TE OHU KAIMOANA

MĀORI FISHERIES TRUST

Fisheries Act Review

SUBMISSION FROM TE OHU KAIMOANA

DECEMBER 2015

Contents

Introduction

1. This paper sets out the matters Te Ohu Kaimoana (Te Ohu) considers should be addressed as part of the review of the Fisheries Act.

2. This is the first time since the Act's commencement in 1996 that such a review has taken place. We welcome the opportunity reinforce those matters that are working well and those that need to be addressed to:
    a. improve the management of our fisheries
    b. ensure the management system is responsive to the protection and enhancement of the Fisheries Settlement.

3. At the September 2015 Seafood Conference, the Minister for Primary Industries announced the Ministry for Primary Industries (MPI) would undertake an operational review of the New Zealand fisheries management framework. As we understand that it will look at improving our fisheries management but the following aspects of our management system are deemed out of scope:

    - sustainable utilisation of fisheries resources as set out in Section 8 of the Fisheries Act
    - the QMS tools (quota and annual catch entitlements)
    - the rights of commercial quota ownership
    - the Crown's obligations under Treaty settlements
    - the rights and interests of tangata whenua, and customary management
    - the right to fish for recreation
    - our international obligations and the systems that apply to New Zealand enterprises fishing in international waters and
    - aquaculture.

4. We understand that you (MPI) has also identified that if there is to be change to the way we manage our fisheries, it could be through changes to:
    a. the Fisheries Act
    b. regulations under the Act
    c. the processes used by the Ministry to undertake its work - including greater collaboration with iwi in fisheries management
    d. a combination of these.

5. Improving our fisheries management is important to us. Collectively, the fishing rights held by all Fisheries Settlement entities, (Mandated Iwi Organisations (MIOs), their Asset Holding Companies (AHCs), Te Ohu, Aotearoa Fisheries Limited, the Sealord Group, kaitiaki and other Maori :
    a. are a significant portion of all commercial quota shares across all fisheries (approximately 33% overall but more in some fisheries and overall valued at around $1.45B);
    b. all customary non- commercial communal fishing
    c. a substantial portion of amateur fishing (estimated by some to be more than 40% of that catch).

6. The settlement entities have been and are a significant part of the "coalition of the willing" can-do innovators seeking to enhance New Zealand's fisheries management and the outcomes

produced by that. We have been and are involved in actively implementing a myriad of initiatives to deliver better fisheries management outcomes and reduce impacts on the marine environment, many of which are voluntary, including:

- gear modification to improve fishing selectivity – this involves both:
  - Precision Seafood Harvesting(PSH)- AFL and Sealord are 2 of the 3 industry partners involved in the $52M PSH project
  - Te Ohu has been funding trials over the last 5 years of different mesh size and orientation in the lengthener and cod ends for inshore finfish trawl nets
- implementing bird mitigation practices to reduce risk of interactions
- closing large areas to bottom-impacting fishing gear - Sealord and Te Ohu were two of the key quota owners that established BPAs
- avoiding areas where juvenile fish congregate and implementing move-on rules – in SNA1
- refining and implementing sea lion exclusion devices
- investigating the use of sub-marine line setting
- initiating experiments with trawl doors to reduce seabed contact
- developing and using suitable software that can be used on robust electronic tablets to record far greater amounts of information on fishing activity and catch – including deepening the amount of information for statutory reporting with more precise location
- developing and using bespoke software to better assist kaitiaki to collaborate with the commercial industry on Pataka whata and also reporting of customary non-commercial authorisations to fish
- Implementing voluntary closures in conjunction with the recreation groups and examining wider causes for near shore depletion
- investigating alternative high value products from what is currently largely waste streams
- installing and using VMS devices on inshore fishing boats and
- camera monitoring on inshore vessels.

7. In addition to this, Te Ohu participates in most of the science working group processes and other government forums associated with fisheries management as well as belonging to and participating in nearly all industry groups and forums. Many other settlement entities participate in those government and industry processes as is appropriate for them.

8. As part of this involvement with industry, Te Ohu is familiar with, contributed to and broadly endorses the Aotearoa Fisheries, Fisheries Inshore New Zealand, Deepwater Group and Seafood New Zealand's submissions on this review.

9. We note that while we welcome this opportunity to improve the system, the review could create significant risks to Fisheries Settlement rights. Any changes to the Fisheries Act need to be advanced carefully. If the Settlement is to be appropriately protected, there is much about the Fisheries Act that should not be tampered with and extreme care is needed where change is promoted. We think it is important that we set these issues out from the start and as Treaty partner, iwi (with Te Ohu as their advisor) would expect significant involvement in developing any changes.

Our starting point

Iwi are not ordinary stakeholders

10. Iwi are the ***Treaty Partners*** with the Crown. The New Zealand courts have indicated to government that it has responsibilities of active protection (of resources – *particularly those that are the currency of a settlement*) and consultation with settlement parties that could be affected by the Crown's exercise of its Article 1 powers. These responsibilities apply to the Fisheries Settlement.

11. Irrespective of the Settlement and their Treaty relationship, the Crown and iwi should collaborate because they share ***common perspectives and drivers***:
    a. They have an inter-generational time horizon when considering fisheries management. While short-term decisions are important, they should be taken in manner that supports the long-term. They are not about an immediate maximum short–term return (though decisions should support ongoing commercial viability), but more about an investment for the future – "*We don't inherit our world from our ancestors, we borrow it from our grandchildren*";
    b. They are required by their constituents to develop a balanced position across the harvest sectors – commercial and non-commercial including both recreational and customary communal, having each recognised that durable outcomes are not achieved by addressing a problem for one sector but doing so in a manner that creates a grievance for another "*We don't solve one problem by creating another*".

12. There should be ***far greater collaboration between the Crown and iwi (aided by Te Ohu) in managing fisheries***. This collaboration should begin when identifying problems and continue through the policy development process to implementation and monitoring.

The Fisheries Settlement

What instigated it?

13. Maori took the Crown to court in 1986 after the Crown introduced the Quota Management System (QMS) with its Individual Transferable Quota (ITQ) rights and at the same time deleted s 88(2) of the Fisheries Act (1983) that had stated that "*Nothing in this Act affected Maori customary rights to fishing*". Maori challenged the Government's right to allocate the perpetual ITQ rights on the basis that the Crown did not own the rights in the first place – as Maori had never ceded them.

14. The New Zealand Courts heard the action and Justice Greig of the High Court in 1987 reported

    I am satisfied that there is a strong case that before 1840 Maori had a highly developed and controlled fishery over the whole of the coast of New Zealand, at least where they were living.

    That was divided into zones under the control and authority of hapu and tribes of the district. Each of these hapu and tribes had the dominion, perhaps the rangatiratanga, over those fisheries.

    Those fisheries had a commercial element and were not purely recreational or ceremonial or merely for the sustenance of the local dwellers".

15. Further the Courts noted that Article 2 in the English version of the Treaty of Waitangi sets out, in as explicit form as set down anywhere in English law, what a property right entails and in doing

so clearly set out ownership of fisheries by Maori. The Courts recommended to the Government that it enter into negotiations with iwi/Maori.

What was agreed to?

16. The Crown agreed that customary fishing rights :
    a. included both commercial and non-commercial dimensions
    b. were not limited to historical take, using earlier technology but involved opportunities in the past, present and future with customary rights holders able to take up development opportunities as they saw fit
    c. involved genuine ability to manage all fishing activity within kaitiakitanga.

17. At the time of the settlement negotiations with Maori, the Crown promoted the concept of the QMS as having the following advantages:
    - it was a means to cap total catch and therefore protect overall sustainability
    - the property rights Maori would receive in the form of ITQ would be perpetual and therefore were robust and enduring
    - an express purpose of allocating ITQ was to give security to ITQ holders which would allow them to plan and invest for the long-term with greater confidence.

18. Maori and iwi accepted and endorsed the QMS because the rights were granted in perpetuity and came with them significant incentives to contribute to the sustainable management of fisheries and their supporting environment.

19. In light of their acceptance of the QMS and the agreed form of management, and in exchange for their customary fishing rights Maori were granted:
    - Quota (10% of species introduced in 1986 and up to September 1992 & 20% of species introduced after September 1992
    - Sufficient cash to buy a half share in Sealord
    - An undertaking that the Crown would provide regulations and assistance that enabled Maori to manage their non-commercial customary fishing activities; and
    - Opportunities to participate in statutory bodies and processes making decisions on fisheries management.

20. Maori accepted that, as part of the Settlement, the level of catch for any fishstock would go up or down on the tides of sustainability. Maori welcomed that having practised it as kaitiaki to protect their resources. Further they considered the perpetual rights under quota provided the incentive to manage for the longer-term. For example, if they set some fisheries to 'fallow' in the short term, they would be able to access those fisheries in the longer term when they were healthier.

21. When iwi/Maori discuss customary rights, it is the full bundle of rights recognised by the New Zealand Courts and Government and agreed to be respected and translated through the Deed of Settlement – not just the customary non-commercial rights referred to in the legislation (with the label then often shortened further to 'customary' rights.) This can often cause misunderstandings on the extent of issues being considered and the breadth of solutions needed to get 'balanced' answers – ie that work across sectors and communities.

The system is generally working well

22. We consider that on the whole our fisheries management system is working well. There is no doubt that New Zealand's fisheries management framework is progressively delivering sustainable fisheries management. By the end of 2014, for the stocks with known status:[1]
    - 96.4% of the landings were from stocks above the 'soft limit'
    - 99.5% were from stocks above the 'hard limit'
    - 95.9% were from stocks below the 'overfishing threshold', and
    - 90.3% were from stocks above their management targets.

23. The number of stocks with known status has increased but more pragmatic monitoring approaches are necessary to provide confidence in sustainable use.

Iwi and stakeholders take responsibility

24. Te Ohu has always taken a long-term view and put the fishery first. The cuts in the TACC for Hoki in the early 2000s, called for by Te Ohu, AFL, Sealord and the rest of industry (ahead of officials), are examples of this. All of industry – quota owners, LFRs, and fishers were concerned for the ongoing health of the stock. Subsequent to making those cuts, to make sure the pattern wasn't repeated, industry considered different management strategies for hoki and chose a conservative proposed management range for the fishery well above what was considered to be B_{msy} at the time – further evidence of the growing maturity of industry. While B_{msy} was considered to be 24% at that time, the industry chose to position the fishery in a management range of 35-50% B_0. This was intended to make sure that if the fishery has another consecutive set of bad recruiting years (the cause of the earlier problem), the biomass would still not reduce significantly and require substantial TACC cuts. The fishery has recovered well and the current biomass is now above 50% B_0.

25. There are many other instances where based on concerns held by quota owners and fishers, industry has taken precautionary action to restrict catch to less than the TACC limit set by the Minister. These examples show that the incentives built into the QMS do translate into real stewardship by quota owners and fishers.

26. Within the customary non-commercial sector, it is well known that kaitiaki refuse to grant authorisations where they consider the fishery is not in good health – demonstrating they are exercising their kaitiaki responsibilities.

Practical initiatives to obtain better information and mitigate fishing effects

27. Te Ohu has also been directly involved in establishing Trident –a seafood research company looking to *develop innovative cost-effective solutions to* industry and ***fisheries management issues***. In the last 2 years Trident has developed a modular set of improved electronic observation options for inshore boats. Depending on the issues, quota owners, licensed fish receivers and vessel owners can install a New Zealand manufactured Vessel Monitoring system (VMS) suitable for small inshore boats. These units provide 24/7 tracking of fishing vessels as required by the Minister in his SNA1 decision. The units have now been installed through cooperative action by Te Ohu, AFL, Sanford and other quota owners. AFL has already found these units invaluable in showing MPI precisely where their vessels are (and have been) when issues arise. Trident also has the ability to add New Zealand made Snap-IT cameras on inshore boats. These were used to

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1 MPI. *The Status of New Zealand's Fisheries*, February 2015.

investigate the extent of under-size snapper caught in SNA1 (less than 5%) and these cameras are now installed on all SNA1 trawlers.

28. Te Ohu has also been active over 5 years investigating whether simple modifications to the size and orientation of the mesh in the lengthener and cod-end of the trawl net on an inshore boat in Hawke Bay can significantly increase the release of small unwanted fish. These results have been significant for round shaped fish like gurnard (50-80% of small fish released with minimal loss of target size) but are not yet effective for elliptical shaped fish like Snapper. Further trials continue. We have also begun to investigate alterations to trawl doors and rigging to reduce seabed contact.

29. In addition we have developed an improved electronic reporting application that can be fitted on robust electronic tablets to record far more data far faster and more accurately than the paper based version used by inshore boats. This can also fit in a modular form to the Trident system.

30. In addition we have been ***instituting mitigation measures for fishing's impact on the broader ecosystem.*** For example deepwater quota owners have placed sealion excluder devices (SLEDS) on squid nets. The devices are effective at ensuring Hooker Sealions escape the squid nets. Other initiatives include extensive work on mitigation of bird interactions with trawl nets and longlines (including the work done by Southern Seabirds Solutions. Te Ohu has been a trustee of Southern Seabird Solutions from its inception).

Key provisions of the Fisheries act

31. We consider there are many provisions in the Act that should not be changed, including all of Part 2 of the Act. In the past Te Ohu and iwi campaigned successfully against changes proposed to s10 which would have made it more cautious but without any disciplines over its exercise. Subsequently we supported changes to s 13 of the Act to provide greater flexibility and more pragmatism in setting management targets and thresholds.

32. We support the current balance in the Act that indicates that in making choices on allocation of the TAC between sectors the Minister must consider each case on its circumstances. While we favour a priority for the customary non-commercial sector, in practice its level is so small in relation to either the recreational or inshore commercial catch, that it is unnecessary to formalise it in the legislation. We would oppose any changes to the legislation that gave primacy to recreational allowances. Our thoughts on this were well summed up by Justice McGechan who noted in his High Court decision in 1997:

    "It is clear Maori negotiators in 1992 were aware that ITQ held by the Commission, and further ITQ to be received by the Commission and Maori, would be subject to reduction along with the TACC on biological grounds. Likewise, it might be increased. That risk and potential benefit, were known and accepted.

    I accept Maori did not envisage, or accept, that TACC and quota might be reduced simply to enable a greater recreational allocation of the resource. It is highly unlikely Maori would have agreed to surrender Treaty rights for the better gratification of Auckland boatmen. The thought did not cross the tangata whenua mind."

33. Another key aspect of the Fisheries Act that affects the Settlement is section 262 – the cost recovery principles. While there are concerns with how these principles have been applied

including through the regulated rules, the principles set out in the legislation provide a useful discipline on the Crown.

34. While the **New Zealand fisheries management** system has much ***merit*** and changes to the legislation need to be carefully crafted, there remains a great deal of work to do to build on the system so that it performs as well as we might like and can afford (when justifying it to our grandchildren). The ***current*** system is ***necessary but not sufficient***. It is now time to develop a more cohesive and responsive fisheries management system.

Areas that need to be addressed

35. You (MPI) have asked for comment against the following themes:
    a. Sustainability
    b. Benefits to all New Zealanders
    c. Decision-making processes
    d. Monitoring and enforcement
    e. Responding effectively to future challenges.

36. We identify the issues we consider need to be addressed in light of these themes, recognising that a number could be categorised under more than 1 theme.

Sustainability

37. If we are to build on our confidence in the sustainability of our fisheries, we need to find smarter ways for all sectors to contribute better information. Some initiatives are already being taken on the commercial and non-commercial customary sector in endeavours to do just that. However for these actions to bear fruit, they must eventually be connected into more responsive management.

38. Pamela Mace of MPI reports that, based on the science processes, stocks of known status are within or above the harvest strategy standards set within our management system, and that these stocks are continuing to improve. However the Ministry only has the capacity to review less than 20 fishstocks in any year. Even though we have good information for fishstocks that represent 72% of overall landings, this means that even for those fishstocks, there is very limited ability to respond to changes that could threaten sustainability.

39. Furthermore, in respect of the inshore finfish stocks:
    - 86% of QMS stocks have never had a formal TAC/TACC review since their introduction to the QMS[2]
    - Less than two-thirds of inshore stocks have a recreational allowance set
    - There is no approved over-arching Fisheries Plan in place for inshore fin fish
    - There are no documented, stock-specific plans in place for any inshore fin fish stock (although progress has been made on SNA1)
    - The medium-term research programme in place is not informed by specified management objectives for inshore stocks.

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[2] We acknowledge that many of these stocks have nominal TACs and that have yet to be proved up (though some of these may be important opportunities for iwi). If these developmental opportunities stocks are removed (i.e. 10 t or less) for the purpose of this rough analysis, the number of stocks that have never had TAC changes reduces to 62%. This is still too high.

40. While that does not mean the other 28% of landings come from stocks that are being fished unsustainably, it does mean that we have yet to specify appropriate management and monitoring measures to provide that information so as to prove its sustainability (or otherwise) in a cost-effective manner. There are in excess of 200 inshore fin fishstocks that individually have small volumes and the quota owners and Crown struggle to pay for the research deemed necessary to provide the level of information considered necessary for robust stock assessment using traditional methods for even the most valuable stocks – whether measured in the market, or recreation preferred retained catch or taonga species for customary non-commercial.

41. This is exacerbated by the system used by the Ministry to purchase research. To try to ensure independence (and presumably to have sufficient research critical mass in NZ) most research services are purchased from NIWA. NIWA as a large commercial organisation but accountable to a Minister and Parliament as a Crown Research Institute has its own overheads along with a required rate of return (>12%) to its shareholding Minister. On top of this are the MPI processes to ensure appropriate administration that result in overhead costs of more than 22%. All are subject to ongoing inflation even where this is low. Cumulatively the final result of this is that over time there is now far less effective research resulting from the same level of expenditure than 10 years ago, and the 10 year level of research was significantly less than 20 years ago.

Cost effective innovative options for management

42. For less valuable fishstocks we need to find more cost effective ways to gain appropriate data that can be used to make decisions on the adequacy or otherwise in the management of the fishstock.

43. As a first step Te Ohu, in cooperation with FINZ, has been encouraging quota owners to better identify their objectives for a fishery. Where this is done collectively, a suitable management and monitoring regime can be agreed and industry data can be gathered in a cost effective manner and provided as input data to allow assessment of the optimal cost effective management procedure for the fishery.

44. Responding to feedback from LFRs and skippers, Fisheries Inshore New Zealand contracted Trident to take a further look at our bluenose fishstocks (which are managed by MPI as if they are a single fishstock). This additional work backed up anecdotal information from skippers that the fisheries were in better shape than identified by the 2011 assessment. The Trident work – taken through the Inshore Science Working Group- was able to demonstrate that a proposed 3rd set of cuts to the Bluenose TACC from 1100 to 660 tonnes/ annum across all Bluenose fisheries was not needed to ensure the sustainability of the fishery.

45. We consider the approach of developing a suitable management procedure for the Bluenose fishery could be applied across a wide range of other low knowledge inshore stocks. More comprehensive reporting by fishers using the app reported in para 28 above would enhance the data available for of this technique – see also monitoring below.

46. To ensure the investment is cost effective, quota owners and fishers need to be assured that if the information is collected and applied in a manner that meets the science standards it will then be used for management purposes. We would welcome further discussion of this.

28N rights

47. Rights granted under section 28N of the Fisheries Act 1983 undermine the Fisheries Settlement and act as a disincentive for commercial parties to collaborate to improve the management of stocks subject to those rights.

48. When the QMS was introduced, the ITQ for each fishstock under it set out the tonnage limit of that fishstock that could be caught by each quota owner in the fishery. After the Quota Appeal Authority completed its deliberations and awarded more quota, it soon became apparent that the resultant total allowable catch for a number of fisheries exceeded the capacity of those fisheries.

49. The Crown acted to reduce the catch. The regime at that time required the Government to buy quota back to retire it. The Government chose to change the law and provide quota owners with the choice of reduced compensation (compared with the market price) or the ability to put a denoted level of their quota effectively on hold until the TACC for the fishery increased through the fishery recovering, at which point that 'quota on hold' would have priority to the increase. Once 'refunded' in this way, that quota is normalised and holds the same rights as other quota. This means if there is a subsequent decrease in the TACC, its proportional decrease is the same as any other quota. This quota and the associated rights and processes were set out in Section 28N in the Fisheries Act 1983.

50. Most affected quota owners took the latter path of having the amount of their quota the government wanted reduced declared to be subject to 28N conditions. Subsequent to this, the Crown made other changes to the Quota Management System that changed the basis of quota being volume based to proportional shares of the TACC. The effect of this last change, when combined with s28N rights, means that when a TACC increases for fisheries where some quota owners hold 28N rights, all the increase transfers to those quota owners (until the total of the 28N rights for that fishery is exhausted). Because there is only a fixed number of shares in the fishery, this can only be achieved by increasing the number of shares held by the 28N rights holder and decreasing the shares held by other quota owners.

51. Nearly 30 years after the change there are still significant amounts in 28N rights in a number of fisheries. The policy change from volumetric quota to proportional shares of the TACC has had the effect of transferring liability for this quota from the Crown on to the rest of industry. This has created perverse incentives among industry participants and the ongoing existence of s28N rights is working against better fisheries management. All quota owners in these fisheries must pay their proportional share for research programmes to assess whether the TAC and TACC should be adjusted. However with any gains only going to those quota holders with 28N rights (but any subsequent reductions meaning all quota holders are affected) there is a reluctance to invest in programmes for these fisheries compared with others.

52. The existence of and ramifications of 28N rights was not made known to the Maori negotiators for the Fisheries Settlement by the Crown. Rather than gaining 10% shares of all the fisheries first introduced in to the QMS as promised by the Government, it has the effect of initially transferring the 10% but then eroding away those entitlements under the Settlement as with every TACC increase in these fisheries, iwi lose quota shares.

53. We consider that the Crown should look at and address this problem. It should regularise these fisheries so they are subject to the same policies as all other fishstocks. It must resume its responsibilities and deal with 28N rights holders in a principled way.

Recreational / amateur fishers

54. Fishing is an important recreational activity for a large number of New Zealanders. The most robust survey of recreational harvest concluded that 530,100[3] people fished on a recreational basis in 2011-12, an average of 11.9% of the population. While a far broader section of the population eat fish (88% of New Zealanders who eat fish at least once every month, with some 45% of us enjoying it at least once every week), it is nevertheless a significant group that in Fisheries Management Area 1 in particular catches a significant share of all fish.

55. Te Ohu considers that our fisheries management regime must provide satisfactory outcomes for all harvesting sectors as well as those who wish to ensure that our biodiversity is maintained. Some of the key inputs for fisheries management decisions and outcomes is linked to the questions of "How much fishing? How many fish caught? Where?"

56. For this, information is key. For recreational fishing estimates, currently the Crown funds the Large Scale multi-species (LSMS) offsite survey every 5 years and proposes that there be some lesser level of surveying within that period along with ramp surveys and over-flights.

57. However recreational catch is a substantive part of the total catch overall in some fisheries particularly FMA1 where presumably the much higher population in the region and its regional weather pattern creates more opportunity for larger numbers of fishers – recreational fishing activity is concentrated from October to April with 75% of recreational fish being caught over that period (January has 20%).

58. For FMA 1 looking at the top 8 fishstocks preferred by recreational fishers, the detailed 2011/12 survey shows the total to be just under 39% (5839 tonnes) of the total take in those fishstocks. When balancing sustainability this is not at the margins, it is significant.

59. In addition we know that the recreational catch is the most volatile – the fishing activity being strongly correlated with the weather conditions and the total take with the proximity of target size fish close to shore.

60. For our significant fisheries – with high value measured across all dimensions – and therefore high harvesting pressure, it is important that these are regularly reviewed and management measures/ settings adjusted based on the efficacy of the management at achieving the goals. Many want this to be at intervals no greater than 5 years.

61. Te Ohu does not consider that having one solid estimate every five years of recreational catch (with the rest an interpolation) to be adequate for management assessment when this most volatile type of catch is close to 40% of the total.

62. This one estimate every five years contrasts with

    a. <u>every</u> catching event in the commercial fleet (at least 1 every day) being recorded and
    b. every authorisation for customary non-commercial communal purposes requiring reporting.

[3] This represents the mean of between 479,400 and 581,700 people with those limits equating to between 10.8% and 13.1% of the New Zealand population at that time,

63. With the population increases forecast for the Auckland, Waikato and Bay of Plenty regions over the next 30 years, and the projected doubling of recreational boats in the region in that time, the recreation pressure will increase further.

64. Te Ohu considers there should be more frequent LSMS surveys for FMA1 - we suggest that these be undertaken every 3 years. To keep alignment across the country that could mean the national survey then happens every 6 years.

65. Recreational fishers do not consider that individual reporting will provide the same level of accuracy as the current LSMS survey. They seem to consider it only as an alternative.

66. Te Ohu considers there is one group involved in recreational fishing that could and should provide detailed accurate data each trip – that is the recreational charter fleet. While some reporting has commenced, it is not across all species and all areas and is yet to commence for the fish most caught and retained by all recreational fishers across the country – snapper.

67. Te Ohu also considers that the Ministry as part of a pro-active campaign to increase the quality of estimates should provide each charter boat with a robust tablet with the report programme set up to easily allow operators to record catch. The device could be set up to automatically feed the records into a confidential database that only MPI and approved researchers could use in aggregate form. Programmes could also be set up to deliver easy-to-read reports back to individual operator about his data – feedback is important. Delayed aggregate data could also be provided. Te Ohu would be pleased to assist with this work given our experience with both commercial and customary non-commercial communal kaitiaki.

68. Te Ohu considers that there are additional benefits from fishers recording catch. In practice many recreational fishers do this now - some have log books going back decades. Fishing clubs record catches from members on a regular basis. It helps put facts on opinions - on whether we are having a good (or bad) fishing year, what the long-term trends are etc. All of this is important information for involvement in fisheries management. It also assist get far better location and seasonal information.

69. Te Ohu does not see individual reporting as a substitute for LSMS surveys but as an additional input that can make individuals better informed and able to consider alternatives in management. Effectively managing recreational pressure is going to be a key challenge in some parts of New Zealand going forward. This will not be solved by ignoring other sectors – it must be done in collaboration with others.

70. Te Ohu notes that, as for most activities, the 80:20 rule applies for recreational fishing ie 80% of the fish are caught by 20% of the anglers. These committed passionate fishers will be the most knowledgeable about recreational fisheries, fish stock location, seasonal fishing opportunities etc. They will likely have the most effective gear for the fishstocks they pursue. Information from these fishers when aggregated will also likely provide an accurate picture of the state of each fishery from a recreational perspective.

71. In Te Ohu's experience, each sector has the best knowledge of its conditions and options and those that are the most informed (and motivated) will generate the best solutions for their sector.

72. There is going to be a need for recreational fishers in aggregate to adopt the best husbandry and fisheries handling practices championed by the top and most passionate anglers. Encouraging individual fishers to report catch is a step towards each taking greater responsibility for their

actions that will help ensure their grandchildren have the same (or greater) opportunities to catch fish in another generation's time.

Better catch information

73. Te Ohu has been involved for a number of years in projects that seek to gain better information on total fisheries mortality and use that information to make management decisions about particular fisheries. Some of this work has arisen from the net trials in Hawke Bay but it is recognised that this is only a point sample in one fishery. This lead to more work conducted in collaboration with MPI.

74. Our work was seeking to have more selective nets that reduced the amount of small fish caught that were not rewarded in the market. Though technology and techniques have improved over time, there has always been unwanted catch when fishing. It is likely that there was significant levels of discarding under earlier fisheries regimes and when the quota management system was established.

75. There are a variety of situations that fishers find themselves in – in some cases Minimum Legal Sizes (MLS) have been declared requiring fishers to throw undersized fish over the side without the system ever requiring a record of these catches – or enabling that – until the recent (2014) sun MLS snapper (SNX) reporting. In other cases fishers are legally required to land fish that are much smaller than the sub MLS fish even though there is no market for this.

76. The lack of recording means that we are consistently under-estimating the productivity of the fishery, but also not recording the full level of mortalities.

77. From a Maori perspective, discarding is highly undesirable as it represents unnecessary waste.

78. The absence of more comprehensive catch reporting is both a symptom and a cause of undesirable activity. Discarding fish can result from TACCs being set low and with fishers wanting to avoid high levels of Deemed Value payments.

79. As a result of discarding, estimates of fishing mortality are inaccurate which results in incorrect CPUE and uncertain stock status information. If TACCs and DVs are not adjusted to reflect increasing abundance, TACCs remain incorrect and the cycle continues unabated.

80. Te Ohu considers this work vitally important to the future management of our inshore fisheries. We continue to consider that this issue must be addressed systematically so that we progressively obtain information for all key complexes across the country through a representative group of boats in each region operating under special permits and recording all fish. This will require collaboration between quota owners, fishers LFRs, observers, scientists and managers at MPI.

81. It is highly likely that for each region the amount of small fish will vary with different locations, different times of the year and between years. Such variations are normal in nature and it would assist our inshore management to have better knowledge about these productivity surges. This however should not deter efforts to better understand the fishery. We will need this information to make changes to policy settings. Once we better understand the factors driving the current behaviours we can develop changed settings that create ongoing incentives for all participants to assist better fisheries management.

82. Te Ohu does not consider an acceptable responsible stance by MPI given its sets of responsibilities and how it has discharged them to date to take a 'black letter law' approach.

83. Te Ohu considers a more responsible attitude would be collaborate over investigations, work with industry to adjust the policies applying so there are sensible incentives for minimising discards and assist with investigations into the range of methods that assist in avoid small uneconomic fish. With this work aiming to change attitudes and behaviours established over time to the current policies, a realistic timeframe will need to be allowed to see change. As with all programmes looking to achieve substantial change, this requires collaborative effort using a VADE approach.

Land etc effects on estuarine and inshore fisheries

84. Another key factor impacting on the productivity of our inshore fisheries are the effects of contaminants entering our estuaries and near shore from activities on land and both point and non-point discharges. Research By NIWA has shown that both suspended sediment and other contaminents reduce fishery productivity.

85. Over time these impacts could lead to far more substantial changes to the safe yield from our fisheries than many fisheries management initiatives.

86. We consider that MPI along with Regional Councils should, as the agencies with responsibilities in managing land water, estuaries and fisheries, work together to investigate and manage these threats.

87. Te Ohu expects that this would include actions, both regultory and non-regulatory, to ensure that land based activities and other marine activities do not detrimentally affect the productivity of our inshore fisheries in our estuaries and the near shore environment.

88. As the agency that works with other parts of the primary sector we expect MPI to be able to identify best practice options for land users activities and encourage uptake of these.

Benefits

Changing Sector allowances

89. We noted earlier in this submission that quota owners have on many occasions either voluntarily reduced catch or have requested the Minister to reduce the TACC to look after the fishery. We consider this positive behaviour to protect long-term interests in the fishery important to encourage.

90. From a settlement perspective it is important to look long-term and make sure that progress steadily moves towards better outcomes. One 'rub point' for the commercial sector that creates perverse incentives towards short-termism is the discretion in the legislation that allows the Minister, at the time of setting any TAC and TACC decision, to alter the allocations between sectors.

91. That flexibility, if fully exercised, signals to participants in that fishery (and all other fisheries with significant recreational fishing- ie all inshore fishing) that precautionary protective behaviour now by quota owners collectively that aim to strengthen the fishery can not only go unrewarded but you may also be penalised - you have forgone catch (and income) for some years to build the

fishery, only to have the increase transferred to other sectors that have not contributed to that rebuild or paid for any of the science and analysis on the state of the fishery.

92. This climate obviously then affects all other ancillary investment into improved gear and practices as well as stock husbandry. This is not good policy. It doesn't encourage the behaviours wanted from all participants in a fishery.

93. Te Ohu considers that the policy associated with the operation of these parts of the Act be looked at – while the policy is discretionary and we think it should remain, we also consider it should only be used in a manner that provides the greatest rewards for positive investment action aimed at strengthening the fishery by a sector.

Decision-making

Locus of decision making

94. As we set out in paragraph 28 above, the current processes used means that MPI generally only examines about 20 stocks a year. With 620 stocks in the QMS the cycle time for all these is unacceptable – we will either have sustainability issues or be forgoing significant economic benefit because the system is not nimble enough.

95. With a number of major fishstocks being reviewed regularly, the cycle time for other fishstocks expands out further.

96. Te Ohu considers the current system as inadequate and in need of improvement.

97. There are few regimes administered by Government that requires Ministerial approval to the level of detail currently required of the Minister for Primary Industry with fisheries matters.

98. We consider the Minister must remain accountable for the overall system and should set the overall strategic direction / objectives for a fishery and any plan developed to achieve those objectives.

99. However most of the detail below this should be able to be delegated to the Director General (DG) and his officials or under conditions fixed by the Minister to mandated representative bodies.

100. This delegation should be a discretion that the Minister will decide the extent of at any time. The Minister could set out processes and thresholds to be achieved under the delegation to ensure sound and fair processes. The delegation would also be able to be passed back to Minister where as a result of particular conditions, the Minister demands it.

101. There may also be virtue in providing the Minister as an optional appeal path where participants consider the DG has not acted reasonably in the exercise of his powers.

Rapid measures in response to pressure on shellfish and reef fish that could be subject to intense use from high population of users

102. One issue that requires the ability to move quickly and bring in stringent controls is where there is heavy population pressure on largely sessile stocks. Without this ability, a large number of users may not perceive their cumulative impact and 'strip' the bay or reef. It is not clear that effective action can be taken quickly in these circumstances currently.

Multi-year settings with delegations

103. One option used with our international fisheries is to set multi-year limits and then allow the country to decide the allocation of catch over those years eg a 3 year total with 33% able to be caught in the first year, 34% in the 2nd year, and 33% in the 3rd year but equally possible catch 40% year 1, 25% year 2 and 35% year 3.

104. This may offer some useful flexibility with little extra complexity in setting the 3 – 5 year totals in other New Zealand fisheries.

Shelving

105. One way of addressing the issue set out above on cross sector allowances could be to provide better recognition of shelving. Shelving occurs when industry agrees to set aside some of the TACC and each quota owner transfers ACE into an independent 3rd party's ACE account so it cannot be fished by industry participants. This is positive behaviour taking precautionary measures to assist the overall fishery – all sectors benefit from this as it increases abundance for everyone.

106. Te Ohu understands that there may be a difficulty in the Minister being able to formally recognise this as a management measure when he considers whether any action is needed to protect the fishery. If that is an issue, Te Ohu requests that you examine changes that allow these collective measures to be recognised so as to encourage precautionary action.

107. If there are other factors at play we would welcome discussion as we seek to provide positive long-term incentives for all harvesters.

Mixed fisheries – managing complexes

108. Our fisheries management system manages each fishery separately. While the examination of issues considers the impact on other fisheries and their effect on the fishstock being considered, there is no attempt to consider them as a complex.

109. Many of the issues associated with fisheries management however arise because fish are caught as complexes. Market demands, fisheries abundance, deemed values all affect fisher behaviour meaning the same fisher fishing with the same gear in the same month of the following year may have a very different strategy on how he catches certain target species. One year he may target species A while catching a little of species B. The next year however he may be targeting Species B and operate in a different manner knowing he will still catch sufficient of Species A as a bycatch. Unless the different fishing strategies and factors driving them are fully reported, it is highly unlikely that the science will be able to unravel the causes for the significant change in CPUE for the same species. This means the science analysis is then likely to conclude that the abundance has changed and management needs to change the TACC.

110. Te Ohu considers there is a need now to begin exploring how we manage complexes. There were attempts at this 10 to 15 years ago. The problems with the mechanisms discredited those techniques and no other techniques have been explored or brought forward since.

Fisheries and effects of fishing managed through Fisheries Act

111. A key principle in the Fisheries Act is to manage all the effects of fishing so that fisheries resources are used sustainably. The Act should be the only mechanism used to manage fishing

and the effects of fishing on both the fishery itself and its supporting environment.

112. Te Ohu is concerned that a number of 'initiatives' are appearing and seemingly supported that suggest additional measures, in addition to those applied under the Fisheries Act, are needed to achieve sustainability.

113. We do not accept that these additional measures are, in practice, needed to achieve sustainability. Sustainability is in practice achieved through the Fisheries Act measures.

114. Society always however has the right to decide it wants greater levels of conservation than those provided under the Fisheries Act. In those circumstances however, quota owners and fishers could rightfully expect compensation if their lawful sustainable activities are to be prohibited.

115. Te Ohu also considers that decisions between harvest sectors is a matter that should be decided under the Fisheries Act. This applies whether the decision is about sharing the Total Allowable Catch between the sectors or decisions that aim to restrict access by one or more fishing sectors while allowing it for others.

116. Te Ohu considers that multiple compatible uses are preferred, where possible, over single exclusive uses of areas as they can give rise to greater benefits at less cost. Exclusive use areas come with ongoing 'rub points' with one being the edge of the zone: "Is this sized zone adequate for my interests?" and the other being the suitability or otherwise of management in adjacent areas that could affect the fish in the zone: "We can't do what was promised in our zone because 'they' are affecting the fishery - they should not be allowed to do that and should have to do more of this" etc.

117. The broader question of allocation between fisheries sectors should be dealt with under the fisheries management regime as part of a shared fisheries policy. Within that context we would note that New Zealand has a history of communities working together to reach accommodation of one another's interest. There are numerous non-regulatory agreements that restrict commercial fishing in certain areas at certain times of the year to better allow for recreational interests. In this vein, there is some good work happening between the commercial and recreational sectors in Hawke Bay where collaboration to improve harvesting information is evolving. Incentives for greater collaboration of this type is needed.

118. In addition to this, as officials will know there are substantial areas all around New Zealand where access by commercial fishers is restricted in various ways from complete prohibition using all methods for the full year to seasonal closures by a method through regulation.

119. Te Ohu therefore does not favour or support recreation fishing only zones. If however Government wants to establish such zones the mechanisms for this should be included in the Fisheries Act. We would expect to see similar provisions on compensation as applies to competition for space between commercial fishing and aquaculture in any policy that establishes any recreation fishing only zones.

120. The management of recreational fishing in these zones / parks needs to be improved. If the government was to press ahead with recreational fishing parks, there should be a requirement on the recreational sector to report harvesting activity within these parks.

121. Te Ohu is also aware of regional councils and unitary authorities looking to use the Resource Management Act to manage the effects of fishing on the environment. We consider this to be entirely inappropriate. Regional Councils and Unitary authorities do have responsibility for managing the effects of other activities on fishing under the RMA but they should not have a role in limiting fishing because of harvesting. There are already measures in the RMA to this effect and Te Ohu considers this Review should take the opportunity to provide greater clarity by making clear that is not with Regional Council and Unitary authorities' powers under the RMA.

Monitoring and enforcement

122. As set out above Te Ohu has been active in developing electronic reporting by users to assist fisheries management. Te Ohu considers that all harvesting sectors should take advantage of relatively low cost technology to increase the amount of data routinely recorded. The greater depth of data should assist better fisheries management.

123. There are a number of challenges in this collection and use that need to be sensitively and sensibly worked through to address ownership and access. The SNA1 programme has shown both industry and MPI have the maturity to address these issues. The FINZ submission sets out the key questions to address and agree joint answers.

124. Given the New Zealand psyche, there is a real need for collaboration over this. Te Ohu considers that there is a need to agree on the objectives of any new system and standards set on that basis. Any system must be flexible with the ability to use a variety of different hardware and software ie we should as much as possible adopt a 'plug and play' approach. We should not be held ransom by one system.

Future Challenges

125. Two key challenges are able to be identified

a. Minimising the impact of land use on our estuaries and near shore fisheries; and
b. Determining the possible effects of climate change on our fisheries so that we can manage the consequences.

126. We have discussed earlier better management of land use practices to minimise any impacts on our inshore fisheries above – this will be a major challenge in some regions.

127. Little can be said currently about the medium or long-term effects of climate change on our fisheries. At present there is a dearth of information on what its effects will be. At one level it is likely that there will be more volatility in the weather and the resultant storms will lead to even greater sediment loads, thereby increasing the problems from land use.

128. What is unknown at present is the extent of change both in decreased productivity of some fisheries or increased productivity with others. Only the Crown has the resources and international networks to be able to adequately investigate this. We expect this will be a challenge that will need to be faced within the next 10-20 years.

Customary Non-commercial customary rights and management

General

129. We have chosen to report this aspect of our fisheries management regime separately. It applies only to Maori and though its benefits are often shared with a far wider community, its management generally only involves Maori. The adequacies or otherwise of the regime largely rebound on Maori. Being kaitiaki often involves putting the fishery first and the people involved often do not want to push an agenda.

130. As noted elsewhere when describing issues, it is also possible that they could be characterised under a number of different starting gates and also by different mechanisms for improvement. That is particularly the case here – there are problems under benefits, decision-making and monitoring and enforcement. It is also likely that solutions will need to consider some refinements in the law, certainly it is expected that regulations will need to change as will the processes used by the Ministry and others in this work.

131. There is widespread dissatisfaction among iwi and hapu with the customary tools and processes provided through Part 9 of the Fisheries Act and allied regulations. The Crown guaranteed in the Deed of Settlement to set in place a regime under which kaitiaki could manage customary fishing including providing sanctuaries (mataitai) or communally managed areas (taiapure). The current set of measures attempt to do this but are badly thought through and cause problems both between Maori and across sectors.

Regulations

132. The current basepoint is a set of transitional regulations that continue to apply across substantial parts of the country. These regulations have a number of inadequacies including not linking authorised kaitiaki to the area of the coast where they can approve fishing for customary communal purposes and an inadequate reporting regime. However the reason many parts of the coastline are still operating under this set of regulations is because of problems initiating the transfer into the Kaimoana Regulations in the North Island. Under these regulations there are two significant problems with initiation:
    - The first step is to agree who will manage customary fishing (before developing any agreement on how collectively it will be managed) i.e. the system requires the acceptance of the manager without any knowledge of the intended management regime
    - Secondly, there is no effective process to resolve objections to nominations for kaitiaki. The Crown ill not generally action and gazette kaitiaki where objections to that person remain. In the event of stalemate, the transitional regulations persist.

Reporting authorisations and catch

133. Another key difference between the transitional and Kaimoana regulations is that under the latter all catch is required to be reported back to kaitiaki granting the authorisations with the requirement that kaitiaki report aggregate catch at 3 monthly intervals. The Crown undertook to provide assistance to Maori to fully develop and implement the customary non-commercial regime but the assistance provided has been both inadequate, variable and now almost non-existent. This is not aiming to discredit some hard-working staff at MPI but the overall system and the way it is organised is inadequate for a modern regime.

134. The assistance currently given to kaitiaki is a printed book to authorise permits for customary communal fishing. The book includes sufficient copies of each authorisation for each participant in the system to have a paper copy to demonstrate they are carrying out a lawful activity. When

a book is full, it is replaced. There is no system that provides feedback to each kaitiaki or to all the kaitiaki in a region to show the cumulative total of approvals or catches. Nor is this information generally used to feed into all stock assessment processes. Given the lack of feedback to kaitiaki, it should be no surprise to learn that few provide full details consistently to the Crown.

135. Te Ohu, through its joint work with Waka Digital, has developed an online recording system for customary authorisations that can automatically provide cumulative totals to each kaitiaki. Where kaitiaki in a region agree to share information, the system can generate regional totals by species and months. The system can also aggregate data and provide it directly to the Ministry where the kaitiaki (or mandated iwi organisation where it is coordinating this activity on behalf of kaitiaki) wish to do this on a regular basis. This approach would quickly lift the quality of data available from customary communal fishing. The aggregate information would be valuable for stock assessment purposes and also to kaitiaki by:
    - giving them information on which to base future approvals
    - enabling them to consider developing any other customary tools,
    - informing cross-sector discussions on fisheries management, and
    - informing discussions with MPI on the adequacies or otherwise of fisheries management of taonga species in their region.

Pataka whata

136. Te Ohu has developed a collaborative system – ***Pataka whata*** - between the commercial and customary communal sectors that has the commercial sector authorised to catch and store fish that can then be used for customary purposes particularly tangi. Where this has been instituted it has led to significant further collaboration between the sectors and very positive endorsement by hapu and marae. To ensure the system meets robust standards of management, Te Ohu developed an electronic tracking system for each fish that operates as one module of our IkaNET system. This has now operated for more than 5 years in the Taranaki region and Ministry personnel involved with it have sufficient confidence in the system that they have recently extended the ability to continue using it and provided that ability for an indefinite period. The underlying regulations it operates from in Taranaki is the transitional regulations – the iwi in Taranaki intend to collectively move onto the Kaimoana regulations in a collaborative manner. However the differences between the regulations mean that there cannot be a seamless transfer on to that new base.

Mataitai

137. There is also a need to adjust the policies and processes for establishing ***mataitai*** – these are able to be implemented to protect customary communal interests provided they do not unduly affect commercial fishing. The process requirements for these do not require iwi or kaitiaki to precisely identify the issues a closure seeks to address and in some cases this has led to requests for very large areas to be included, leading to a high level of impacts. This may subsequently result in applications for reduced areas but it would be helpful in the first instance for applicants to discuss any proposals with their MIO and AHC before lodging an application. In many cases, iwi are not seeking to stop all commercial fishing but only for some particular species. However irrespective of the intended measures by iwi, the system requires an assessment of the effect of complete prohibition of commercial activity. This inevitably works against cross sector collaboration.

Section 186 closures

138. The Fisheries Act allows iwi and hapu to call for s 186 closures. However these are temporary with research requirements to demonstrate whether the fishery is recovering. In many cases the

time period is too short for recovery. Sufficient time is particularly important when attempting to protect shellfish beds in areas of high population – whether permanent or transient as in holiday locations. The length of restrictions should be examined.

Conclusion on Customary Non-commercial customary rights and management

139. Given all these problems, we propose that a working group between the Crown and iwi (assisted by Te Ohu) be established to examine each issue and develop suitable solutions. While each issue will need to be addressed and solved, it is critical that the set of measures work together in a coherent way. We therefore propose that no change be advanced until there is agreement across the board – it will help no one to be caught in another unsatisfactory transitional regime. Until such time as the full suite of changes are agreed, this work will be solely between the Crown and iwi. Once an agreed set of proposals is concluded, there should be the opportunity for industry organisations and the recreational sector to comment. The joint Crown- iwi working group will consider all submissions and make recommendations to Ministers and iwi leaders –including the Te Ohu Board.

Overall concluding comments

140. Te Ohu considers this review provides a timely opportunity to strengthen and improve our fisheries management system and build on the common interests of iwi and the Crown in durable outcomes.

141. To that end we would welcome a collaborative approach between the Crown, iwi and Te Ohu to ensure this common goal can be achieved.