried in the media or put out of business through administrative decisions made without independent scrutiny;
- ***promoting best practice in employment*** – all workers should be respected, valued and kept safe;
- ***protecting the value of fisheries settlement assets*** – the Crown should not adopt a policy that would negatively affect settlement assets unless no effective alternative exists;
- ***ensuring cost-effective implementation*** – as a matter of good governance, all measures should be as cost-effective as possible, with costs targeted and proportionate to the benefits of improved compliance;
- ***encouraging investment and workforce development*** – if the seafood industry is to play its part in the government's objective of doubling the value of primary sector exports by 2025, it requires policy settings that create certainty to encourage investment in people, infrastructure and research.

6 We appreciate that the task of developing a system that lives up to these principles is challenging but do not consider the Bill (along with associated measures such as the draft risk management framework that is open for submissions) will provide a regime that meets that challenge.

7 Broadly speaking, the Bill does two things:

- excludes any fishing vessels not flagged to New Zealand from May 2016
- expands the discretion and powers of the chief executive in relation to vessel registration and applies them to the whole New Zealand fishing fleet.

8 Te Ohu Kai Moana is concerned these options are not the most effective or "least cost" options for achieving the government's objectives. The proposed requirement that all New Zealand fishing vessels be flagged to New Zealand from May 2016 will have adverse effects on the value of quota and ACE currently fished by foreign charter vessels for reasons we outline in our

submission. This will have flow on effects on iwi. We recommend an alternative approach be considered that would deem foreign flagged vessels to be New Zealand vessels and subject to full New Zealand law. The deeming process could be subject to vessels meeting appropriate standards.

9 Bringing foreign flagged vessels under full New Zealand law is one matter. Changing that law as it relates to vessel registration and applying it to the entire fishing fleet is another. It is our assessment that subject to application of suitable standards when foreign vessels apply to be "deemed" as New Zealand ships, no further changes to the registration system that applies to all fishing vessels can be justified at this time. We recommend that the changes to the registration process, along with the additional powers provided to the chief executive, be set aside.

10 If there is a concern that broader changes are required to the current regime for managing risks and compliance across the fleet, then a suitable policy development process should be initiated in consultation with Te Ohu and iwi technical advisers, Seafood New Zealand and fisheries Sector Representative Entities. Unlike the changes proposed in the Bill, the outcome of that process should complement our existing approach to risk management and enforcement, be fair and transparent, and consistent with the principles of natural justice.

11 In the following sections we outline in more detail our concerns with the Bill and alternative approaches that go some way towards addressing those concerns while providing for the necessary changes in relation to the use of foreign charter vessels.

The requirement that all fishing vessels be flagged to New Zealand

Summary of the Bill's provisions

12 Clause 10 of the Bill amends section 103 of the Fisheries Act to require that a person cannot use a fishing vessel to take fish, aquatic life, or seaweed for sale, in New Zealand fisheries waters, unless it is a New Zealand ship, the vessel is registered in the Fishing Vessel Register as a fishing vessel and the person complies with all conditions of registration (new section 103 (1)).

13 A New Zealand ship must be registered under the Ship Registration Act, with the outcome that it will be flagged to New Zealand.

The problem the Bill aims to address

14 The Government's decision to require all fishing vessels to be New Zealand flagged aims to clarify the jurisdictional problems of asserting authority over employment, health and safety in our EEZ. However we do not consider it is necessary to require vessels to be flagged to New Zealand to achieve this.

15 We have expressed the view in other submissions that government agencies could have done more to act to deal with problems within the current system. It is noteworthy that the Review Panel on Foreign Charter Vessels commented that "despite jurisdictional and practical problems, it seems … that New Zealand's government agencies can do more to ensure compliance with New Zealand rules and standards". Agencies have been "acting in isolation, with little in the way of information sharing or co-ordinated decision making on FCV issues" (para 452). In addition, the Panel concluded that the mistreatment of crew did not appear to be as wide-spread as reported.

16 The government approved the first 6 recommendations of the Review Panel and in doing so established an inter-agency forum to ensure coordination and sharing of information. Agencies have been much more active in addressing issues of concern and Immigration New Zealand, in particular, has adopted both more stringent employment standards and more rigorous audit processes. The regime requires explicit decisions each year to allow vessels to operate in New Zealand and conditions can and are being attached to achieve the required standards.

17 Thus in many respects the decision to require the flagging of all foreign charter vessels to New Zealand is surprising. The Review Panel decided against recommending the flagging of all foreign charter vessels to New Zealand because of the uncertainties and risks it would pose for the future of the foreign charter vessel fleet and the fishing industry generally (p 91 of Review Panel Report). For instance, they noted that "a number of firms and regional economies depend heavily on the business generated by the FCV fleet" and "reflagging could also reduce the value of quota and the price of ACE if it resulted in a significant downsizing of the fleet" (p 91 of the Panel's report).

Consequences for iwi

18 Information on the structure of the Fisheries Settlement, and the interests that iwi hold in fisheries harvested by foreign charter vessels is contained in the submission made by Te Ohu to the Review Panel (see Appendix 1). The Fisheries Settlement is a full and final settlement of Maori claims to fisheries. In order to ensure that the Settlement will always be available to Maori, Parliament included provisions in the Maori Fisheries Act to prevent the sale of settlement quota outside the entities involved in the allocation of the commercial settlement assets – iwi (through MIOs and AHCs) and the Te Ohu Kaimoana group (Te Ohu and AFL). This group as a whole **must** retain ownership of settlement quota - including the low-value, high-volume fish stocks that are harvested primarily by foreign charter vessels. Thus if stocks presently fished by foreign charter vessels are unable to be fished because the capacity is not available, iwi will have far less flexibility than other quota holders to dispose of the quota, or even to exit some fisheries and devote their investment to others.

19 Returns from quota and ACE are the primary source of income for many iwi organizations and form the basis for the services they provide to their members, including education grants, social and cultural facilities, environmental advocacy and communication with iwi members. Their ability to provide these services is likely to be affected to different degrees by the proposed changes.

20 While it is clear that iwi face a number of constraints that mean they are likely to be more affected by the changes to the regime than other quota holders, the impact on iwi quota owners of vessels not being able to reflag is difficult to predict in precise terms. However it is possible to provide a sense of the potential range of those impacts.

21 Modeling of average ACE prices for all stocks fished by foreign charters vessels (either in part or as a whole) suggests that the worse-case scenario (which would mean foreign charter vessels cannot work under the new regime and thus the stocks they currently fish are no longer fished) could reduce the value of settlement quota by up to $120 million, and more importantly reduce annual income by about $10 million. This comes from both the loss of income for the low value stocks that would not be caught by the NZ fleet as well as the expected reduction in ACE price for the high value species like hoki and orange roughy because there will be fewer boats and therefore less competition for ACE as well as increased costs from the new regime and

overheads spread over a far lesser volume of fish caught. This does not factor in losses that might result from additional costs and uncertainty applied to New Zealand owned vessels, including those in inshore fisheries.

22 Even in the best situation where flagging to New Zealand is possible for most of the fleet or substitutes are available there will be a reduction in ACE prices due to the additional costs that will apply – it is hard to estimate this but it could be expected that there will be at least a 15% reduction across the board resulting in a combined annual loss of income to all iwi of approximately $2.4M and combined overall loss of capital value in the settlement of $27M.

23 Since the announcement of the government's changes, vessels from different jurisdictions appear to be having mixed success in transitioning through to New Zealand flagging with barriers relating to the requirements in their home jurisdictions, or related trade advantages. For instance for regular short term charters, the prospect of having to deregister from their current jurisdiction and flag to New Zealand – and then reverse the process on leaving New Zealand waters – is impractical and costly. The regulatory impact statement that accompanies this Bill shows that Korean vessels (with a catch value of around $158 million) could be negatively affected given financial arrangements they have with their own banks. Japanese vessels (catch value around $27 million) may not be permitted to be reflagged to another jurisdiction (see Appendix 3 of the regulatory impact statement). In addition we note as a result of these impacts the statement notes that there could be an increase in tariff costs of $850,000 to $4.8 million.

24 The regulatory impact statement notes that while there are few vessels available for charter, there are likely to be a number available for purchase. However the ability of quota holders (including iwi) to purchase the vessels and carry out profitable businesses has not been tested.

25 There remain unanswered questions about the full implications of requiring all fishing vessels to be flagged to New Zealand. Alternative options should be explored.

Solutions

26 Te Ohu Kaimoana strongly supports the need for employees to be treated fairly and for working conditions to be safe. In addition, the Fisheries Settlement was agreed to by Maori on the basis that New Zealand's fisheries management system aims to ensure sustainability, so we fully support measures to achieve that objective. We also accept that there is a cost to ensuring adequate measures are in place, not only to achieve sustainability, but to demonstrate it.

27 At the same time, the Crown, given its obligations under the Deed of Settlement (referred to in section 32 of the Maori Fisheries Act) should not adopt a policy to address these matters in such a way that settlement assets are unduly adversely affected - unless no effective "less cost" alternative exists.

28 While reflagging gives New Zealand clear jurisdiction to deal not only with fisheries but also employment, vessel safety and criminal activity, it is not clear that this is the only option that would provide the necessary jurisdiction without removing the benefits that can be generated by vessels that retain the flag of their own country. We do not consider that this issue has been well enough canvassed in the advice that has gone to Ministers.

29 We recommend that the Select Committee urge the Government to give serious consideration to an alternative and more flexible approach. This would involve a legislative provision that

deems all vessels on the fishing vessel register to be New Zealand vessels for the purposes of all relevant New Zealand legislation and regulations. Deeming could be subject to the vessels and operators satisfying appropriate conditions. This would achieve the government's objectives in a manner equivalent to re-flagging without requiring vessels to be deregistered from their current state flags. The government would still be able to exclude vessels that do not meet appropriate standards but would still enable the good operators to bring benefits to New Zealand.

30 In the event that this option is not pursued, we recommend that provision be made for exceptions to provide for specialist vessels that are only needed on a short term or temporary basis, subject to appropriate conditions.

The registration process

Summary of the Bill's provisions

31 Certain amendments to section 103 of the Fisheries Act take effect on enactment, giving the chief executive the following powers in relation to foreign charter vessels:

- place conditions on foreign charter vessels that relate to fisheries management, employment or vessel safety (new section (103) (4))
- amend, add to or revoke any conditions of registration placed on a foreign charter vessel (new section 103 (6)(ba))
- have regard to any risk associated with fisheries management, employment, or vessel safety that the chief executive considers would be likely to result if the vessel were to be registered (new section 103 (6AA)).

32 However new section 106A gives the chief executive power to suspend the registration of <u>all</u> vessels if satisfied on reasonable grounds that:

- its registration, for the time being, poses a risk of a breach of fisheries management, employment, or vessel safety laws justifying that action, or
- there has been a breach of any condition of its registration (section 106A (1) (a) and (b)).

The first of these grounds is extraordinary in that it gives the chief executive the power to suspend registration where he or she considers something <u>might</u> occur, rather than acting on evidence that a breach has actually occurred.

33 The chief executive is given discretion under section 106 A (2) and (3) to take into account information from a variety of sources including government agencies and "any person" (subsections 2 and 3) in considering whether the tests in the previous section have been triggered. However it is unclear how this information will be dealt with and whether those subject to a proposed suspension will have access to it. We note that it is proposed in the risk management framework that has been released by MPI for consultation that access to information will include only that information an operator would be entitled to under the Official Information Act. This means there is no guarantee that operators will fully understand the grounds upon which they could be suspended.

34 Sections 106 A (4) – (7) set out the process the chief executive must follow if the tests set out above are triggered. If he or she considers that there is a likelihood that an operator poses a risk, or that conditions of registration have been breached, they must carry out a notification process setting identifying actions that must be taken by an operator, and grounds for considering that the actions must be taken and the period within which they must be undertaken or cease (subsection 4). Subsection 5 sets out the next steps to be taken should the actions directed earlier have not been carried out. This includes a notice period where the chief executive intends to suspend registration and a reasonable opportunity for the operator to make submissions to the chief executive, which the chief executive must "consider". The chief executive may impose conditions and requirements in respect of the implementation of a suspension (subsection 6) and if they suspend a vessel's registration, follow a notification process setting out the grounds, timeframe and any conditions.

35 New section 107 (6) broadens the grounds on which the chief executive may cancel a vessel's registration, including not complying with requirements imposed as part of the suspension of registration, and if the vessels owner, operator, foreign charter party or notified user is convicted in New Zealand or another country of an offence relating to fishing or transportation in the fisheries jurisdiction of New Zealand or that other country.

36 The Bill sets out further changes to the process for granting consent to the registration of all New Zealand fishing vessels that will take effect from May 2016. The process makes it clear that the chief executive may grant consent to registration of a vessel or vessels operated by any person, and that this consent can be subject to any conditions that the chief executive thinks fit to impose (and such conditions may include, but are not limited to, conditions that relate to fisheries management, employment, or vessel safety (new section 103A (1) (a and b)). Matters that the chief executive must take into account, listed in new section 103A(2) include:

- any risk associated with fisheries management, employment, or vessel safety that the chief executive considers would be likely to result if the vessel were to be registered (subsection (a))
- the previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charter party, notified user, master or crew (subsection (b))
- any other matters that the chief executive considers relevant (subsection (c)).

37 Part two of the Bill provides for observers to be given the power to collect information on matters relating to employment and vessel safety. We are aware that operators have some justified concerns that the role of observers – particularly in respect of employment and safety – could undermine the authority of skippers and therefore the safety of vessels at sea.

The problem the Bill aims to address

38 The problem that was intended to be addressed following the review was the performance of foreign charter vessels and the risks they pose to New Zealand's reputation amongst other things. These risks arose from allegations about poor performance and abuse of foreign crew and a desire on the part of the government to ensure it can take action to investigate and if appropriate, enforce New Zealand standards onboard the vessels concerned. The wording in the Bill however suggests that the design of the process is now intended to move to the fisheries, employment and safety risks that may be posed by <u>all</u> fishing operations – despite the fact that there has been no open process to assess the need for this to apply to all vessels.

39 Te Ohu Kaimoana fully accepts that the risks that are generally inherent in fishing operations should be well managed. However there are already numerous powers available to relevant agencies to deal with fisheries, employment and safety problems. For instance it has been suggested that the proposed scope of the suspension and cancellation powers is driven by a desire that government have tools that enable it to act quickly in response to information suggesting non-compliance of some type might have occurred. It is true that the processes involved in proving offending or non-compliance, and allowing the Courts to impose appropriate sanctions, can take time, but that is precisely because they provide protections of the rights of those accused. In any event, each of the agencies involved already have powers that allow them to act quickly and decisively:

- **Fisheries:** Section 204 of the Fisheries Act 1996 empowers any Fisheries Officer, if he or she believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any permit, registration, etc issued under the Act, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port. Having given such a directive, the Officer may also give to the master or any person on board the vessel any reasonable directions in respect of any activity, etc (e.g. to cease fishing) while the vessel is proceeding to port.

- **Safety:** Section 55 of the Maritime Transport Act 1994 empowers the Director of Maritime New Zealand (MNZ) to detain any ship or prohibit or impose conditions on the use or operation of any ship at any time, if the Director believes "on clear grounds" that operation or use of that ship endangers or is likely to endanger any person or property, or is hazardous to the health or safety of any person. It is worth noting that the Act expressly provides for immediate appeal to the District Court of any such detention, prohibition or imposition (s.55(7)) and, moreover, that Maritime New Zealand is liable to pay to the owner of a ship compensation for any loss resulting from the Director unduly detaining or delaying that ship and, where action under s.55 is taken "on the information of a complainant and the information is subsequently found to be frivolous or vexatious", that complainant is liable to Maritme New Zealand for all costs Maritime New Zealand incurs or is liable.

- **Immigration/employment**: Para WJ3.1 of Immigration New Zealand's Operational Manual provides that "where an audit identifies significant non-compliance with conditions of an Approval in Principle (AIP), that AIP will be immediately suspended. Para WJ5.40.1.b makes it clear that audits or investigations can occur as a matter of urgency, presumably in response to concerns being raised by or on behalf of crew.

Consequences for industry and iwi

40 The changes in the Bill are not well focused, contain too much discretion, push the boundaries of the principle of natural justice and create uncertainty for everyone. We consider that in light of the existing powers available to relevant agencies, these changes are largely unnecessary.

41 The registration process provides the "hook" used to control the use of vessels based on an assessment of the risk they pose not only to fisheries but also to those matters controlled by other government agencies responsible for employment and vessel safety. Because all vessels will be flagged to New Zealand from May 2016, these provisions will apply comprehensively to registration decisions that apply to the entire fishing fleet. Moreover the scope and application of these provisions goes well beyond cost effective and transparent regulation and sets out a regime that provides the chief executive with discretion to decline, suspend or (ultimately)

cancel a vessel's registration without evidence of wrong doing and based merely on suspicion that some wrongdoing might occur.

42 Under the current regime, registration for New Zealand vessels is a straightforward process that is virtually automatic, provided all relevant information relating to vessels and crew is provided. Applications from all operators are made through FishServe, with those from operators of foreign owned vessels then being referred to MPI. FishServe has been delegated authority to grant all applications in respect of New Zealand-owned vessels. This is consistent with the distinction made in the registration provisions between New Zealand vessels and foreign owned vessels under the current Act.

43 Now that the registration provisions in the Bill will be the same for all vessels, it is less clear how – or even whether – there will continue to be a more straight forward application process for most vessels that pose a low risk – with higher risk vessels being subject to greater scrutiny. This will create high levels of uncertainty. Without clearer direction in the law on the matters that will be of concern in relation to different classes of vessels or the fisheries they work within, and a clear "filtering" mechanism that requires the chief executive to focus on the real problems, this new process has the potential to become grounded in bureaucracy. MPI has released a draft risk assessment framework for consultation however this is still work in progress.

44 There is no provision for any independent scrutiny of these grant/suspend/cancellation decisions including scrutiny of information provided to the chief executive that may or may not constitute evidence of any wrongdoing/breach of conditions. This, in combination with the broad discretions provided to the chief executive is in conflict with principles of natural justice, creating uncertainty for all vessel owners and operators. We consider that this sends a message that investment in fishing is too risky.

45 The approach runs into conflict with sections 25 and 27 of the Bill of Rights Act 1990, which uphold principles of natural justice, the right to a fair and public hearing by an impartial court and the right to be presumed innocent until proven guilty. It is also inconsistent with provisions in other legislation such as the Resource Management Act that deal with non-compliance through abatement notices and changes to conditions of consent. In both cases consent holders have a right of appeal to an independent body.

46 While the reflagging provisions directly affect the foreign charter fleet, the changes to the registration process affect all commercial fishing vessels. This will have a flow-on effects on the interests iwi hold in every commercial stock.

47 The Crown has an obligation to further the agreements contained in the Fisheries Deed of Settlement. Alternative options for managing risks, breaches of conditions and offences need to be explored before we can conclude that the approach set out in the Bill is the best option. The proposals beg the following questions:

- what are the problems and risks that need to be managed?
- where across the fishing fleet are these likely to be found and why?
- how far can these problems be dealt with under the current fisheries legislation?
- why does vessel registration – particularly post May 2016 – need to be concerned with employment and vessel safety if all vessels are subject to full New Zealand law (whether through reflagging or an alternative deeming option)?
- why can't agencies responsible for those matters invoke their own standards and sanction relevant operators accordingly?

The basis of an alternative approach

48 As already noted, we accept that risks inherent in fishing operations need to be managed and breaches of conditions and offences must be dealt with effectively. However the system needs to ensure that bureaucratic effort is well targeted, cost effective and fair. In addition it should not take away from, or duplicate the system of compliance and penalties that already exists, but should clearly support that system. Operators need to have confidence that if they perform to all required standards, they can carry on with their business with little interference. On the other hand operators also need to understand that poor performance and non-compliance will ultimately lead to sanctions if offences are proven through due process. The triggers for sanctions against poor performance or non-compliance need to be clear.

49 A number of elements which are generally in tension, need to be incorporated into the design of a risk management system:

- clear identification of the risks to be managed and the standards required of vessel operators
- incentives on vessel operators to meet the standards required of them
- the ability for regulators to act to sanction rule breaking
- the need for checks on decision making to ensure that bureaucratic decisions are fair and transparent
- the presumption of innocence until guilt is proven.

Identifying risks to be managed

50 As already noted, the changes proposed in the legislation were intended to ensure the government had the ability to effectively monitor and control the foreign charter vessel fleet. Even then, not all foreign vessels pose a high risk to the extent that they require the same levels of scrutiny on an on-going basis. If it is desirable that there be a level playing field, then the management of risk needs to be based on an understanding of the real risks that need to be managed. The range of risks can then be managed through an appropriate set of conditions – designed specifically to respond to and manage those risks. These conditions should be clear so that operators know when they meet them and when they don't.

51 The current legislation makes a distinction between the registration processes that applies to domestic vessels and to foreign owned vessels. The process that applies to domestic vessels is automatic while foreign charter vessel registration is subject to the chief executive's consent. At the very least, this distinction gives most vessels certainty around the circumstances in which referral to the chief executive is required. If registration is ultimately used as an opportunity to scrutinise vessels as part of a risk management approach, the legislation should make clear what circumstances will require an application to be referred to the chief executive, or what kinds of risk are involved. While it could be argued that this distinction could be made through operational policy, the lack of guidance in the Bill creates a great deal of uncertainty and unwarranted angst. The Bill itself should make clearer that this distinction is provided for in the law, rather than leave the current provisions completely open to changes in operational policy. Even then, a cooperative process is required to identify the nature of the risks to be managed, and how.

52 We are aware that other submissions made by the industry make the case for best practice approaches to risk management that apply in a wide range of Crown and local authority

activities, based on joint government/stakeholder identification of risks and setting of performance standards, devolution of accountability to operators and the need for an audit and compliance role. We agree that this approach is appropriate and should be followed before deciding that changes to the vessel registration process are required to manage particular risks.

Employment and safety

53 We do not consider it appropriate for the chief executive to take into account matters relating to employment and vessel safety in decisions on vessel registration. We have already referred to legislative provisions that give relevant agencies the power to act promptly when required.

54 We have also referred to concerns expressed by operators that with their new powers, observers – particularly in respect of employment and safety – could undermine the authority of skippers and therefore the safety of vessels at sea. At most, we consider that if employment matters are to be considered, they should be focused on vessels with foreign crew only – as this is the only area of risk considered by the Review Panel and – as far as we are aware – by Cabinet. Even then, with demonstration of good performance over time – the process faced by such vessels should become routine and mechanical.

Incentives and sanctions

55 In our view, the compliance approach currently used by MPI provides a good balance between the incentives needed to encourage compliance and the need to penalise operators for on-going or wilful breaches of agreed conditions and standards. This involves four steps: "Volunteer – Assist – Direct – Enforce". This approach provides an opportunity for operators and crew to rectify any problems voluntarily and for MPI to test the likelihood that an offence is a real prospect –and provide assistance to avert that outcome. However ultimately, where the particular matters are not addressed, the operators can be formally required to take action, with prosecution being the ultimate sanction.

56 Any use of additional powers such as suspension or cancellation of registration should be designed to complement this approach, and be based on clear evidence of a breach of the conditions of registration and not an opinion that something <u>might</u> happen. The ability for the chief executive to sanction vessel operators on the basis of an assessment of potential risk has no place in a risk management or compliance regime, and it interferes with the balance between incentives and sanctions referred to above.

Transparency and natural justice

57 If suspension and amended cancellation provisions are ultimately to be part of our fisheries management regime, the decisions made by the chief executive should be made subject to a cost effective review process. Such a process should give operators some comfort that if wrongly accused there is a process of redress. This would also provide sufficient discipline on officials to target their efforts appropriately and ensure that the reason for applying sanctions are made clear. Such a process might involve referral to the District Court, or establishment of an independent appeal body.

Conclusions

58 Te Ohu Kaimoana supports the overall objectives of the government in developing a response to the issues raised by the Review Panel on foreign charter vessels but we consider that there alternative ways of achieving these objectives. We appreciate that the issues the government is endeavouring to address are complex and that New Zealand's reputation is something we should all be working to protect.

59 It is our assessment that subject to application of suitable standards when foreign vessels apply to be "deemed" as New Zealand ships, no further changes to the registration system that applies to all fishing vessels can be justified at this time. Once these vessels are classed as New Zealand vessels – then they will be subject to full New Zealand law. We see no reason why the law that applies now to all New Zealand vessels needs to be changed in the way that is proposed by this Bill. We recommend that the changes to the registration process, along with the additional powers provided to the chief executive, be set aside.

60 If there is a concern that broader changes are required to the current regime for managing risks and compliance across the fleet, then a suitable policy development process should be initiated in consultation with Te Ohu and iwi technical advisers, Seafood New Zealand and fisheries Sector Representative Entities.

APPENDIX 1

TE OHU KAIMOANA

MĀORI FISHERIES TRUST

Submission to the Review Panel on Foreign Charter Vessels

Te Ohu Kaimoana

7 October 2011

TE OHU KAI MOANA TRUSTEE LIMITED
Trustee for the Māori Fisheries Trust
Protecting Māori fisheries assets for future generations

Level 4 | Revera House
48 Mulgrave Street
PO Box 3277
Wellington | New Zealand

Phone 64 4 931 9500
Fax: 64 4 931 9518
Email: tari@teohu.maori.nz
Web: www.teohu.maori.nz

MINISTERIAL INQUIRY INTO FOREIGN CHARTER VESSELS

Introduction

61 Te Ohu Kaimoana (Te Ohu) welcomes the opportunity to make a submission to the above inquiry. In making this submission, Te Ohu seeks to provide the panel with an overview of the Fisheries Settlement in order to place the issue of foreign charter vessels in that context. The submission does not seek to undermine submissions you may receive from iwi organisations. Given the short time available for submissions, we have not been able to investigate the issue to the level we would have desired. However we will continue in our efforts to bring together that information up until the time the panel holds hearings.

Who are we?

62 Te Ohu was established under s.33 of the Maori Fisheries Act 2004 and has a key role in the Maori Fisheries Settlement. Te Ohu is the corporate trustee of the Te Ohu Kai Moana Trust. The purpose of Te Ohu Kai Moana Trust is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:

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63 In carrying out its role, Te Ohu works actively with iwi organisations who have received, or who will receive settlement assets under both the Aquaculture and Fisheries Settlements. We also work actively with the wider seafood industry (both fisheries and aquaculture) and participate in industry organisations to protect the interests of iwi and Māori as the beneficiaries of the settlements.

Terms of reference for the Inquiry

64 The principal objective of the inquiry – convened jointly by the Minister of Fisheries and Aquaculture and the Minister of Labour - is to ensure that the operation of foreign owned and flagged vessels chartered by New Zealand fishing companies supports the following government objectives:

- protect New Zealand's international reputation and trade access
- maximise the economic return to New Zealand from our fisheries resources
- ensure acceptable and equitable New Zealand labour standards (including safe working environments) are applied on all fishing vessels operating in New Zealand's fisheries waters within the exclusive economic zone.

65 The review panel is to consider the following matters:

- *The application of New Zealand's legislative regime to the use and operation of fishing vessels, and in particular foreign charter vessels, with respect to labour, immigration, maritime safety and fisheries management and the compliance with that regime by such vessels and their operators*
- *Any international reputation risks associated with the use of FCVs*
- *Any trade access risks associated with the use of FCVs*
- *Whether the economic factors supporting the use of FCVs deliver the greatest overall benefit to New Zealand's economy and to quota owners*
- *Whether acceptable and equitable labour standards (including safe working environments) are, or can be applied on all fishing vessels operating in New Zealand's fisheries waters within the Exclusive Economic Zone; and*
- *Any other matters that the Inquiry considers relevant.*

66 As the panel will be aware, iwi, through the Fisheries Settlement 1992, have been or are in the process of being allocated 10 – 20% of the quota shares for all fish-stocks in the Quota Management System (QMS). To provide the panel with some context, our submission first sets out the background to the Fisheries Settlement, including the way that iwi have been allocated settlement quota and income shares in Aotearoa Fisheries Ltd. We then identify the issues iwi face in gaining a fair return from their quota – particularly in the case of the lower value high-volume deepwater stocks.

67 We are aware that SeaFIC and the Deepwater Group have addressed the review panel's questions in some detail, and we do not intend to repeat in this submission all the information they provided against every question. While we provide brief comment on each question later in our submission, we touch mainly on information that responds to question (d) which concerns the economic factors supporting the use of FCVs.

The Interim and Final Fisheries Settlements

68 To resolve Maori claims and litigation involving customary fishing, Maori and the Crown entered into an interim settlement in 1989. This settlement acknowledged the full spectrum of Maori customary interests in fisheries (from commercial to non-commercial, historic and developmental) and provided for 10% of the quota for all fisheries then in the Quota Management System to be allocated to Maori. The Maori Fisheries Commission was established to implement this interim agreement by holding the quota that the Crown had been agreed should be allocated to Maori, and by developing a model for its allocation. A number of species fished by deepwater vessels were already in the QMS at that time, including hoki, ling, hake, barracouta, squid, sliver warehouse and jack mackerel.

69 This Settlement was superseded by the Fisheries Deed of Settlement, implemented through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This is the final settlement of all Maori claims to customary fishing rights. Under the settlement, the Crown additionally:

- gave Maori funds to purchase a 50% ownership stake in Sealord Products Ltd
- undertook to provide Maori with 20% of the quota for all new species brought into the Quota Management System after that time
- restructured the Maori Fisheries Commission into the Treaty of Waitangi Fisheries Commission to enhance its accountability to Maori; and
- agreed to make regulations to allow self-management of Maori fishing for subsistence and cultural purposes.

70 In return, Maori agreed:

- that the settlement settled all Maori claims to commercial fishing rights and interests
- to stop litigation (including any Tribunal claims) relating to Maori commercial fisheries
- to support legislation to give effect to the settlement
- to endorse the Quota Management System
- to the making of regulations for customary non-commercial fishing.

71 The Treaty of Waitangi Fisheries Commission was tasked with developing proposals for allocating the various assets and benefits deriving from the settlement in respect of commercial fisheries. In doing so, it also had responsibility to take stewardship of the assets until allocation was completed and to assist iwi/Maori into the business and activity of fishing.

72 In the period that closely followed the final Fisheries Settlement agreement, the Commission put in place a number of measures to assist iwi/Maori into the business and activity of fishing including:

- making the ACE for quota they held available to iwi each year
- supporting members of iwi to participate in commercial fishing organisations as Commission representatives
- developing scholarship and training programs to develop the skills necessary for Maori to participate in management within the industry as well as harvesting and research. These included scholarships for technical training – focusing primarily on harvesting activity (for instance at the Deepsea Fishing School in Westport).

73 For twelve years following the signing of the Fisheries Deed of Settlement, the Commission facilitated debate amongst Maori as to how the Settlement's commercial fisheries assets should be allocated, taking into account that the settlement was for the benefit of all Maori. The debate focused on three main issues:

- to whom should ownership of the assets be allocated, for instance how is an "iwi" defined and how would urban Maori be provided for?
- on what basis would the assets be managed – centrally, a mix of management by a central / national entity and individual iwi, or all to individual iwi?
- on what basis would full or beneficial ownership be allocated, for instance should it be based on the relative population of each iwi, or the extent of their coastline, or a combination of these factors?

74 By 2004, 96% of iwi agreed that the final allocation model should proceed into law. This is now enshrined in the Maori Fisheries Act 2004 (MFA). Decisions made by the courts, including the Privy Council, confirmed that the direct beneficiaries of the Settlement would be traditional tribes (iwi) and all Maori would receive benefits directly or indirectly through them. The allocation model identifies 57 iwi whose identity was confirmed through a formal process requiring each iwi to meet several criteria including mutual recognition, meaning that each iwi needed to be recognised by its neighbours as an iwi. Each iwi would receive assets based on:

- satisfying strict governance and mandating provisions
- a mix of an iwi's population and coastline.

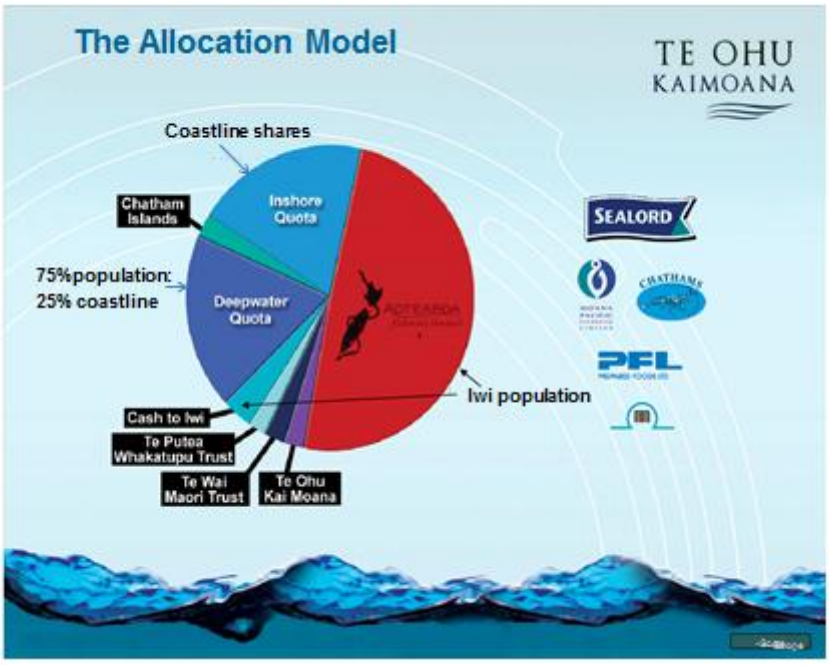
75 Under the MFA each iwi needs to meet a number of criteria:

- develop a constitution for its Mandated Iwi Organisation (MIO) [1]
- establish an Asset Holding Company (AHC) with its own constitution
- establish a register of iwi members [2]
- inform all members on the register and hold a vote that gains approval of at least 75% of those that respond to ratify the constitution of the MIO.

76 As each iwi has completed this process, Te Ohu has been able to recognise the MIO for that iwi. This recognition has allowed Te Ohu to transfer the assets allocated under the iwi population formula. Figure 1 summarises the settlement assets and the basis for allocation. Once allocated and transferred to iwi, the fisheries assets are held and managed by its AHC on behalf of its sole owner - the MIO.

77 Since late 2004, there has been intensive work by Te Ohu and iwi. In that period, 53 (of 57) iwi have been recognised and have received their "population based" assets. These assets include 75% of the quota shares for deepwater stocks and income shares in AFL, which owns 50% of Sealord. Twenty five percent of the deepwater stocks are allocated based on proportional shares of each iwi's coastline. To obtain their inshore quota and remaining assets, iwi with coastline in the same Quota Management Areas must agree with their neighbours their relative shares of quota, with the default entitlement based on coastline lengths. This agreement can only be made between MIOs. Where MIOs cannot agree, they must follow a dispute resolution process set out in the Maori Fisheries Act 2004.

Figure 1



[1] The constitution must comply with all the kaupapa set out in Schedule 7 (including the voting system for the MIO)

[2] The register must comply with Kaupapa 5 of schedule 7 of the MFA and have no fewer than a minimum threshold number as set out in Schedule 3 of MFA

78 Te Ohu continues to retain ownership of quota for the relevant inshore and deepwater stocks where iwi are yet to finalise their governance arrangements or resolve coastline agreements. In the meantime, Te Ohu continues to make the appropriate ACE available to those iwi.

79 As noted above the Fisheries Settlement is a full and final settlement to Maori for customary fishing. It is important that the panel also be aware that provisions in the MFA prevent the sale of settlement quota (shown above) outside the entities involved in the allocation of the commercial settlement assets – iwi (through MIOs and AHCs) and the Te Ohu Kaimoana group (Te Ohu and AFL). This group as a whole **must** retain ownership of settlement quota - including the low-value, high-volume fish stocks. Part of the measures instituted by Te Ohu under MFA was to work with FishServe to establish a separate electronic 'bucket' for this quota and sales procedures to ensure the quota cannot be sold outside the group.

Iwi interests in stocks fished by the deepwater fleet (in particular the foreign charter fleet)

80 Background information provided by MFish states that there are currently 26 FCVs that operate in New Zealand waters. Nineteen of these are trawlers in deepwater fisheries that operate year around and most have a long history as part of the deepwater trawl fleet. These 19 FCVs form part of a fleet of around 45 vessels that comprise the deepwater fleet. As MFish notes, of the nine main species caught by FCVs over the last five years, about two thirds of the total volume has been taken by FCVs. This is about 40% of the total commercial harvest of all species in the QMS. The annual value of this catch is estimated to have ranged between $274.6 and $387.3 million[3] .

81 The use of FCVs is of direct interest to iwi in two capacities:

- as quota-owners (or ACE owners in those more limited cases where allocation has not yet occurred)
- as holders of 80% of the income shares in AFL. Te Ohu Kaimoana holds the other 20% of these income shares, which in part fund its core activities – which we have outlined earlier. Income shares form the basis of dividends paid by to iwi and Te Ohu by AFL.

Iwi as quota owners

82 In its background paper, MFish provides a more detailed breakdown on the percentage of the TACC for nine deepwater stocks that are fished by FCVs during the last five fishing years. This information is useful for understanding the contribution that FCVs make to the industry's harvesting effort, their primary focus on low value, high volume stocks such as squid and barracouta, and the more limited involvement they have in the higher value stocks such as hoki.

83 Taking the 2009/10 fishing year as an example, we have set out the maximum possible settlement quota that could have been fished by FCVs for these nine stocks, based on the percentage of settlement quota that contributes to quota shares for each species and fish stock where relevant (see Table 1).

[3] MFish (2011) *Background paper on the Use of Foreign Charter Vessels*

Table 1

Maximum possible settlement share of FCV Harvest of key stocks for 2009 - 2010[4]

Species		**2009/10 catch**
Hoki	% Settlement quota shares (SQ)	10%
	Total catch	107,200
	% taken by FCVs	31% (33,232)
	Max poss SQ taken by FCVs	10,720
Ling (excludes LIN 1 &2)	% Settlement quota shares	10%
	Total catch	12,100
	% taken by FCVs	25% (3,025)
	Max poss SQ taken by FCVs	1,210
Hake	% Settlement quota shares	10%
	Total catch	6,300
	% taken by FCVs	77% (4,851)
	Max poss SQ taken by FCVs	630
Barracouta	% Settlement quota shares	10%
	Total catch	29,000
	% taken by FCVs	80% (23,200)
	Max poss SQ taken by FCVs	2,900
Squid	% Settlement quota shares	10%
	Total catch	32,400
	% taken by FCVs	94% (30,456)
	Max poss SQ taken by FCVs	3,240
Jack Mackerel (excludes JMA 1)	% Settlement quota shares	10% (JMA 7); 20% (JMA 1&3)
	Total catch	34,400
	% taken by FCVs	99% (34,056)
	Max poss SQ taken by FCVs	6811 (assuming 20% for all stocks)
Southern Blue Whiting	% Settlement quota shares	20%
	Total catch	36,300
	% taken by FCVs	84% (30,492)
	Max poss SQ taken by FCVs	7260
White Warehou	% Settlement quota shares	20%
	Total catch	1,700
	% taken by FCVs	69% (1173)
	Max poss SQ taken by FCVs	340
Silver Warehou	% Settlement quota shares	10%
	Total catch	7,000
	% taken by FCVs	79% (5530)
	Max poss SQ taken by FCVs	700

84 As noted these are maxima but in many cases the total tonnage of settlement quota actually taken by FCVs maybe lower – however we do not have access to information about who ultimately fishes all ACE derived from settlement quota. Certainly in the case

[4] Note that these figures represent the maximum that is possible assuming that all settlement quota is caught by FCVs. However in reality these figures may be lower as some settlement quota may well be harvested by domestic vessels. Base information provided by MFish in their paper "*Background Paper on the Use of Foreign Charter Vessels*"

of some stocks – particularly hoki (a large percentage of which is fished by New Zealand owned vessels) we would expect the portion of settlement quota fished by FCVs to be lower than the maximum we have stated. On the other hand, with a stock such as squid, for which the majority of quota is fished by FCVs, there is more certainty that most of the settlement quota would be harvested by FCVs.

85 These figures are significant for two reasons. First, they show that contrary to the impression provided by the media, ACE derived from settlement quota is not the only ACE fished by FCVs –in fact it represents a relatively small proportion. For many stocks such as barracouta, squid, jack mackerel, southern blue whiting, white warehou and silver warehou, the majority of quota is fished by FCVs, meaning the majority of quota owners use FCVs for these fish stocks. In saying this we refer the panel to the submission made by SeaFIC and the Deepwater Group, that all major New Zealand deepwater fishing companies use some foreign vessels or sell ACE to companies that operate foreign fishing vessels.

86 However secondly, and more importantly, these figures show that industry, as a whole, does not currently have the capacity to fish all the ACE for these fish stocks without FCVs. Additionally, the changes in capacity over the last few years indicate that substantial industry participants do not consider purchase of boats to directly undertake this fishing to be a sound business proposition. This strongly suggests that there is little prospect that settlement quota in many of these species would be able to be fished by iwi owned vessels. The QMS – which enables ACE to be sold - provides iwi with the ability to make rational choices about how they obtain the best value from their quota, given their particular circumstances.

87 Iwi have only progressively become owners of settlement quota since 2005, and prior to ownership could not make long terms investment decisions, for example in relation to the purchase of vessels. Quota shares and equivalent ACE held by iwi vary. The majority of iwi are at the low end of the spectrum of quota ownership. For instance taking into account current TACCs, the amount of ACE that can be generated by iwi for squid ranges from a maximum of around 1000 tonnes to a minimum of 17 tonnes. In the case of silver warehou, these amounts range from around 100 tonnes to 680 kgs and for white warehou, from 90 tonnes to 890 kgs. If larger fishing companies already involved in harvesting and processing find that it is uneconomic to fish the lower-value high-volume deepwater stocks, it is hard to see how iwi quota holders could be expected do so.

88 The only real option available to iwi in the short to medium term is to sell their ACE. This option gives them flexibility to operate within the capital constraints they face if they are to gain an income for the longer term – not only from valuable stocks fished largely by domestic vessels, but also from the low-value high-volume stocks that are fished primarily by FCVs. At the same time, iwi face the same costs as do other quota holders such as having to pay MFish and industry levies. The sale of ACE is a necessary part of covering these costs.

89 Iwi are involved in a variety of arrangements with respect to the fishing of their ACE. These include joint ventures, to long term arrangements with fishing companies, to annual ACE sales through quota brokers or directly with fishing operators. As iwi have gained experience and knowledge of the fishing business, some have been working together to aggregate their ACE and thereby gain a greater ability to influence fishing companies with whom they wish to form business relationships or to package their ACE so that it provides an attractive amount for existing operators. However in each case, these arrangements result in the harvesting of relevant low value high volume species by FCVs. For instance a group of 12 iwi have established an “Iwi Collective Partnership”

that enables them to work jointly to enter into agreements with fishing companies such as AFL and Sanford about the use various packages of their inshore and deepwater ACE. The majority of the deepwater ACE is fished through an agreement with Sanford, who will no doubt provide its own submission on the use of FCVs to harvest some of the fish stocks concerned.

90 The removal of any one charter operator from the fishery could affect not just one but many iwi who work to combine their small packages of ACE.

Iwi as holders of income shares in AFL

91 Sealord is involved in inshore and deepsea fishing and has interests in 18 vessels, 3 of which are foreign charter vessels. These vessels are Ukrainian factory trawlers that have been fishing with Sealord for more than 10 years. They catch mainly low-value high volume species such as jack mackerel, barracouta, squid and southern blue whiting. Sealord reports that the catch from these vessels makes them a good and taxable profit, which contributes to the overall viability of their business.

92 While Sealord will provide you with its own more detailed submission on this issue, we wish to note here that iwi and Te Ohu hold income shares in AFL, which owns 50% of Sealord. Fifty percent of Sealord's profit is consolidated into AFL's profit and the dividend AFL pays is calculated on its consolidated group profit after tax (which includes Sealord). In the 2009/10 financial year, AFL paid a dividend of $7.5 million to iwi and Te Ohu.

Brief responses to questions posed by the panel

93 As noted earlier, the Deepwater Group and SeaFIC are preparing detailed responses to the panel's questions. Thus we provide brief responses to these questions and intend to refer to the Panel to their more detailed submissions.

a) The application of New Zealand's legislative regime to the use and operation of fishing vessels and in particular FCVs, with respect to labour, immigration, maritime safety and fisheries management and the compliance with that regime by such vessels and their operators.

94 We note that the regime that applies to FCVs includes:

- requirements to register vessels under the Fisheries Act, which in turn means vessels need to meet certain standards in relation to minimum wages
- application of a Code of Practice on Foreign fishing Crew agreed between the Department of Labour, SeaFIC and the Fishing Industry Guild that sets out minimum terms and conditions for all foreign nationals employed on board FCVs and that must be observed by all companies that charter foreign flagged vessels
- a requirement to join the Safe Ship Management system within 2 years of arrival in New Zealand. In the interim, FCVs are subject to 6 monthly Port State Inspections.
- a requirement for all FCVs to meet MAF/NZFSA requirements in respect of food safety.

95 Compliance with these requirements puts FCVs on a similar operational footing to New Zealand owned or operated vessels. We would expect any non-complying FCVs to be prosecuted and if necessary excluded from New Zealand's EEZ using the powers that are already available. Te Ohu strongly supports measures to ensure integrity of operations and a "level playing field" of compliance and expects the responsible

agencies to take appropriate action to achieve this. We are not aware of any gaps arising from the operation of the procedures.

b) Any international reputation risks associated with the use of FCVs

96 Compliance with the requirements set out above puts FCVs on the same operational footing as New Zealand vessels and should mean there is little risk to New Zealand's reputation. In saying this we are aware of much of the negative attention given to this issue by the media – much of which has placed a sense of "blame" on iwi interests. Even though the regime that is in place to manage the activities of FCVs in our waters should be of no threat to our reputation, negative public opinion is another matter. This inquiry provides an opportunity to test the allegations being made and provide independent comment on what might satisfy the public and protect our international reputation. Given this attention by the media, we would expect the inquiry report to highlight, as we have above, that ACE derived from settlement quota can only supply a minority portion of the fishing by FCVs.

c) Any trade access risks associated with the use of FCVs

97 We consider the suggested risk of market access problems due to our international reputation has the potential to be over-played. This could only be the case if we had systemic behaviours that did not meet the compliance standards but were tolerated. We could not support this. As noted earlier, where non-compliance is found to have occurred, it should be dealt with appropriately.

98 We refer the panel to the more detailed submissions made on other trade related issues by SeaFIC and the Deepwater Group.

d) Whether the economic factors supporting the use of FCVs deliver the greatest overall benefit to New Zealand's economy and to quota owners

99 As other industry submissions are likely to suggest, the use of NZ flagged vessels or FCVs has enabled quota holders and fishing companies to make rational decisions about vessel ownership. As the need for increased capacity arises, one of the issues to be faced is the cost of purchasing vessels as opposed to utilising FCVs. We understand the costs of vessels can range from $16 million for a 25 year old factory vessel, to $50 million for a newly built vessel. Alongside this issue is the question of how often any vessel acquired by a fishing company will be fully utilised. These are matters that affect the extent to which New Zealand companies can afford to own their full fishing capacity themselves.

100 By combining the use of existing NZ flagged vessels with FCVs, companies are better able to operate with the flexibility they need to quickly reduce their capacity when the TACCs for stocks are reduced, and to build it again when TACCs are increased – avoiding the situation of having to meet the costs of underutilised capacity.

101 The removal of FCVs would reduce competition in the market for ACE. This would affect all quota holders, particularly iwi who, as we have set out above, have limited feasible options available. Unless returns for fish increase, ACE prices (and quota value) could be adversely affected if companies have no option but to purchase more expensive catching capacity. And where companies decide that purchasing additional capacity is uneconomic, it is highly likely that some species would not be fished and the relevant ACE and quota values would be worth little.

e) *Whether acceptable and equitable labour standards (including safe working environments) are, or can be applied on all fishing vessels operating in New Zealand's fisheries waters within the EEZ*

102 As you will be aware, foreign fishing crew are required to be paid the minimum New Zealand wage plus $2 per hour. No costs of accommodation, meals etc can be deducted until the fisher has worked or been paid for a minimum of 42 hours per week. At the same time, as crew are working outside New Zealand's territorial sea, they do not pay tax or ACC. We note that the Department of Labour audits the compliance of vessels against the Code of Practice they are required to operate under, and that MFish is able to refuse to register a vessel for failure to observe the Minimum Wage or Wages Protection Acts. Without evidence of any charter operator being refused the chance to renew their charter contracts or obtain crew at the end of their contracts we would assume that operators have complied with these provisions.

Other matters

103 We are aware that under the United Nations Convention on the Law of the Sea (UNCLOS), it is possible that where New Zealand is not catching the full extent of fisheries that are available for harvest, that other countries could apply pressure to open the fisheries to Foreign Licensed fishing. This is a complex situation which raises many questions. Where all the harvesting rights are fully allocated through quota shares, but the ability of quota owners to carry out the harvest is prevented, how might the government provide (or refuse) foreign access? We understand that under a Foreign Licensed regime, flag states are fully responsible for recruitment of the crew, working conditions and so on. If working conditions, health and safety and wages are a concern, what measures would the New Zealand government be able to take to address these issues in that situation? It seems the government would have less control over these matters in that situation than it does under the present regime for managing FCVs.

104 Te Ohu is aware that part of the procedures in the AIP process is intended to test the market for supply of suitably qualified personnel to participate in fishing these fish stocks. We understand that there are real difficulties in finding suitable people to man the NZ owned and fished vessels.

Concluding remarks

105 There has been much negative comment in the media about FCVs, combined with assertions that Maori interests are a major cause of "the problem". These assertions are unfair and unjustified. Maori interests – through iwi owned asset holding companies - have to make rational decisions about how best to obtain an appropriate return on their quota assets – as is the case with any quota holder.

106 The use and management of FCVs is an issue relevant to the whole industry, not just iwi.

107 A review of the amounts harvested by FCVs shows that settlement quota/ACE made available by iwi (whether through JVs, long term ACE contracts with companies or through annual tender processes) forms the minor share of the catch for low value high volume stocks harvested by FCVs. During the last few years, the Government has moved to tighten the regulatory framework for managing FCVs. If there has been non-compliance (and we have no evidence to say that there is), then that would be no reason to remove the whole regime. The appropriate agencies should act to deal with the matter.

108 As we have noted, Te Ohu is not aware of any systemic problems with FCVs and consider that the mix of measures provides appropriate control of what is a vital part of the New Zealand fishing industry. If the panel does however find aspects that it considers requires further adjustments, Te Ohu is prepared to work with officials and industry to develop clear and practical measures to enhance the regime.

109 Te Ohu would like to appear before the Panel. In the meantime we will be circulating our submission with a view to obtaining further input from iwi.

Contact:

Kirsty Woods
Manager
Fisheries Leadership
Te Ohu Kaimoana
PO Box 3277, Wellington