TE OHU KAIMOANA

MĀORI FISHERIES TRUST

THE FUTURE OF OUR FISHERIES

Submission from Te Ohu Kaimoana

23 December 2016

Contents

Introduction

1. Te Ohu Kaimoana (Te Ohu) makes this submission in on "*the Future of our Fisheries*" consultation document, released by the Ministry for Primary Industries on 11 November 2016.

2. Te Ohu is the trustee of Te Ohu Kai Moana, a trust established under the Maori Fisheries Act 2004 in the context of the 1992 Deed of Settlement (the 1992 Fisheries Settlement) between Māori and the Crown. Te Ohu works to implement the terms of the fisheries settlement and advance the interests of iwi individually and collectively in the development of fisheries, fishing and fisheries-related activities.

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. This would be the first system review since the commencement of the Quota Management System (QMS) in 1986, The Fisheries Settlement in 1992, and the enactment of the Fisheries Act in 1996. It was stated that the review would look at improving our fisheries management but some aspects of our management system were 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. On 11 November 2016, the Minister for Primary Industries released *Te Huapae Mataora Mo Tangaroa – the Future of our Fisheries* proposals, set out in 4 volumes. Iwi and Te Ohu Kaimoana reviewed these proposals, noting with dismay that many of the so-called 'out of scope' aspects of the review were not out of scope at all. In particular, iwi and Te Ohu were appalled to find that aspects of the proposals would deleteriously affect the Deed of Settlement and the cornerstones of the QMS.

5. At a hui held in Wellington on 7 December 2016 to discuss the proposals, iwi resolved the following:

    a. *We categorically oppose the Ministry's assumption that the Crown can unilaterally, without consultation and discussion, repudiate the Fisheries Deed of Settlement and related legislation;*

    b. *We support Te Ohu Kaimoana, on our behalf, taking appropriate legal proceedings against the Crown for this and other related breaches of the Fisheries Deed of Settlement;*

c. *We direct Te Ohu Kaimoana, on our behalf, to develop a comprehensive strategy to oppose the proposals and to fully inform people of the downstream effects of the proposals;*

d. *We direct Te Ohu Kaimoana, to develop for our approval, what we see as the alternative Future of our Fisheries based on the partnership between iwi and the Crown that recognises, respects and promotes the agreements and rights in the Deed of Settlement;*

e. *That Te Ohu develop for dissemination to all iwi, a consistent set of messaging for iwi to be communicated to MPI, as informed by the workshop participants today*.

6. In discussion leading up to iwi deciding to develop and support these resolutions, they identified the following key issues:

   a. There is a difference between **mana** and **mahi** and while the 7 December hui was intended to discuss the technical detail of the proposals (the mahi), the more fundamental concern is mana and the Treaty relationship between the Crown and Māori;

   b. The process leading up to the release of the proposals – and indeed the nature of the proposals themselves – demonstrates the Treaty relationship has broken down;

   c. The Treaty relationship needs to be re-established first, in order to develop improvements to the fisheries management regime that are consistent with the Fisheries Settlement.

7. This submission sets out the actions necessary to re-establish the Treaty relationship (the mana) in this instance as it applies to changes to the fisheries management regime, and highlights the key policy issues that need to be resolved through a joint policy process (the mahi). Te Ohu considers that because the Fisheries Settlement was a whole-of-government agreement, any government agency considering changes to marine management should also develop any proposals jointly with iwi (and Te Ohu as their agent) to further the agreements in the Deed of Settlement – see also paras 33 and 34.

8. Te Ohu considers that mahi on fisheries management can best be taken forward working in collaboration. Te Ohu supports the submissions made by iwi, the Iwi Collective Partnership, Moana New Zealand and the combined Industry Sector Representative Entities (SRE) submissions.

Background

Te Ohu Kai Moana

9. Te Ohu Kai Moana was created under the Māori Fisheries Act 2004 (**MFA**). The MFA states 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:[1]

[1] MFA, section 32.

a. ultimately benefit the members of iwi and Māori generally;

b. further the agreements made in the Deed of Settlement;

c. assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and

d. contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

10. Te Ohu Kai Moana has only one trustee – Te Ohu Kai Moana Trustee Limited (often referred to colloquially as Te Ohu Kaimoana or just Te Ohu) - which has both duties and functions. Te Ohu is required to administer the Fisheries Settlement assets pending allocation to iwi in accordance with the purposes of the MFA and Te Ohu Kai Moana.

11. Te Ohu's duties are prescribed in section 34 of the MFA and include administering Fisheries Settlement assets until satisfied that iwi have met the criteria set out in the MFA ie each iwi has established its Mandated Iwi Organisation (MIO) that meets the criteria on MFA, each MIO has established at least 1 Asset Holding Company (AHC) in accordance with the MFA. Te Ohu then transfers to the MIO and its AHC the iwi's share of the Fisheries Settlement assets that are allocated through the iwi population formula. Once neighbouring MIOs have reached agreement on shares of inshore fisheries quota assets (and 25% of deepwater quota), Te Ohu then transfers those assets to the iwi's AHCs in accordance with their agreement. 56 of the 58 iwi have MIOs recognised and Te Ohu has now transferred in excess of 95% of the Fisheries Settlement assets to MIOs and AHCs.

12. The functions of Te Ohu are prescribed in section 35 and are to further the purpose of Te Ohu Kai Moana by, inter alia, protecting and enhancing the interests of all 58 iwi and Māori in fisheries, fishing and fisheries-related activities and performing the functions of the voting shareholder in Aotearoa Fisheries Limited (**AFL**) now trading as Moana New Zealand.

13. Improving New Zealand's marine management is important to all these entities. Collectively, the fishing rights held and exercised by Māori (including MIOs, their AHCs, Te Ohu, AFL, the Sealord Group, kaitiaki and other individual Māori) comprise:

a. a significant portion of all commercial quota shares across all fisheries – deepwater, highly migratory, inshore finfish, rock lobster, paua and other shellfish stocks and eels in freshwater (approximately 33% overall but more in some fisheries and overall valued at around $1.45B);

b. all customary non-commercial fishing; and

c. a substantial portion of amateur fishing (estimated by some to be more than 40% of that catch).

14. Iwi, Te Ohu and other entities exercising rights under the Fisheries Settlement have strong reputations for promoting and supporting initiatives that protect and enhance the natural marine environment consistent with kaitiakitanga. We have implemented many initiatives to

deliver better fisheries management outcomes and reduce impacts on the marine environment — many of which are voluntary — including:

a. modifying fishing gear to improve selectivity – this involves Precision Seafood Harvesting and trials of new net technologies;

b. implementing sea bird mitigation practices to reduce risk of interactions; and

c. advocating strongly for science-based management;

d. early adoption of both electronic reporting - Te Ohu support assisted the development of the application that can work on robust electronic tablets able to be readily used on inshore fishing vessels; this tablet based app is being trialled on vessels fishing into Moana and other LFRs – and electronic positioning and monitoring by Moana NZ as part of the SNX programme.

A more detailed list of the measures that we have implemented is attached in **Appendix 1.**

15. We remain a contributor to the development of sound research and initiatives that support sustainability of fisheries and the marine environment. Te Ohu participates in most of the science working group processes and other government forums associated with fisheries management and the aquatic environment.

16. In all this interaction, Te Ohu works with and for all 58 iwi – MIOs and their AHCs – on their full range of interests in fisheries and the marine environment. We seek to inform and advise them and advance their interests collectively.

17. Te Ohu aims to work constructively with the Crown and government officials in the review and development of policies on the management of New Zealand's fisheries to ensure New Zealand gains better fisheries management and this is done in a manner where the rights and interests Maori under the Fisheries Settlement are protected and enhanced.

The Fisheries Settlement

18. Following the introduction of the QMS in 1986, Māori claimed, in proceedings in the High Court and in various claims to the Waitangi Tribunal, that the QMS:

a. was unlawful and in breach of the principles of the Treaty of Waitangi; and

b. was in breach of section 88(2) of the Fisheries Act 1983 which provided that nothing in that Act shall affect any Māori fishing rights.

19. As a result of these proceedings, Māori obtained from the High Court and Court of Appeal, by way of interim relief, a declaration that the Crown ought not take further steps to bring fisheries within the QMS.

20. At a national hui held at Wellington in June 1988 certain representatives of Māori (the **Māori Negotiators**) were given a mandate by Māori claiming rights and interests in the fisheries of New Zealand to negotiate and secure a just and honourable settlement of their claims with the Crown.

21. In 1989 the Crown and the Māori Negotiators reached an interim agreement whereby the Māori Fisheries Commission was established and received $10 million dollars and, progressively at 2.5 percent per year, quota comprising 10% of the TACC for each species already in the QMS or the equivalent in cash (the **Interim Settlement**).

22. The Māori Fisheries Act 1989 (which came into force on 20 December 1989) gave legislative effect to the Interim Settlement. The Māori Fisheries Act 1989 was an Act "*to make better provision for the recognition of Māori fishing rights secured by the Treaty of Waitangi*" and provided for the transfer from the Crown to the Māori Fisheries Commission of quota totalling 10% of the TACC for all species then subject to the QMS.

23. In 27 February 1990, the Māori Negotiators and the Crown agreed that there should be discussions between them to ensure that the evolution of the QMS, including the term of quota, met both conservation requirements and the principles of the Treaty of Waitangi, and further agreed that all proceedings should stand adjourned sine die to allow discussions to continue. On 23 September 1992, following lengthy negotiations, the Māori Negotiators and the Crown signed a final Deed of Settlement.

24. The 1992 Deed of Settlement proclaimed, among other things that:

    a. ...Māori and Crown agreed … to ensure that the evolution of the Quota Management System, including the term of quota, met both **conservation** and **Treaty of Waitangi principles** …;[2]

    b. The Crown and Māori wish to resolve their disputes in relation to the fishing rights and interests and the Quota Management System and **seek a just and honourable solution** in conformity with the principles of the Treaty of Waitangi;[3]

    c. the Crown has a duty is to develop policies to help recognise use and management practices and provide **protect**ion and scope for the **exercise of rangatiratanga in** respect of **traditional fisheries**, which includes **commercial and non-commercial** fishing[4]

    d. The Crown and Māori … consider the completion and performance of this Settlement Deed to be of the **utmost importance** in the pursuit of a **just settlement of Māori fishing claims**;[5]

    e. The Crown and Māori wish to express their **mutual and solemn acknowledgement** that the settlement evidenced by this Settlement Deed marks the resolution of an historical grievance;[6]

    f. The Crown and Māori enter into the agreement in the **spirit of co-operation and good faith**.[7]

---

[2] "Her Majesty the Queen and Māori, Deed of Settlement" (1992), paragraph G, page 2.

[3] Id at paragraph J, page 3.

[4] Ibid at paragraph K, page 3

[5] Id at Paragraph L, page 3.

[6] Id at Paragraph M, page 4.

[7] Id at Paragraph M, page 4.

Key Terms of the Fisheries Settlement

25. The key entitlements provided to Māori under the Fisheries Settlement included:

    a. entering into a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company, with not less than a 50 percent share by Māori;

    b. a sum of $150 million to be used for the development and involvement of Māori in the New Zealand fishing industry, including participation in the acquisition of Sealord;

    c. allocation of 10% of all quota for species already subject to the QMS and 20% of all quota for species brought within the QMS after the signing of the Deed; and

    d. the recognition and provision for (by way of legislation empowering the making of regulations) customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is not commercial in any way nor involves commercial gain or trade;

    e. actions by Government including legislative change where necessary to reflect the special relationship between the Crown and Māori and provide Māori with the ability to directly participate on all Fisheries statutory bodies to ensure direct consultation on any matters of major concern or proposals for change to the fisheries management system.

26. In return for these entitlements, Māori endorsed the Quota Management System (**QMS**) (and Individual Transferable Quota (**ITQ**)) as the **lawful and appropriate regime** for the **sustainable management of commercial fishing** in New Zealand and to fully and finally settle their claims with regard to commercial fishing.

27. This is the only fisheries management regime endorsed by Māori. It was recognised because its features best met with the Māori perspective – the rights are **perpetual** in accordance with the ongoing Treaty rights being recognised in the Settlement. The rights were **secure** dependent only on meeting sustainability requirements[8]. The QMS underwent substantial modification over the first five years of its life. By 1992, Māori were sufficiently confident in the parameters of the QMS at that time that it could be endorsed as a suitable regime for the **sustainable** management of commercial fisheries. These properties (perpetuity, security, sustainability) created the correct incentives for all participants to manage for the long-term, recognising that future generations would benefit or otherwise from the actions of the current generation.

28. The 1992 Fisheries Settlement was the first significant Treaty settlement concluded by the Crown, the first pan-tribal settlement and is widely recognised as being very successful. The Fisheries Settlement was integral to, and remains the cornerstone of, the performance of this world-class fisheries management system.

[8] See section 308 Fisheries Act that protects the Crown from compensation only where it takes action for sustainability purposes under the Fisheries Act.

29. The Māori negotiators were well aware of the dimensions of the fishing property right and the limitations on other processes to cause significant change to those rights[9]. They accepted that under the QMS the level of total catch for any fishstock would go up or down to ensure sustainability. This approach is consistent with iwi views of kaitiakitanga in which all had responsibility for the overall health of fisheries and their supporting environment. 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.

30. This view has been endorsed by the High Court, who has observed that the object of the QMS scheme is to "create a stable regime under which stocks of commercial fish species are conserved" and under which commercial fishers "have stable and recognised rights to fish on a basis on which they can plan and make the considerable financial commitments which this industry requires."[10] Accordingly, the legislative scheme was "not a scheme set up to be dismantled or tinkered with by a Minister as a matter of whim."[11]

31. To reflect the importance of the stability of quota rights, section 19(4) of the Fisheries Act provides that no species can be removed from the QMS and no QMA can be altered without an Act of Parliament. Further, the level of catch entitlements can only be reduced (or increased) on the grounds of sustainability through the processes provided under the Act. The Fisheries Act provides in section 308 that only the setting of sustainability measures under the Act exempts the Crown from being liable to pay compensation or damages to any person. This boundary was recognised and accepted by Government earlier in 2016 when proposing to establish recreational fishing only parks, the Government proposed it would pay compensation to quota owners for the economic losses arising from loss of catch by exclusion.

Relationship of Settlement and Fisheries Management

32. In terms of the nature of the relationship between the Crown and its Treaty partners within the unique context of the Fisheries Settlement, we consider the following matters are fundamental:

    a. The Crown and iwi are Treaty partners.

    b. As Treaty partners, historical issues relating to fisheries were honourably resolved on the terms and within the spirit of the 1992 Fisheries Deed of Settlement ('1992 Deed').

    c. The 1992 Deed is based on acceptance of (and commitment to) the scope, principles and substance of the Quota Management System (QMS) as a sound foundation for an enduring settlement (and importantly that Individual Transferable Quota (ITQ) is the 'currency' of that settlement').

[9] It was understood at the time that the quota rights could also be attenuated under the Marine Reserves Act but this was within understood thresholds and could not be exceeded with the agreement of iwi.
[10] *Sanford (South Island) Ltd v Moyle* HC Wellington CP 3/98, 10 November 1989 at 7 (per McGechan J).
[11] Ibid at 7 (per McGechan J).

d. A core tenet of the QMS is the principle of 'sustainability' along with its companion and related principle of 'utilisation' which were specifically endorsed by the iwi Treaty partner through the 1992 Deed.

e. Iwi well understood that their rights would be constrained to ensure sustainability, with any utilisation set at a level that achieved this. Accordingly, and as an incentive to ensure sustainability, there was no regulatory ability to encroach on iwi rights except to achieve sustainability (other than the limited ability understood under the Marine Reserves Act 1971 which can only be established for the purposes of scientific study and does not unduly interfere with commercial fishing). Consistent with this, the Fisheries Act only exempted the Crown from paying compensation for sustainability measures.

f. Accordingly, except on the basis of a further new agreement between the Treaty partners, no derogation from the scope, principles and substance of the QMS (including derogation of ITQ rights or a retrenchment from sustainability or utilisation as currently prescribed) would reasonably conform with the 1992 Deed.

g. More particularly, there will be such a derogation if a Crown initiative seeks to alter the boundaries of the QMS in any way which disrespects and/or materially affects Māori traditional fishing interests (which both the highest New Zealand Courts and the Crown in the Settlement recognised as encompassing both customary non-commercial and commercial interests) or undermines the benefits provided to iwi under the 1992 Deed.

h. The Crown remains entitled to promote initiatives to marine management affecting the QMS for hygiene and fine tuning purposes, but:

   (i) the inherent nature of the 1992 Deed and the Treaty partners' relationship require prior engagement with iwi (and Te Ohu due to its trustee obligations on behalf of iwi) before general public consultation, and

   (ii) such initiatives should accommodate Māori traditional fishing interests (which encompass both customary non-commercial and commercial interests).

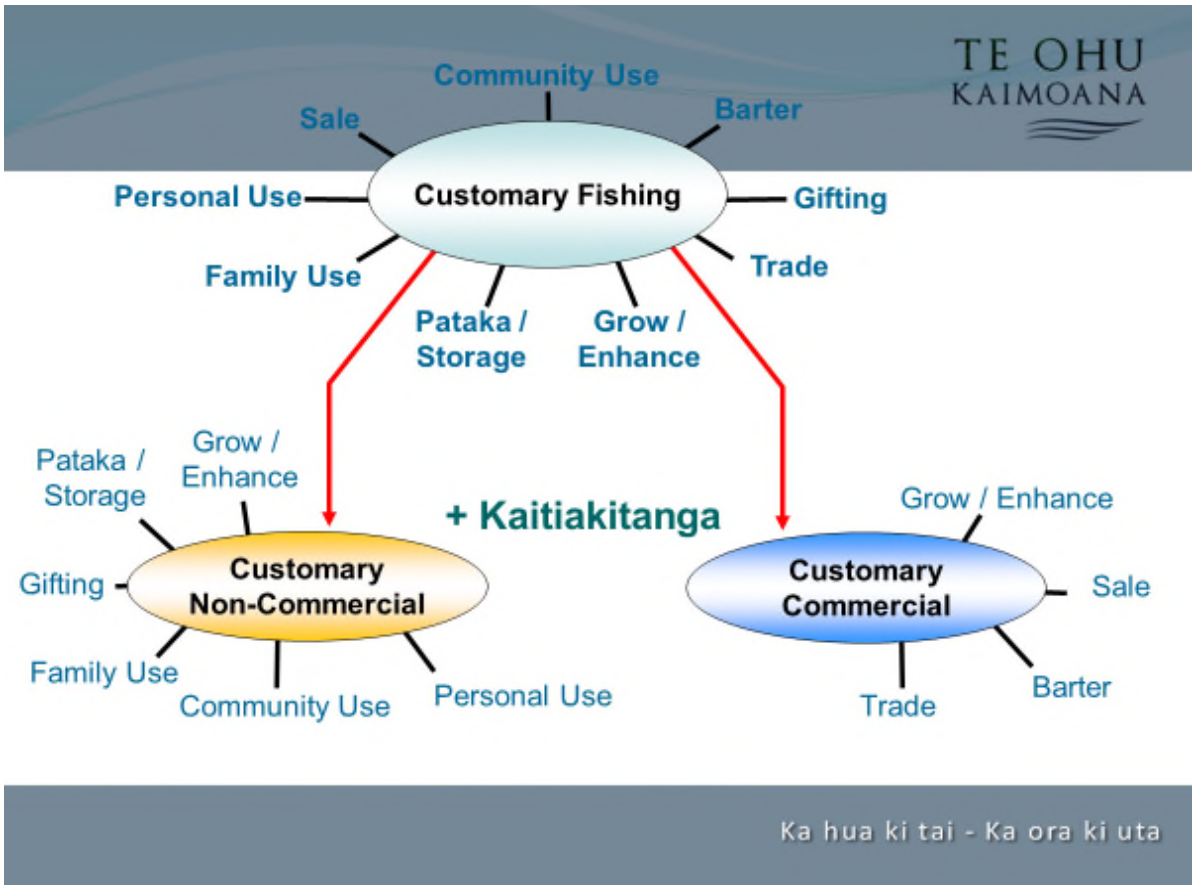
33. We see these principles as being agreed by the Treaty Partners – iwi and the Crown. As such it was (and remains) a whole-of-Government Agreement. Accordingly, these principles apply to policies promulgated by <u>any</u> government department that will affect the tenets of the 1992 Deed and the benefits provided through the Fisheries Settlement. Notable recent examples include policy initiatives from the Minister for the Environment in respect of the proposed Kermadec Ocean Sanctuary and the establishment of Marine Protected Areas. As you are aware, we remain strongly opposed to both policies. In our view that they materially undermine the fundamentals of the Fisheries Settlement.

34. It is our view that with Government signing the 1992 Deed, enacting the Treaty of Waitangi Fisheries Settlement Act 1992 including its section 3 and including section 5 (b) in the Fisheries Act 1996, Parliament clearly set out that any pathway of further improvement in fisheries

management should clearly further the Agreements in the Deed and this necessarily would need to be advanced jointly by the Treaty Partners. That would mean that only those interpretations of the legislation that also furthered the agreement in the Deed should be advanced. To do otherwise would either create false expectations in the mind of the public that these proposals could be implemented (and waste others' energies on responding to them) or signal to the Treaty partner that the government intends to act against the solemn undertakings given in signing the Deed of Agreement. The correct process to avoid this unnecessarily occurring would of course involve representatives of both partners developing proposals to address fisheries management issues.

Aspects of the settlement and need for integration

35. When considering any proposals for change it is fundamental that the full range of Maori interests in fisheries be included. The Settlement recognised that Maori traditional interests in customary fishing included what would now be termed all sectors. This can most easily be depicted through the figure below.



36. These manifold interests also demand that any management regime must address all the issues for each sector, and deal with these in an appropriate manner to manage their activities commensurate with their collective take so as to ensure there is an integration of measures that lead to sustainable outcomes. The management regime must necessarily must create responsibilities for each sector and the conditions for collaboration between the sectors.

The Fisheries Act Review

37. Te Ohu Kaimoana participated in the first stage of the Fisheries Act Review in late 2015. This first stage involved discussions between the Ministry for Primary Industries (**MPI**) and interested parties. During these discussions, Te Ohu and iwi highlighted key issues we consider need to be addressed to improve the operation of our fisheries management system. However, we also highlighted the need to avoid significant risks to Fisheries Settlement rights by advancing any changes cautiously. We highlighted the importance of setting this issue out from the start and that iwi as Treaty partners, would expect significant involvement in developing any changes.

38. Te Ohu's submission on the first stage confirmed this expectation and identified what we consider to be the key issues that need to be addressed in the review.

Mana – the need to re-establish the Treaty relationship

39. As you will be aware Te Ohu received an advance copy of the draft summary paper of the *Future of our Fisheries* (*FooF*) proposals. We considered that, while there are some proposals that are worthy of consideration, there are also a significant number of proposals and approaches that do not further the Agreements under the Deed of Settlement, but rather undermine the fundamentals of the QMS and the Settlement. In addition, though Te Ohu had proposed joint development through its December 2015 submission and requested meetings with officials, it was clear that the proposals had been developed in isolation.

40. Te Ohu decided that the most constructive path was to immediately take its concerns to Government with the intent that officials and Te Ohu work together on the document to ensure that any released document only proposed measures that did further fisheries management in a manner that was in accord with the Settlement. Those concerns and proposed process were set out in our letter of 1 November 2016.

41. Against our advice, the Government decided to proceed with its proposals as developed and the *FooF* proposals were released on 11 November 2015.

42. Te Ohu subsequently released its preliminary analysis of the proposals (based at that point on Volume 1 of *FooF* -the summary) to iwi.

43. Te Ohu has participated in many of the hui the Ministry has held with iwi around the country over the last few weeks and listened carefully to iwi views. As should be well-recognised by officials, polite conduct and little comment from hui participants does not in any way represent agreement from iwi; the Ministry should also be aware that many iwi representatives purposely stayed away in protest at the poor process undertaken and dubious proposals put forward.

44. Te Ohu held a national hui in Wellington on 7 December. At that hui iwi expressed their anger at the processes used to develop the proposals, the approaches proposed to solve the fisheries issues set out in the document and timeframes for comment, given the importance of the fisheries settlement to their iwi. The iwi collectively passed the resolutions set out in paragraph 5 above.

45. Te Ohu wishes to advance fisheries management in a manner that furthers the agreements in the Settlement. We consider that to minimise the need for litigation, the process from here

should be to agree and implement an ongoing partnership model consistent with the Deed. That should immediately include:

a. ***Regulatory proposals***: Te Ohu to immediately engage with the Ministry on a suitable framework for the implementation of the regulatory proposals. This will be through a technical working group from the iwi treaty partner liaising and working with Ministry officials on a detailed programme of work. Working together we will need to make sure that collectively we get to the right answers to the right questions at the right time so that additional expenditure by industry and the Ministry will provide the needed information to improve and demonstrate integrity in the management of our fisheries at least cost.

b. ***Strategic proposals***: to have the Treaty partners engage early in 2017 on the rights and obligations of both Treaty partners under the Fisheries Settlement and establish a joint process to focus on the Strategic proposals in the *FooF* documents (and such other proposals as the parties agree) to develop options that comply with the Settlement.

c. Where any ***differences of opinion*** between the partners on the settlement rights and obligations and their application to any proposed policy proposals that the Crown still wishes to advance, there be ***joint application to the Courts*** to seek clarity for both Treaty partners.

46. In the remainder of the submission we identify the key areas that need to be addressed as part of our recommended process. Due to the tightness of the timeframes established by the Ministry and the Government, this submission cannot respond to the full range of issues. Written responses can only highlight the 'tip of the iceberg' regarding these and other issues and so our response here concentrates on those aspects where we consider there needs to be far greater thought and development of solutions to the underlying issues. As set out in this paper, we expect a joint process for that work.

Mahi – comments on the proposals

General comments

47. The QMS and our fisheries management regime is generally operating well. The most recent international study [12] has identified three attributes that are consistently associated with positive fisheries management outcomes: science-based stock assessments, limits on fishing pressure and adequate enforcement of those limits. New Zealand's system of fisheries management system has all 3 of these. The overall system has been rated by international studies as being in the top 3-5 fisheries management regimes around the world. Using our science -based stock assessments and the limits set for catches, at the end of 2014, for the stocks with known status:[13]

- 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.

[12] Michael Melnychuk, Emily Peterson, Matthew Elliot and Ray Hilborn: *Fisheries Management Impacts on target species status,* Proceedings of National Academy of Sciences of USA, Nov 2016

[13] MPI. *The Status of New Zealand's Fisheries*, February 2015.

In addition, the most recent international examination of fisheries compliance systems rated the New Zealand fisheries compliance and enforcement system and operation as top in the world.

48. The QMS operates through a relatively complex series of regulatory constraints and incentives. Operationally these needs to be regularly checked and individual settings adjusted to ensure for fitness for each fishery.

49. The previous statements are not attempting to suggest there don't remain some problems and issues where refinement is needed. There are but it does emphasise that changes to our system will need to be undertaken carefully to ensure there are no unintended consequences that solve one problem but cause several others (as per McGechan J para 30). Each issue will need to be examined carefully so that its underlying causes are revealed and the interplay of factors understood. Then the options for addressing those causes examined to choose the optimum measure that addresses the issue without causing other negative impacts. When addressing several issues, it is also critical that the full suite of measures to address each issue are then integrated to ensure they do not negate one another or significantly change the parameters and therefore long-term results of our fisheries management system, the QMS and the Deed of Settlement.

50. While the *FooF* documents indicate that any option can proceed, it will be critical to make sure that any set of changes are assessed on the impact they collectively have on fisheries management, the QMS and the Settlement. We understand that, to date, there has been no analysis has been undertaken of the impact of any of the proposals.

51. While the documents note that each proposal needs to be assessed on its own merits, it is not obvious that the Ministry has in mind a coherent, coordinated set of proposals that will be supportive of the current aims of our fisheries management regime and mutually reinforcing.

52. While we understand these are proposals for feedback, we do not consider they are sufficiently developed to allow sensible consultation. The issues included appear more to be a list of topical issues than to have arisen from an analysis of problems. There is no precise definition of the issue (or issues) to be addressed in any of the proposals, nor any analysis of the underlying cause(s) of the issue(s). There is insufficient detail in the measures to properly understand them and how they might work together. They are at a level of generality where many courses of action remain possible and it is impossible to adequately assess the impacts of each measure on fisheries management, the QMS and the Settlement or the costs or benefits from any individual option.

53. Nevertheless, there is a consistent direction throughout the proposals that demonstrate that while undertakings were given to not affect the Settlement or the core of the QMS, many of the key Strategic proposals suggest changes that on their own or cumulatively will do just that.

The Treaty of Waitangi and the Fisheries Settlement

54. One of the key statements made by the Minister as the operational review commenced and subsequently repeated by the Director General and other officials is that the Crown had, and continues to have, no intention to interfere with the Crown's obligations to Māori under the Fisheries Settlement or benefits (including rights associated with ITQ ownership) of that Settlement. They have been said to be out of scope for the review. These statements are acknowledged and accepted in good faith. They are consistent with the obligation in section

5(b) of the 1996 Act requiring all persons exercising powers conferred under that Act to act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

55. However, when many of the proposals included in *FOOF* are submitted to scrutiny it seems to us that they do in fact trespass against these matters – in a manner contrary to the principles identified above - and therefore are not in fact "out of scope" at all, irrespective of the stated intention.

56. In addition, while we understand this declaration is being stated to make clear that policies will not be undermine or derogate from the obligations, it can also be read that the Crown is stating that in its proposals for the future of New Zealand's fisheries, it won't take any actions to better deliver and enable its obligations under the Settlement to be met going forward. Iwi have raised this with us, citing the lack of response to our earlier submissions including the need for the Crown and iwi to have a fundamental look at the adequacy of the customary non-commercial communal tools and redesign and additions where agreed. We will want to address this and other positive actions to take both the Settlement and fisheries management forward.

Vision and objectives

57. Te Ohu supports the value of a national strategy to guide the management of our fisheries. We agree that a clearly articulated Vision that captures the aspirations of Iwi, commercial and recreational fishers, and society would be a useful tool to act as a compass setting for the ongoing development of our fisheries regime and to secure support for the strategy from all people who use and enjoy our fisheries. Any such statement, while being inclusive, must be consistent with those parts of our fisheries management system that must always remain and in doing so recognise the importance of the QMS and Settlement.

58. The vision put forward in the *FooF* proposals is:

> *Abundant fisheries and a healthy aquatic environment that provides for all our people, now and in the future.*

59. With respect, while that may sound a worthy goal to have in general terms, that statement completely misconstrues the purpose and principles of the Fisheries Act. The wording of the proposed Vision gives us serious cause for concern that this will in some way be used as a substitute for, or limit on, the purpose and principles (as explicitly agreed by iwi) laid down in section 8 of the 1996 Act. In our view, the appropriate 'vision', if one is needed is a restatement of section 8, which we remind you of here because it appears to have been forgotten:

> ***Part 2 Purpose and principles***
>
> ***8 Purpose***
>
> *(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.*
>
> *(2) In this Act,—*
>
> ***ensuring sustainability** means—*
>
> *(a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and*

(b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment

utilisation *means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.*

60. In addition, probably because the process to date has not involved iwi or Te Ohu in the development of the vision, objectives or proposals, we are aware that many iwi question this vision as they don't see themselves included.

61. A vision is meant to be unifying - the language must align all participants and solutions toward a joint outcome. The use of the word "abundance" throughout the document is fraught with difficulty as it means very different results to different sectors. This would mean that using the same Vision, the different sectors would seek to drive fisheries management in diverse directions. This surely cannot be what officials are recommending to Ministers - that we create a framework that drives sectors into competition with one another with the resultant battle in a fishery then only able to be solved through political intervention rather than having the joint energies applied collaboratively on better shared fisheries management. Given the different connotations attributed to it by different sectors we strongly suggest the word "abundant" not be used in place of "sustainable" given ensuring sustainability is a key limb of the purpose of the Fisheries Act. It is unclear what level of abundance is being proposed as the intended goal or for whose benefit.

62. Te Ohu wants to work with iwi and the Ministry to jointly develop a vision that champions management of our fisheries in a manner, that recognises and furthers the agreements in the Deed of Settlement, to enable utilisation of our fisheries in a sustainable manner that rewards New Zealanders commensurate with their efforts to take up their responsibilities to ensure sustainability as they pursue their benefits from fishing.

63. The summary document sets out a series of objectives that, if achieved, are expected cumulatively to realise the vision. Each objective is grouped with a series of desired outcomes. There is no clarifying commentary or analysis of any of these elements in the documents. They are treated however as the basis for looking at the merits of the Strategic Proposals. If these are to be the elements against which alternatives are measured, they need to be very clear and there needs to be universal agreement from all sectors that they are appropriate.

Objective 1: abundant fisheries in our seas and a healthy aquatic environment

1.1	Fish stocks are managed for abundance
1.2	The fisheries management system supports wider ecosystem and environmental health
1.3	QMS incentivises fishers to value every fish and minimise waste
1.4	Better information supports richer understanding of abundance, aquatic health and NZ's needs

64. The use of "abundance" in Objective 1 and outcomes 1.1 and 1.2 reinforces our comments above. Why is "sustainability" being unbundled into some of the elements that make it up but with prominence being given to the concept of abundance but without any sense of how such an objective and outcome would be measured? Is the current floor of B_{MSY} intended to remain as the statutory target in the absence of agreement of all sectors to higher levels? Or are targets for fisheries above B_{MSY} now to be the default objective? If so, to what level? in

what fisheries? In what circumstances? With the agreement of whom? Will it be as determined by Ministerial decree? These statements, combined with proposals for shared fisheries (see Strategic Proposal 1, Option 3) place the agreements made under the Deed of Settlement at substantive risk (see paras 108-122).

65. It is not clear whether the wording of the second part of the objective is attempting to reflect that, as per Part 2 of the Fisheries Act, our fisheries management is required to appropriately support wider ecosystem and environmental health or to highlight what officials perceive to be a gap in the ability to do this. If the latter, what, if any, part of the fisheries management system currently does not support wider ecosystem and environmental health?

66. The wording for outcome 1.3 could cause some confusion and may need to be clarified. It specifically considers that the QMS should incentivise fishers to value every fish - we take it this wording reflects a deliberate categorisation that recognises that only fish that have commercial value are managed under the QMS; this goal does not apply to non-QMS fisheries. However not all fish managed under the QMS have sufficient economic value in all circumstances to justify the costs of landing all fish. In addition, there are circumstances where landing fish will adversely affect the sustainability of those fisheries or reduce the value of the catch. In that context we trust that the Ministry is looking to build on the good practice of generations of fishers and managers in promoting sustainability by returning small live fish to the sea as well as female lobster with berry, or requiring large eels to be released during tunaheke. These practices show fishers are valuing the fish by returning them live to the sea and as such this would not constitute waste. It might be that a broader goal should be provided: "the fisheries management system including the QMS incentivises fishers to avoid unwanted catch". We make further comments on discards in paras 79-103.

67. We support the need for better information to improve the fisheries management system. However, this should be couched in terms of sustainability. The level of information for each sector needs to be commensurate with its level of effort and catch for that sector relative to the overall catch, its variability spatially and annually and the extent to which the sector acts jointly to manage its collective catch within its sectoral allowance along with the measures it employs to minimise its footprint on the surrounding environment. Equally there needs to be recognition of the costs of management of that sector with all contributing fairly.

68. We are unclear what the reference to "New Zealand's needs" is intended to mean. Does this refer to information we need to manage fisheries better? Does it refer to improving the ability of Government to report internationally on agreements it makes internationally? Or does it refer to the information that might be needed for the Government to make fisheries allocation decisions?

Objective 2: Everyone plays their part in managing New Zealand's shared aquatic resources

2.1	All New Zealanders are aware of their obligations in supporting the system
2.2	Fishers and communities participate in the decisions that affect them
2.3	Continued strong partnership and participation of Māori
2.4	Quota holders have responsbilities and act on this basis
2.5	The system makes it easy to comply and address compliance issues
2.6	The system distributes its costs fairly

69. What is the part everyone should play in managing New Zealand's shared aquatic resources? It is not clear what is being proposed as the obligations of the various harvesting sectors or wider public. What seems very clear however is that while all New Zealanders should be aware of their obligations in supporting the system, the material and proposals identify only quota holders as having "responsibilities". We must therefore assume that these "responsibilities" are materially different from their obligations to support the management system. With this review said to be future-proofing the fisheries management system, what seems remarkable is that the proposals portend no changes in responsibility to any sector other than the commercial fishing sector. We do not consider the status quo for the recreational sector will be sufficient going forward.

70. There is no doubt that fisheries, particularly inshore fisheries have an important impact on local and regional communities. It is not however clear what is intended by the reference in objective 2.2 of "and communities". Is this referring to mandated groups that represent fishers? Or is it elevating communities to having some legal status in decision-making processes? If so, for which decisions? Under what circumstances? What are the respective rights of fishers vis-à-vis communities?

71. The reference to a "continued strong partnership and participation of Māori" assumes these matters are already at a desired level that only requires maintenance. However, the form and scope of that partnership is not clear from the document. For reasons outlined earlier, the Treaty partnership needs to be re-established and agreement needs to be reached on how it should be put into practice.

72. In addition, while the document suggests that the Crown's Treaty obligations in respect to customary non-commercial fishing are ongoing, it gives us no confidence that the Crown recognises its ongoing obligations in respect of the commercial aspects of the settlement, including its foundation in the QMS. These obligations extend beyond its allocation of quota shares to the Treaty of Waitangi Fisheries Commission and subsequently Te Ohu.

73. The concept of "fairness" emerges in a number of places in the document. Policies should make clear what is meant. For instance, the cost recovery principles in section 262 of the Fisheries Act (that we recommended should also remain as a cornerstone for our fisheries management in the review) provide that costs are allocated on the basis of those who benefit – whether it be quota holders or the public generally. We make further comments on fairness below.

Objective 3: Everyone can share fairly in the social, economic, cultural and environmental benefits of abundant fish in a healthy aquatic environment

3.1	Everyone in New Zealand, now and into the future, has the opportunity to enjoy our fisheries
3.2	Local communities flourish from the benefits fisheries provide
3.3	Businesses can innovate and grow value from the fisheries resources
3.4	Participation in fishing remains a strong part of New Zealand's identity and economy

74. Objective 3 of *FOOF* appears to miss the point of the legislation – this objective should again be tied back to section 8 of the Act. The notion of "sharing fairly" is a very subjective. The

statements give no guidance as to what this means. In our view, any consideration of "fairness" should begin with respect for the existing Treaty Settlements.

75. However, when looked at in conjunction with some of the options in the Strategic proposals, this objective appears to us to be a poorly disguised attempt to subvert the purpose and principles of the Act so as to allow for reallocation of a greater share of the Total Allowable Catch from (in particular) the commercial sector to the recreational sector. In our view the Minister does not have the authority to so reallocate. All sectors' rights to fish should rise and fall on the sustainability of that fishery, with increases and reductions shared by all sectors, not through one being advantaged over another. As only this schema creates certainty for all sectors for all conditions, it is the only pathway that encourages long-term action from all sectors and collaboration. It is therefore the only sustainable option.

76. We agree that our fisheries management system should provide opportunities to enjoy our fishery. However, there should be responsibilities that go with that privilege. Those responsibilities include reporting catch and operating in an environmentally responsible manner.

77. Again it is not clear what is being proposed under objective 3.2 Local communities flourish from the benefits fisheries provide. Iwi are well aware of the many benefits that fisheries provide to their communities with nutritious food, ability to provide for cultural activities and income being three. But what is being proposed as a fair amount? Who decides? And what is the basis for any change?

Objective 4: The fisheries management system is widely trusted in New Zealand and internationally

4.1	Public confidence in the QMS is strong and evidence based
4.2	Decisions are timely, risk-based, and supported by evidence and robust processes
4.3	New Zealand continues to be recognised as an international leader in fisheries management
4.4	Consumers of New Zealand's fish value the sustainability of our fishery resources

78. These objectives are supported. It is not clear whether there are other measures contemplated to further advance these. The evidence from international studies of our New Zealand fisheries management system is that we already achieve many of these goals. What is less clear is whether the strategic proposals cumulatively will further assist – or work against - attainment of greater achievement of the goals.

Strategic proposals –

Strategic Proposal 1 - Maximising value from our fisheries

Address discarding of fish

79. *FooF* proposes that significant measures be put in place to minimise 'discarding'. Te Ohu agrees this issue needs to be addressed.

80. Like several other issues in the *FooF* proposals, it is regrettable that this issue is only given a 'once-over-lightly' approach in the documents. The documents do not make clear what

discarding is and imply by the range of options in the documents that all returns to the sea are undesirable. Though it is important for abundant fisheries that there are incentives to minimise all unwanted sources of mortality, careful reading of the document reveals that the proposals only address commercial catch, and then only the commercial catch of QMS species. This has not been clearly set out for the uninformed reader.

81. As you will be aware we (Te Ohu) have sought to work with the Ministry and broader industry on this subject for more than a decade. We are aware that there were also even earlier attempts by industry to have this issue addressed. However, no program got beyond discussion; both industry and MPI need to bear responsibility for this - the Total Allowable Catch (and Total Allowable Commercial Catch) settings for finfish were set when the QMS was established off landings, not catch. Though managers, scientists and enforcement officers were aware of this, no investigations or proposals were progressed to alter these values to reflect catch. In part this could have been because managers were aware that by setting catch limits based on this, it was unlikely that in the absence of strong warning signs in any fishery, there would be sustainability issues as each of the fisheries were inherently more productive than the official modelling assumed.

82. When changes were made through the 1996 Fisheries Act to bring in Annual Catch Entitlements (ACE), this issue was raised again as it could be seen that in many fin-fisheries, unless changes were made to TACCs before the ACE regime came into effect in 2001, normal operations would on a 'black letter law' basis make standard fishing practices illegal – again industry participants, managers, scientists and enforcement officers were aware of this – but no change occurred.

83. However as acknowledged in part above (para 66), there are a number of circumstances where fishers return fish to the sea:

a. Where it assists sustainability, and is required by law ie rock lobster in berry and also soft shell as well as the requirement to return small live fish of the 11 species that have Minimum Legal Size (MLS) set - this applies to all fishers (unless customary non-commercial are specifically exempted in a particular authorisation). Note also that for gurnard there is a MLS only for non-commercial fishers;

b. Where the fisher is a recreational or customary non-commercial fisher – the law allows these fishers to return all other species to the sea so they can 'high-grade' their catch as long as they do not land more than their bag limit;

c. Where the fisher is a commercial operator, for swordfish there is specific requirement that the fish must be returned to the sea;

d. Where the fisher is a commercial operator and there are specific exemptions for approx 30 QMS species under Schedule 6 – note that this includes Blue sharks (as agreed under the National Plan of Action on Sharks) in part because the ammonia they exude contaminates and degrades all other fish retained;

e. Where the fisher is a commercial operator and there is a specific exemption for all fishstocks not included in the QMS;

f. Where the fisher is a commercial fisher and it assists sustainability because the QMS fish could be returned live to the sea and it is not economic to land the fish (under current law these fish must be landed and counted against ACE);

g. Where the fisher is a commercial fisher and the QMS fish is dead but there is no market for the fish including where it is damaged eg lice or eaten in part by sharks and whales (under current law these fish must be landed, their green-weight estimated and counted against ACE).

84. There are therefore a range of circumstances where return-to-the-sea of fish occurs and with each, there can be a number of reasons why this occurs. It is important to understand the cause(s) and adjust measures to address those. The MPI responses largely treat symptoms – it is unlikely this will achieve positive utilisation and sustainability outcomes.

85. In addition, though there has been a requirement to return to the sea sub-MLS fish of many important target species, there has been no requirement that this element of the catch be reported – paper based forms with space for only 5 to 8 fish and no codes for MLS fish militated against recording this information. While some commentators have suggested that considerable tonnages of these fish are killed and dumped at sea (without clarifying to the public that legally returning these fish to sea is required under the law) the closely observed trials for sub MLS Snapper in SNA1 (North Cape to East Cape) revealed this to be less than 5% of the commercial catch and a significant percentage could in normal operations be returned alive to the sea.

86. Discarding largely occurs in mixed fisheries and in the largest numbers when fishing by trawling. The actual mix of fish caught through trawl in a mixed species fishery complex is unpredictable and varies both spatially and temporally (within a season and between seasons). For inshore trawling (because a number of difficulties) there has been a very low level of observation. This, along with paper reporting and other factors, has meant inadequate reporting. The result is we don't know the size of the problem. 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.

87. 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.

88. As a result of discarding and non-reporting, 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.

89. Te Ohu considers work on this issue to be 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.

90. 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.

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

92. We consider Option 1 will impact negatively on sustainability compared with the current situation. It will require fishers to bring home female rock lobster with berry and moulting rock lobster as well as small live fish that could safely be returned to the sea. Such an option would be perverse.

93. Option 2, while allowing discarding measures that support sustainability, would require landing of many fish that will have little to no economic value and are currently exempt from this through sound decisions in the past as set out above – Schedule 6. Landing these fish will not create markets for them. If markets were available, industry would be bringing these fish back to port now. If markets do develop, industry will then land the fish. However, in the absence of markets, landing such fish will only result in them going to landfill. It is difficult to see this as an improvement compared with being returned to the marine ecosystem.

94. Option 3 provides the only sensible starting point. However, Te Ohu considers this can only be a start and a set of measures need to be put in place to create ongoing effective solutions.

95. Te Ohu considers the responsible approach 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 achieve change. As with all programmes looking to achieve substantial change, this requires collaborative effort from all parties and would benefit from a VADE approach.

96. It will be important to address the underlying causes in a manner that does not result in more damage through the cure than the disease; comprehensive solutions that incentivise good behaviour and penalise bad behaviour in a manner commensurate with any transgression are needed.

97. Te Ohu helped develop and endorses the FINZ 6 point plan :
    a. Management and monitoring plans;
    b. Better catch information;
    c. Electronic reporting;
    d. Improved penalty regime;
    e. Gear improvement (including when, where and what to deploy)– focus on solutions to minimise catch of unwanted fish; and
    f. Re-balancing – setting the TACC at correct values.

98. All these limbs have a part to play to successfully minimise discards. While the *FooF* strategic proposals have some elements, they do not include the full set that we consider will be needed.

99. Te Ohu endorses the FINZ approach with 2 key emphases – ensure sustainability and minimise waste. We propose 4 operational pillars:
    a. QMS fish that are alive can be returned to sea and not counted against ACE;
    b. commercially valuable QMS fish can be landed and will be counted against ACE;
    c. commercially worthless fish can be returned to the sea and also counted against ACE if QMS, not if Non-QMS;
    d. <u>all</u> catch is to be recorded. (though sensible limits will be needed to start).

100. The important changes are that we get better recording of mortalities to prove sustainability and improve incentives to reduce waste.

101. The operational responses to this will vary - they will include changed fishing practices (reduced trawl time), improved nets to reduce the catch of unwanted fish, as well as changes to where and when target fish are sought as well as agreed industry move-on rules where high concentrations of small or non-target fish are found and changing fishing methods.

102. Te Ohu has sponsored trials of different net mesh size and orientation to minimise catch of small fish over 5 years. This has proved very successful for round shaped fish (such as gurnard – a key fishstock in Hawke's Bay) but much less successful for elliptical shaped fish (such as snapper, trevally and tarakihi- also valuable target fishstocks in Hawke's Bay and elsewhere). Trials of alternative net settings to better release these fish continue. The Electronic Reporting App that Te Ohu has supported also will routinely record the key aspects of fishing gear that can affect selectivity.

103. There has also been extensive work done on what is referred to as Precision Seafood Harvesting (PSH) that aims to bring far greater percentages of live fish to the back of the boat allowing live non-marketable fish to be safely returned to the sea.

Encourage and enable innovative harvesting

104. We support this proposal but consider that it should be widened in scope to look to allow for all innovative practices that better assist sustainability while enabling better value from our fisheries. We comment further under ***Regulatory Proposal 2*** below.

Maximise the value of shared fisheries

105. In the context of shared fisheries, it is important to recognise that 88% of New Zealanders eat fish at least once a month, with 45% of us eating fish at least once a week. The agreed best estimate of the number of New Zealanders that fish recreationally at least once a year is approximately 530,000 (range 479,000 to 582,000),[14] rather than the figure quoted in *FooF* of 700,000. The figure of 530,000 represents ~12% of the population. This shows that most of us eating fish regularly, share it via commercial purchase rather than our own individual harvest.

106. The *FooF* does not define what a shared fishery is other than to say "shared fisheries are those that are of interest to customary and/or recreational users as well as commercial users". This gives no guidance at all on the threshold of the share of overall catch where this interest means that a fishery becomes a "shared" fishery – is it 0.1%, 1%, 10% or an even greater percentage of the total catch. Are there other factors that are weighed to decide this?

107. Elsewhere the Ministry has asserted that if a species is strongly valued in one region and is deemed to be a shared fishery, that species will be treated as a shared fishery across all stocks. We do not consider that because snapper is a shared fishery in SNA1 that should automatically make it a shared fishery in SNA3. There is no sensible argument that says that to appropriately reflect catch in one QMA, a certain allowance needs to be made and the highest share for that species should then be allocated in all other QMAs for that species. Indeed that appears to be a policy proposal that is completely against the case law that the Minister should make allowances that are expected to be caught by the various sectors. We consider it nonsensical

[14] National Panel Survey of Marine Recreational Fishers 2011-12 harvest estimates FAR 2014/67

to suggest that because SNA1 fishery may have a ~50:50 allocation between the commercial and recreational sectors[15], it should immediately follow that all SNA fisheries should share ~50:50. This flies in the face of the facts about the location and intensity of recreational fishing being principally in FMA1.

Managing fish stocks for increased abundance and Optimising TAC allocation across sectors

108. These proposals are run together because the *FooF* document does just that.

109. The proposals suggest there will be increased value across a number of dimensions by managing stocks at "increased abundance". It states that "management of New Zealand's shared fisheries needs to maximize their overall value to all sectors of society with an interest in fishstocks " but does not indicate how either the value for each sector could be determined or how the combined value across different the dimensions considered. It appears to suggest that instead of determining value, a proxy of increased abundance can be used. This seems to suggest looping logic.

110. It contends that greater abundance has the potential to better maintain the functional role of fishstocks in marine ecosystems and bolster their resilience to environmental changes. While this statement is so qualified that it could be meaningless, we would like to see the science that shows that when a fishery is at B_{msy} – the current legislative minimum target – it is not maintaining its functional role in its marine ecosystem and is not resilient to environmental changes, or that in being at greater abundance than this, the fishery becomes more resilient.

111. The proposals state that "to realise the benefits of managing stocks for increased abundance, current catches or other sources of mortality would need to be reduced". It states that "this means fishers may need to absorb reductions in the TAC and reduced opportunity to harvest fish. For shared fisheries in which different fishing sectors actively participate, this raises challenges of deciding how many cuts would be allocated between different sectors." It then states that this issue is discussed in more detail later in this section.

112. The only subsequent discussion is the proposal to re-allocate catch to the recreational sector to satisfy their increasing demands. It is notable that catch reductions are the only mechanism mentioned to increase the biomass of a stock. Other options such as changes in selectivity and/or increasing yield-per-recruit should be considered and may be preferable – in practice these were the choices of the multi-sector working group for the long-term plan for the SNA1 fishery – the most valuable (in every dimension) shared fishery in the country.

113. Our earlier comments in paras 61, 64 and 74 and immediately above apply.

114. The *FooF* appears to confuse the Minister's responsibility to "ensure sustainability" (such as TAC setting) and the duty of the Crown to "provide for utilisation". The latter is an enabling provision to facilitate people having the opportunity to conserve, use, enhance and develop fisheries resources to provide for their social, economic and cultural wellbeing.

115. The Crown or government of the day does not have either the power or duty to ensure "benefit or wellbeing". And it certainly is not part of the Crown's power or duty to "maximise

[15] Allowance must be made for customary non-commercial communal take – even though this will be small, it will mean that recreational and commercial cannot be 50:50 of the TAC – in practice they can share 50:50 of the remainder after allowances are made for customary non-commercial communal take and Other Sources of Mortality.

value from fisheries" as is asserted in Strategic Proposal 1. The 1996 Act provides the framework for people (in our case iwi ITQ owners) to make their own utilisation decisions with the Minister's powers being limited to "ensuring sustainability".

116. The FOOF proposals outline an intent to progressively adjust the relative allocations of the TAC in shared fisheries, using SNA1 as an example of government's intent to move to 50/50 for each of the recreational and commercial sector. Where this allocation would be achieved by reducing the TACC, or denying an increase that would otherwise be received (as in the case of SNA7), the re-allocation of catch shares is a confiscation of quota rights and therefore also a fundamental breach of the Deed of Settlement, section 5(b) of the Fisheries Act 1996 (the Act) and the Treaty of Waitangi. In reaching that Settlement, Maori acknowledged that quota rights could be attenuated or regulated for sustainability reasons, but did not envisage it happening for other reasons, and certainly not in order to effect a forced transfer of fishing rights from Maori to the recreational sector.

117. The relative shares held by the different sectors of fishstocks were known at the time of the Deed of Settlement. Maori would not have agreed to put aside their historic grievances, and accept shares in the QMS, if there was prospect those assets would be subsequently confiscated. This perspective was well recorded by McGechan J 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."*

118. Ensuring that fisheries are used in a way that reflects their 'highest and best' use at any time requires that reallocations of fisheries be made in ways that support, rather than erode value.

119. In our view, the maximised value of shared fisheries can only be achieved through dynamic collaboration and trade between the sectors, not through regulation by Government. Each sector can manage for its desired levels of abundance if each sector receives and takes responsibility for a specific share that has clear limits, all sectors collaborate to agree an overall level of abundance over time; and each sector manages the activities of its members to ensure their fishing activity takes place within their sector limits.

120. To achieve this, rights must be secure. There is significant scope for developing solutions based on the stronger specification of all types of rights in the marine environment (including recreational fishing rights) and enabling reallocations that build on the QMS, rather than undermining it.

121. There is no other area of the economy where the government would countenance intervening to remove resources from one extractive interest to provide to another. To create certainty and thereby continued investment in fisheries management by all participants there is a government role in supporting transfer, but not in forcible re-allocation.

122. Te Ohu and iwi oppose these policies in the strongest possible terms – even though they are stated as proposals that are not yet adopted as binding policy they signal an intent fundamentally undermine the QMS, as well as breaching the Deed of Settlement and in doing so ignore section 5(b) of the Fisheries Act 1996 (the Act) and the Treaty of Waitangi.

Build the market position of NZ seafood

123. Te Ohu considers that MPI (and the Government generally) need to take a more active role in defending its management of NZ's fisheries including providing immediate and impartial comment on any ill-informed slurs on its current management. This can and should happen now. It is important that the public have confidence in our fisheries management. This will only be achieved through a sustained programme of pro-active engagement with the public through the media. Industry and Te Ohu are willing to participate in this.

124. MPI should also provide information to support recognition of our fisheries management system under other certification schemes. This should also extend to supporting the development of any NZ assurance scheme.

125. We do not consider the Government should attempt to develop a certification scheme of its own to compete with existing domestic or international programmes, bujt continue to see a role in Government to Government assurances on food safety, fisheries sustainability and environmental management.

Deliver value from new and under- developed fisheries

126. The circumstances driving the need for this proposal are the same that Te Ohu and iwi faced over possible development of fisheries in the Kermadec zone. There needs to be adequate recognition of risk by any developer and a far greater degree of certainty provided so as to encourage research, but this must be done in a manner that does not compromise sustainability.

127. At the same time, it needs to be recognised that iwi have extensive interests in all fisheries. Iwi are involved in the non-commercial sector for customary purposes (reflected in the "customary regulations") as well as the recreational sector (as individuals) with iwi members fishing for whanau being a significant portion of amateur catch. Together they also hold a minimum of 10 or 20% of quota shares in all commercial fisheries and with other Maori fisheries settlement companies up to a further 10-20% of some fisheries

128. MPI must recognise its obligations under the Deed of Settlement and require any applicant who wishes to develop a fishery to collaborate with iwi. Any special permit must make sure that iwi interests across all sectors are not adversely affected or be subject to increased risk without the explicit approval of iwi.

Strategic Proposal 2 – Better Fisheries Information

129. It is accepted that you need good information to manage - the old adage that "you can't manage what you don't know" is accepted. However collecting information, storing and analysing it is expensive. Investing in more information must start from very explicit management needs and an assessment of the degree of precision needed to be able to better manage. We will, want to be assured that looking forward the right information is being collected of all the factors impacting our fisheries.

Implement Integrated Electronic Monitoring and Reporting System (IEMRS)

130. Te Ohu is supportive of using innovative cost effective tools to improve the management of our fisheries. But that support is dependent on making sure we have the right tools for the right job. There is limited economic surplus in fisheries and care must be taken to invest a share of it in a manner that gives the greatest improvements from a limited budget. Employing improved technology starts with defining what the key management goal is and then collecting the relevant information to inform managers, resources users and the wider public whether the management settings are achieving the goal, or adjustments need to be made. We address this issue more completely under ***Regulatory Proposal No 1*** below.

Gather more information to support decision-making and value-adding
Monitoring of non-commercial fisheries

131. Strategic Proposal 2 collectively (by what is included and what is not) implies that the only sector that needs to invest more in providing detailed information is the commercial sector. This suggest that it is only information gaps from commercial fishing that is limiting our ability to manage.

Recreational catch

132. Though the *FooF* proposals are meant to future proof the system, they appear to completely ignore any requirement to gain better information on recreational catch. The tenor of the proposals appears to be that the recreational sector will over time acquire a greater share of the available catch (notably under Strategic Proposal 1, Option 3) and yet continue to have few if any reporting (and other) responsibilities. It is not clear how officials consider they will improve their management when they will have less information on all sources of mortality – under the proposals a smaller share of the total catch will be caught by commercial fishers - this will mean less reporting by the commercial sector. A greater share will be caught by the recreational sector. The overall result will be less information on the fishery. No international studies have suggested you manage better by having less information.

133. If the goal of Strategic Proposal 2 is to gain better fisheries information, then the recreational sector must play its part. Fisheries can only be managed sustainably if there is accurate information on all sources of mortality; the sector that has the greatest variation in its catch, year to year and by far the greatest growth projected over the next 30 years is the recreational sector. There are already more effective kontiki fishing that will change the level of recreational catch – these fishers (and their catch) are unlikely to be picked up through ramp surveys or aerial oversight. There will also be further improvements in other harvesting techniques over time. There is already a boom in recreational charter vessels but inadequate reporting of this fishing with no proposed improvements. However, the strategic initiatives propose only additional measures to get greater accuracy of data from all commercial fishing with no comparable efforts to improve both overall, spatial or temporal recreational catch even though other initiatives propose that fisheries should be managed to better provide for sub-area management.

134. Some of the key inputs for fisheries management decisions and outcomes is linked to the questions of “How much fishing effort? How many fish caught? Where (in both cases)?”

135. 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.

136. 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%).

137. For FMA 1 looking at the top 8 fishstocks preferred by recreational fishers, the detailed 2011/12 survey shows the total recreational take 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.

138. 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.

139. 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.

140. 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.

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

146. As noted elsewhere in this submission, 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.

147. 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 to get far better location and seasonal information.

148. 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.

149. 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.

150. 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.

151. 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.

Customary

152. Customary non-commercial fishing requires an authorisation. However, under the transitional regulations that still operate in many parts of the country there is no requirement that the fisher report back catch.

153. Under the Kaimoana regulations though 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.

154. 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.

155. 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.

156. Te Ohu, through its joint work with Waka Digital, has developed an online recording system (IKANET) 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.

157. In addition, IKANET-the electronic online system - also has another part that accurately records the pataka operation.

158. More recently through the SNA1 plan the Crown has agreed to further assist iwi and kaitiaki with improved reporting systems. We look forward to discussing this with MPI and iwi.

Monitoring fisheries at a finer management scale

159. The FOOF documents promote managing fisheries at finer geographic scales, which is acknowledged to add considerably to management costs. Before pursuing this direction careful consideration in terms of what are the outcomes /objectives sought through fine-scale management need to assessed, along with who is best placed to undertake it, and who should bear the costs. A key factor is to determine who this additional scale of management and therefore measurement is for? Except where there is agreement across all sectors, the sector calling for the fine scale management should meet the additional costs including provision of detailed fine-scale spatial information on catch. If the sector wanting this change cannot provide quality data of its own catch for fine-scale management, it should not progressed until that is available as the necessary data to judge the success or otherwise of management will be lacking.

160. Fine scale management is best progressed at the initiative of stakeholders since it is often directed at increasing utility or managing access rather than dealing with issues of sustainability. For relatively sessile species there may be advantages in maximising productivity by controlling all harvests in areas smaller than QMAs. The industry has implemented a fine scale approach where it adds value to management, despite the absence of supporting arrangements for collective management. For example, industry is currently undertaking or investigating sub-QMA management approaches in the paua and rock lobster

fisheries, and also some deepwater fisheries. However, managing at this spatial scale is not a cost-effective exercise when done through regulation by government.

161. If the current scale of management is not ensuring sustainability, then the Minister may impose the sub-division of a quota management area under section 25B of the Act.

162. If, as is often the case, fine scale management is sought by the recreational sector to improve local stock abundance or as part of a process to demand spatial exclusivity, then this is an issue of fisheries allocation rather than sustainability.

163. In the case of finfish, fine scale management simply will not deliver local increases in stock abundance because of the mobility of the species. More generally, inter-sectoral arrangements entailing spatial access or local abundance, and the costs of implementing such arrangements, should be negotiated directly between the affected parties. As noted above, any finer scale management will require detailed catch data for the all sectors involved in the fishery.

Invest in ecosystem-based management

164. The Fisheries Act already enables the effects of fishing on marine ecosystems to be managed. As the document notes, measures have been put in place to manage the effects of fishing on seabirds, sharks, marine mammals and the benthic environment, and further measures can be accommodated in future. Any measures need to be debated and argued through fisheries and aquatic environment assessment science working group and management processes to ensure they are based on robust scientific evidence, have clear objectives and can implement cost effective measures to achieve those objectives.

165. The document suggests that the settings could be "refined" to deliver on stronger environmental principles and adopt international best practice such as ecosystem-based fisheries management to respond to public pressure for stronger habitat protection and higher fish abundance (which means lower catches). This seems to be a political response to public pressure but over an ill-defined issue.

166. We would note that Te Ohu's submission on the operational review of the Fisheries Act strongly recommended that no changes should be made to the "front end" of the Act because it would be considered outside of the 2015 Review of the Act and a fundamental change to the QMS. That would therefore be a change to the Fisheries Settlement and would breach the obligations of the Crown to Māori. Te Ohu has previously rejected and successfully fought against proposals to change the environmental and other principles in the Fisheries Act where that would mean fisheries management would not be based on scientific knowledge or an evidential basis.

167. We are of the view that the inclusion of the poorly defined and understood (and less well proven) notion of "ecosystem-based management" under Strategic Proposal 2 is designed largely to subvert the key purpose and principles of the Act. We note for completeness that the 1996 Act has the necessary tools to deal appropriately with the purported problem this 'solution' is trying to solve. There are extensive measures now taken by the commercial sector to minimise its footprint and there are no known gaps.

168. We consider that successful management of fisheries deals with all the factors that affect a fishery's productivity. If instead of more and more detail about trophic layers, what is being considered is gaining better information on habitats of significance for fisheries and land use

impacts that can affect the productivity of fisheries in estuarine and near-shore waters, then the approach could more readily be supported.

Use more externally commissioned research

169. The proposal to allow more externally commissioned research under Strategic Policy 2 sounds, in principle, to be a positive initiative. Being a participant in the science processes, we are well aware that this occurs now. It is particularly important that all participants and in particular, any agency or group contemplating commissioning its own research, be well-briefed to fully understands the RSIS standards, the processes undertaken to ensure any material scrutinised through the science processes and the need for the research programmed for scrutiny to be relevant to management decisions. All of these aspects must come together to form a foundation for management recommendations.

170. Any research must meet robust standards including the provision of the underlying data to ensure replicability. If it does not, the system must reject its application for management. It is particularly unhelpful when externally commissioned work will not supply that underlying data or assumptions that is the basis for the claimed conclusions. That has been the case in the Simmonds study that contends that New Zealand has had far greater catches of fish than has been reported. It is also unhelpful when the science process determines that the research is not of sufficient quality to enable it to be used for management decisions, that reform proposals inexplicably specifically reference that work as if it is authoritative - see inclusion of Southwick report in *FooF*. If the intent is to transfer research costs from the Crown to other parties and, where that work is not conducted by the commercial sector, to then accept lowered standards then we would oppose the proposal.

Strategic Proposal 3 Agile and Responsive Decision-Making

Shift decisions to level of accountability that reflects level of risk to acheive clearly identified management objectives

171. As signalled in the Te Ohu submission on the operational review of the Fisheries Act, there is need for changes to ensure more nimble decision-making on management settings for fisheries efficiently made consistent with acceptable levels of risk in suitable time periods when compared with the present system.

172. Any changes must be cost effective and be agreed with iwi as advancing the agreements under the Deed of Settlement. Proposals under Strategic Proposal 3 must ensure the processes for involvement of iwi to meet the Crown's commitments to Māori (as stated in the text) mean early and full meaningful engagement on all issues iwi signal as significant and agreed appropriate involvement in other matters. Arrangements under these proposals must not cut across the Treaty Partnership.

173. Improvements to decisions on aspects associated with implementation of the customary non-commercial regulations and how improvements might be made need to be discussed with iwi and Te Ohu Kaimoana.

Support independent advice through a National Fisheries Advisory Council

174. This proposal needs more detail on its role and mode of operation. Iwi are not in favour of an additional layer between them and the Minister – there should be no intermediary body tyat gets in the wat ofvthe Treaty partnership.

175. It is not clear where the value-add will be with another advisory board. If, on the other hand, the NFAC became a decision-making body, it could not cut across the Settlement so the key parameters would need to be agreed between iwi and Ministers. There would also need to be iwi representatives on the body to assist it. That would require that the role be clearly understood so representatives with appropriate skills could be offered.The relationship between national policies and the impact on Settlement assets of regional application of those policies would need to be clearly understood and opportunities for iwi at a regional level to directly communicate over regional effects of policies.

Develop a more flexible decision-making framework.

176. We agree with the need for a more flexible decision-making framework. This needs to be detailed so that it can be executed in a manner that is consistent with the fisheries settlement. Iwi need to be involved in the development of the standards, thresholds and decision rules for decision-making and operations. It may be that dual thresholds are needed.

Regulatory proposals

Integrated Electronic Monitoring and Reporting System

177. As noted in para 130 above, Te Ohu broadly supports MPI's Integrated Electronic Monitoring and Reporting (IEMRS) proposals as set out in Volume III of the *FooF* document to implement electronic monitoring and reporting of commercial fishing operations as a means of gathering better information for fisheries management.

178. Te Ohu's support for IEMRS is however conditional:

a) The *FooF* does not provide a substantive analysis of the full costs of IEMRS against expected benefits from improvements in fisheries management and compliance nor is there any indication that MPI has undertaken this analysis. MPI's earlier statements and releases regarding IEMRS indicated that deployment would be scaled to the size and fishing effort of individual vessels. There will clearly be a point at which the marginal cost of deployment outweighs expected benefits. Te Ohu's support for IEMRS will depend on reviewing MPI's full assessment of costs and benefits and a pragmatic approach to scaling IEMRS deployment to likely benefits. Moana does not support deployment of all aspects of the IEMRS on all commercial fishing vessels as appears proposed in *FooF*.

b) The primary benefit of IEMRS is the collection of information to improve fisheries management and the utilisation of fisheries resources. Electronic monitoring is not a panacea. The assumption in *FooF* that IEMRS will satisfy most data requirements is incorrect. Simply taking video footage of fishing operation does not result in useable information unless the information requirement, the monitoring, and the vessel's operations are aligned to produce useable data. Te Ohu's support for IEMRS is conditional on the data generated by IEMRS being targeted to, and available to meet, defined data needs, including industry requirements to support fisheries management, supply chain management, fisheries certification and product assurance, marketing, and

other functions. The agreements on access to data will be critical to the success of this programme.

c) The initial focus of IEMRS from an MPI, political, and public perspective will, inevitably, be on the use of IEMRS for enforcement of fisheries regulations and prosecution of commercial fishers. As has been previously noted Te Ohu has consistently stated that the change in the information regime must be accompanied by a change in the compliance and enforcement regime. Te Ohu's support for IEMRS is conditional on MPI conducting a review of the offences and penalties regime set out in Part 13 of the Fisheries Act 1996 and implementing changes to reflect the greater likelihood of offences being detected and prosecuted.

d) Te Ohu's support is also conditional on direct engagement with it in the design and deployment of the system as discussed in this submission. IEMRS will involve a culture change both within industry and the Ministry. Experience elsewhere is that attitude change and a full understanding of the information being delivered and how the most appropriate changes to management setting are will take considerable time. There will be mutual benefit from making sure the design and implementation of IEMRS is done well the first time and at every stage.

179. It is essential for MPI and the commercial fishing industry that deployment of IEMRS is successful. IEMRS will require major expenditure on:

a) Development of equipment and data standards;
b) Acquisition and installation of equipment, equipment maintenance, and replacement;
c) Development of new databases and analytical tools;
d) Data collection, communication, storage, and destruction;
e) Development of reporting applications and observation software;
f) Observation of collected camera footage;
g) Data access management and reporting;
h) Media management; and
i) Programme management.

180. MPI has encouraged high media and Government expectations of IEMRS. Deployment will be subject to intense media and political scrutiny adding to execution risk. None of the parties with a vested interest in the successful deployment of IEMRS can afford a Novopay outcome.

181. The IEMRS programme is complex and involves the development and use of technology that has not been used in New Zealand other than on a relatively small scale within the SNA1 trawl fishery, a number of paua fisheries, some explorative work going on with some trawl vessels fishing in Hawke's Bay and some other vessel operators also exploring options.

182. Successful deployment of IEMRS will require close cooperation between service and equipment providers, industry, and various sections of MPI. Successful integration of the components of IEMRS represents a significant challenge.

183. Based on Moana's experience from the deployment and use of electronic monitoring in FMA1 fisheries and Te Ohu experience in developing electronic reporting and then seeking to apply it along with geospatial reporting in Area2, our combined view is that the current IEMRS deployment timetable set out in *FooF* is simply not achievable, and trying to drive towards

these unachievable timetables is likely to reflect badly on industry, the Ministry, the Minister and government.

184. The *FooF* documents do not provide any detailed implementation planning or comprehensive risk assessments. As far as we are aware, MPI has not engaged with industry, or Fisheries Logistics Limited, the only New Zealand business with direct experience in developing electronic reporting systems for small inshore finfish and pelagic vessels (though there is also some experience within the paua and rock lobster sectors in ER), or Trident Systems LP, the only New Zealand business with direct experience with electronic monitoring systems in New Zealand fin fisheries, in any systematic way to assess readiness to deploy IEMRS or to assess the risks associated with deployment. We are aware that as yet the systems for collecting storing and retrieving the full list of information in IERMS

185. Given the likely cost of IEMRS and the risks associated with deployment MPI is unlikely to secure support for IEMRS unless industry and Iwi are fully involved in the design and delivery of the system. We suggest investigation into the formation of a joint MPI / industry / Iwi entity, based on the approved service delivery organisation (ASDO) model set out in Part 15A of the Fisheries Act 1996. This option might provide a suitable vehicle for successful management of IEMRS implementation. The entity would be responsible to the Director General of MPI for deployment of the components of IEMRS. It would not be responsible for the storage and use of IEMRS information for statutory and enforcement purposes. Joint industry / MPI / Iwi accountability for delivery of IEMRS will maximise the opportunity for successful deployment at least cost to industry and Government.

186. Use of IEMRS for the purposes of fisheries monitoring, compliance, enforcement, prosecution and more generally for the purposes of fisheries management constitutes expenditure for the public good as there are no specifically identifiable individuals or groups that derive a benefit from the activity. In our view, it is unreasonable for MPI to propose that the costs of IEMRS be fully absorbed by industry.

187. Te Ohu considers that the same systems that apply to inshore commercial vessels should also be applied to recreational charter vessels in the same timetables. There should be an immediate requirement to provide event reporting on every fishstock using robust electronic tablets and vessel positioning systems. Given that the Crown absorbs the costs for recreational fishers, we consider the Crown should provide charter vessels with the necessary equipment.

Enabling Innovative Trawl Technology

188. Te Ohu supports MPI's proposals to enable the development and deployment of innovative trawl technology (ITT). Our company Moana New Zealand is a co-investor with Sealord, Sanford, and Government in the development of the Precision Seafood Harvesting (PSH) net technology currently being trialled under special permit.

189. Te Ohu broadly supports MPI's preferred option, Option 3 in Volume IV of the *FooF*, however we have some reservations regarding the process proposed for the approval of ITT, specifically:

a) Te Ohu supports the establishment of clear assessment criteria and approval processes by way of regulation as this will provide certainty to potential applicants. The criteria, the assessment process, and the cost of assessment must not however become a barrier to innovation especially by individual fishers operating on small budgets. This has certainly limited the level of trialling Te Ohu has been able to support in the Hawke's Bay over the last 5 years. Industry and MPI should be encouraging investment in ITT at all levels within the sector to improve the productivity and environmental performance of trawl fisheries.

b) Te Ohu does not agree with the proposal to monitor the use of newly approved ITT[16]. The benefit, if any, of monitoring the interaction of gear type and fishing outcomes is generic and should apply to all gear types not just ITT. Monitoring can be built into the analysis of data collected by the IEMRS system as a subset of routine catch effort reporting.

c) That data should also collect good information on the various gear components that are likely to affect selectivity of fish in the net. Te Ohu has made sure that, in the development of the Reporting Application it has assisted through funding, appropriate fields will be included that record the particular features of the gear used for each fisheries event eg For the cod-end and lengthener: what is the net mesh size, what orientation is the mesh and what material and details of it so that analysis can readily be undertaken to estimate expected levels of mortalities from the fleet. This will allow researchers to be able to better assess CPUE data knowing what performance levels have changed due to gear innovation.

Additional matters

Review of customary non-commercial management

190. Our 2015 submission set out a range of concerns with the customary non-commercial tols and systems. 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.

191. There are problems :

a. establishing who has authority in any area,
b. with reporting as above;
c. establishing and managing pataka whata
d. establishing mataitai and taiapure
e. section 186 and 186A closures.

192. To address all these Te Ohu proposed 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

[16] The Future Of Our Fisheries, Volume IV, Enabling Innovative Trawl Technologies, Providing for use of approved gear, page 12

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.

Land and other marine activity effects on estuarine and inshore fisheries

193. 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 contaminants reduce fishery productivity.

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

195. 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.

196. Te Ohu and iwi expect 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.

197. 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.

Who is managing fisheries

198. The fishing industry (including iwi) increasingly has to invest time and resources to dissuade agencies and authorities, other than MPI, from trying to manage fishing activity.

199. Recent examples include SeaChange - the set of integrated measures that are stated to be aimed at restoring the productivity of the Hauraki Gulf but wich attempt to over-ride MPI's fisheries management under the Fisheries Act; so-called marine protection initiatives which seek to manage the sustainability of fishing or manage fisheries interactions with protected species, where that is already being undertaken under the Fisheries Act; new Marine Protected Areas legislation which claim that additional measures over those imposed in fishing under the Fisheries Act are needed to achieve sustainability as well as characterising 'recreational fishing parks' as MPAs when the parks are indisputably a mechanism to allocate access to fisheries between fishing sectors; and regional councils seeking to use their Resource Management Act responsibilities to control fishing (for example in the Proposed Marlborough Environment Plan). The recent Environment Court decision has exacerbated this last issue.[17]

200. In all these cases, other parties are seeking to duplicate or take over core fisheries management functions and MPI is either absent or does not effectively engage to prevent the jurisdictional creep. The result is confusion and uncertainty as to how fisheries are managed and who is responsible for management.

[17] Motiti Rohe Moana Trust v BOP Regional Council. Environment Court. 5 December 2016.

201. In addition to this there are a rising number of applications for exclusive use of space under the RMA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 that deny fishers access to key fishing grounds through that legislation not adequately recognising fishing rights and being required to avoid impacts on commercial and non-commercial fishing rights.

202. Fisheries stakeholders bear the brunt of this confusion in the form of erosion of access, fishing success and asset value. We see an urgent need for MPI to step up and reclaim the fisheries management arena and recognition of fishing rights, including by undertaking its core management responsibilities and empower fisheries stakeholders to manage their own activities. MPI should consider the need to clarify the statutory interface between the Fisheries Act and other resource management laws.

Appendix 1

Additional Innovative Measures Implemented by Fisheries Settlement Entities

The additional measures in addition to those set out in paragraphs 15 and 16 include:

a. avoiding fishing in areas where juvenile fish congregate and implementing move-on rules – in HOK1 and SNA1;
b. refining and implementing sea lion exclusion devices in squid and other fisheries;
c. investigating the use of weighted and sub-marine line setting in longline fishing to minimise interactions with seabirds;
d. initiating experiments with trawl doors to minimise seabed contact;
e. 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, now being trialled on vessels fishing into Moana NZ (and others) and also be used on the trawl fleet operating in Hawke Bay;
f. developing and using bespoke software (IKANET) to better assist kaitiaki to collaborate with the commercial industry on Pataka / Whata and also reporting of customary non-commercial authorisations to fish;
g. implementing voluntary closures in conjunction with recreational fishing groups and examining wider causes for near-shore depletion;
h. investigating alternative high-value products from what is currently largely waste streams;
i. installing and using VMS devices on inshore fishing boats; and
j. camera monitoring on inshore vessels.