

**SYNOPSIS OF SUBMISSIONS
RECEIVED FROM THE RELEASE OF “*HE ANGA MUA – A
PATH FORWARD*”**

Index: Synopsis of Submissions

The Documents below comprise an initial synopsis of the written and on the proposals contained in Te Ohu Kai Moana's *He Anga Mua*.

The synopsis considers the submissions under a number of themes:

Page 12 Criteria

the success factors to be used to assess overall proposal

Page 16 Key Considerations

Factors to be weighed when making key decision on both:

- Nature of Settlement
- Allocate, retain, or both
- Tikanga Maori
- Distribution to Iwi or non-Iwi organisations

Page 32 The Methods to be used to apportion Benefits from the use of assets Coastline/ Population/ Combination/ Quota volume etc

- This is examined generally and then against the different classes of assets

Page 42 Specific issues

These leads to a variation on general rules in the proposal

- Rekohu
- Freshwater
- Alleged Lease Round Inequities
- Depletion
- Development Putea
- Other

Page 58 Models

- General comments
- Putahi, Pataka, Mana Orite, Tohatoha, OAM

Page 65 Successor to Te Ohu Kai Moana

- Role including Trust! company if assetmanager Process for Establishment
- Funding base

Page 76 Benefits, for all Maori

- Constitutions and registers Registers
- Asset protection mechanisms
- Transition

Page 82 Technical issues

Generally then synopsis records first any Iwi submissions and then those received from Pan-Maori organisations, Maori kinship groups and individuals.

Submissions on “He Anga Mua – A Path Forward”

No.	Date	Organisation / Individual	Status	Class.	Signature	Position	Address 1	Address 3
1	13/02/2002	Whakarara Maori Committee	Hapu / marae collective	K	Anaru Kira	Project Co-ordinator	P.O. Box 551	Kerikeri
2	13/02/2002	Moray Bevin	Individual Maori	IN	Moray Bevin	n.a.	97 Karepa St	Wellington
3	13/03/2002	Ngati Tama Manawhenua	Iwi organisation	RI	Fred Te Miha	Chairman	P.O. Box 10	Nelson
4	14/02/2002	Te Runanga o Muriwhenua	Claims iwi status	K	Rima Edwards	Chairman	Fax (09)408-0592	Kaitaia
4A	18/02/2002	Te Runanga o Muriwhenua	Claims iwi status	K	Rima Edwards	Chairman	Fax (09)408-0592	Kaitaia
4B	27/02/2002	Te Runanga o Muriwhenua	Claims iwi status	K	Rima Edwards	Chairman	Fax (09)408-0592	Kaitaia
4C	14/03/2002	Te Runanga o Muriwhenua	Claims iwi status	K	Rima Edwards	Chairman	Fax (09)408-0592	Kaitaia
4D	15/03/2002	Te Runanga o Muriwhenua	Claims iwi status	K	Rima Edwards	Chairman	Fax (09)408-0592	Kaitaia
4E	15/03/2002	Te Runanga o Muriwhenua	Claims iwi status	K	Rima Edwards	Chairman	P.O. Box 616	Kaitaia
5	4/02/2002	Thomas Smiler	Individual Maori	IN	Thomas Smiler	n.a.	11 Haig St	Gisborne
6	11/12/2001	Te Iwi o Tangahoe	Claims iwi status	K	Aroha Houston	Claimant	no address	
6A	14/03/2002	Te Iwi o Tangahoe	Claims iwi status	K	R Bulitz	Chairperson	P.O. Box 535	Hawera
7	19/11/2001	Urban Maori Authorities	All urban Maori organisations.	K / PM	none	n.a.	no address	
8	20/02/2002	Te Runanga o Ngati Porou	Iwi [organisation]	RI	none	n.a.	no address	
9	27/02/2002	Tangaroa Accord	Multi-iwi group	RI	Dan Te Kanawa			
10	27/02/2002	Ngati Raukawa ki te Tonga	iwi organisation	RI	I Nicholson / M Kiriona	Fisheries Negotiations	no address	
11	27/02/2002	Te Runanga o Toa Rangatira	iwi organisation	RI	none	n.a.	no address	
12	22/02/2002	Ngati Tuwharetoa	Iwi	RI	T Te Heuheu	Rangatira	no address	
13	28/02/2002	Ngati Kahungunu Iwi Inc	Iwi Organisation	RI	none	n.a.	no address	
14	25/02/2002	Ngati Makoro Hapu	Hapu of Kahungunu	K	Reimana Johnson	n.a.	800 Matai St	Hastings
15	28/02/2002	Donna Hall	Individual Maori	IN	none	n.a.	no address	
15A	19/03/2002	Donna Hall	Individual Maori	IN	Donna Hall	Barrister	P.O. Box 30-411	Lower Hutt
15B	19/03/2002	Donna Hall	Individual Maori	IN	Donna Hall	Barrister	P.O. Box 30-411	Lower Hutt
15C	5/04/2002	Donna Hall	Individual Maori	IN	Glen Boswell	Barrister	P.O. Box 30-411	Lower Hutt
16	22/02/2002	Ngati Hikitunga	Hapu of Ngati Raukawa	K	M Morgan Allen	n.a.	15A Russell St	Marton
17	4/03/2002	Te Atihaunui a Paparangi	Iwi	RI	Ben and Mike Potaka	Fisheries / Manager	P.O. Box 323	Whanganui
18	4/03/2002	Raukawa Trust Board	Iwi Organisation	RI	Wally Papa / A Paul	Chairman / C E O	Private Bag 8	Tokoroa
19	4/03/2002	Kahukuraariki / Ngati Kahu ki Whangaroa	Hapu grouping?	K	Wilfred Peterson	Kaumatua	RD Akatere Road	Mangonui
20	4/03/2002	Ngati Manu Trust	Hapu of Ngapuhi	K	Johnson Davis	Secretary	1 North Road	Kawakawa

20A	28/03/2002	Ngati Manu Trust	Hapu of Ngapuhi	K	Johnson Davis	Secretary	1 North Road	Kawakawa
21	6/03/2002	Otimi Hapu o Pukekoromiko o Te Rohe Potae	Maori Sovereignty faction	PM	Gerrard Otimi	unclear	hapucoop@concept.net.nz	
22	7/02/2002	Te Waiariki Ngati Koroa Hapu	Hapu of Ngapuhi or Ngati Wai?	K	Mitai Paraone-Kawiti	Facilitator / contact	P.O. Box 1091	Whangarei
23	7/03/2002	Waimarie Bruce	Individual Maori	IN	Waimarie Bruce	n.a.	P.O. Box 1749	Whangarei
24	4/03/2002	Pakotai / Parakao Maori Committee, Mangakahia	Marae	K	T H Ashby	n.a.	no address	
25	15/03/2002	Ngati Kuri Trust Board	Iwi Organisation	RI	A Chrisie [for G Neho]	Chairman [G Neho]	P.O. Box 629	Kaitia
25A	15/03/2002	Ngati Kuri Trust Board	Iwi Organisation	RI	A Chrisie	Secretary	52 Thurleigh Grove, Karori	Wellington
26	4/03/2002	Te Runanga o Te Aupouri **	Iwi Organisation	RI	Mrs Tireniamu Kapa	Dep Chairperson	no address	
27	4/03/2002	Nga Whanau Hapu o Hokianga	Ngapuhi hapu grouping	K	Rudy Taylor	Chair	P.O. Box 1808	Whangarei
28	21/03/2002	Ngati Wai Trust Board	Iwi Organisation	RI	none		P.O. Box 1332	Whangarei
29	5/03/2002	Te Roopu Takiwa o Mangakahia	Hapu / marae grouping	K	S Kaipō	Secretary	no address	
30	7/03/2002	Te Runanga A Iwi o Ngaphui	Iwi Organisation	RI	Raniera Tau et al	Chairman	no address	
31	8/03/2002	Te Ao Kohatu Turi Kaki Hako Hauraki Aotearoa	Maori Sovereignty faction	PM?	Maatai Ariki R Kauae Te Toki	n.a.	no address	
32	11/03/2002	Ngai Te Ao Kapiti Inc Soc	Ngati Kahungunu hapu	K	Roger Joe	n.a.	P.O. Box 194	Wairoa
33	22/01/2002	Te Whare Maire Charitable Trust	Hapu grouping?	K	Hinehou Campbell	Kai wawao	77 Church St	Opotiki
34	22/02/2002	Te Runanga o Ngati Rangitahi	Te Arawa Iwi	RI	none	n.a.	no address	
35	11/03/2002	Hokotehi Moriori Trust	Iwi Organisation	RI	none	n.a.	no address	
36	11/03/2002	Ngati Mutunga o Wharekauri **	Iwi Organisation	RI	George Goomes <i>et al</i>	Kaitiaki	no address	
37	11/03/2002	Te Runanga o Wharekauri Rekohu **	Iwi Organisation	RI	Peter Gregory-Hunt	Vice Chairman	P.O. Box 102	Chatham Is
38	12/03/2002	Ngati Rarua Iwi Trust	Iwi Organisation	RI	John Morgan	Te Tao Tangaroa Ltd	P.O. Box 1026	Blenheim
39	13/03/2002	"Te Ati Awa ki Whakarongotai" [Wharekohu]	Iwi Organisation	RI	Damian Parata	Director Wharekohu	P.O. Box 93	Otaki
40	13/03/2002	Te Runanganui o Rangitane	Iwi Organisation	RI	Manahi Paewai	Chairman	Copenhagen Square, High St	Dannevirke

41	14/03/2002	N Z Co-operatives Association	Business organisation	NM	Ian Reid	Executive Director	P.O. Box 715	Wellington
42	18/03/2002	Te Iwi o Rakaipaka Inc	Hapu of Ngati Kahungunu	K	Huia Koziol	Secretary	Cnr Inaka and Mataira Sts	Nuhaka
43	18/03/2002	Wendy Heath-King	Individual Maori	IN	Wendy Heath-King	n.a.	Fax (03) 689-4722	
44	14/03/2002	Kairakau Lands Trust / Ruaumoko Inc	Hapu of Ngati Kahungunu	K	Jillian Munro	Trustee	no address	
45	18/03/2002	Rongowhakaata Charitable Trust	Iwi Organisation	RI	Stanley Pardoe	Chairman	PDC Manutuke	Gisborne
46	14/03/2002	Te Whiu / Puketotara Lands and Resources	Hapu [in Ngapuhi rohe?]	K	John Alexander	Chairman	P.O. Box 4460	Kamo
47	14/03/2002	Te Runanga o Whaingaroa	Bi-iwi organisation	RI	Pat Tauroa	Chairperson	P.O. Box 88	Kaero
47A	2/04/2002	Te Runanga o Whaingaroa	Bi-iwi organisation	RI	Pat Tauroa	Chairperson	P.O. Box 88	Kaero
48	14/03/2002	Taumata B Pakiri Beach	Hapu / marae in Ngati Wai	K	Greg McDonald		P.O. Box 80	Leigh
49	14/03/2002	Ngati Tama Iwi Development Trust	Iwi Organisation	RI	none	n.a.	no address	
50	14/03/2002	Ngati Maniapoto Maori Trust Board	Iwi Organisation	RI	Roy Haar	Board Manager	P.O. Box 36	Te Kuiti
51	14/03/2002	Ngati Kuri Iwi Treaty Negotiators	Iwi	RI	Tom Bowling Murray	Liaison Person	P.O. Box 15 373	Dinsdale
52	18/03/2002	Te Runanga o Waihao	Hapu of Ngai Tahu	K	Parris Heath	Dep Chairperson	Maori Road, RD10	Waimate
53	20/03/2002	RONAN	Iwi Organisation	RI	Lance Brown	Chairman	P.O. Box 618	Kaitaia
54	14/03/2002	Poho-Tiare Hapu	Hapu	K	Judy Moses	n.a.	P.O. Box 236	Awanui
55	14/03/2002	Muriwhenua Negotiation Management Com.	Pan-iwi group?	K	Tame Kawiti Murray	n.a.	PDC	Ahipara
56	25/03/2002	Tuhoe Waikaremoana Maori Trust Board	Iwi Organisation	RI	Tama Nikora	Secretary	P.O. Box 1119	Rotorua
56A	19/03/2002	Tuhoe Waikaremoana Maori Trust Board	Iwi Organisation	RI	Tama Nikora	Secretary	P.O. Box 1119	Rotorua
57	14/03/2002	Hauraki Maori Trust Board	Iwi Organisation	RI	Toko Renata	Chairman	P.O. Box 33	Paeroa
58	15/03/2002	Ngaiterangi Iwi Inc	Iwi Organisation	RI	Brian Dickson	Chief Executive Officer	no address	
59	15/03/2002	Waitaha Management Group	Hapu within Ngai Tahu	K	Nui David Robinson	Chairman	no address	
60	20/03/2002	Moehau Nga Tangata Whenua Trust Board	Hapu grouping in Hauraki?	K	OM Nicholls	Kaumatua	70 Kapanga Rd	Coromandel
61	15/03/2002	Muapoko Trading Co [for Iwi Authority]	Recognised iwi	RI	MJ McMillan	Chairman	P.O. Box 1080	Levin
62	2/04/2002	Te Whanau Rikona	Whanau in Whangaroa	K	Multiple	n.a.	Wainui Bay RD1	Kaero
62A	15/03/2002	Ngati Kura	Hapu in Whangaroa	K	Paul Epiha	n.a.	RD1 Matauri Bay	Kaero
62B	15/03/2002	Te Whanau na Whangaroa Rangatahi	Whanau in Whangaroa	K	Multiple	n.a.	no address	
62C	15/03/2002	Paul Whanau	Whanau in Whangaroa	K	Multiple	n.a.		Kaero
62D	15/03/2002	Te Haare Whanau	Whanau in Whangaroa	K	Multiple	n.a.	no address	
62E	15/03/2002	Te Whanau o Rararua	Whanau in Whangaroa	K	Multiple	n.a.	P.O. Box 91	Kaero
62F	15/03/2002	Peterson / Tarawa Whanau	Whanau in Whangaroa	K	Multiple	n.a.	Akatere Rd RD1	Mangonui
62G	15/03/2002	Karangahape Marae Trust	Marae Trust	K	Maria Brown	Secretary	P.O. Box 1386	Whangarei
62H	15/03/2002	??	??	K	Multiple	n.a.	no address	
62I	19/03/2002	Te Wakaminenga o nga Hapu Ngapuhi	Ngapuhi Hapu	K	Multiple	n.a.	P.O. Box 91	Kaero

62J	19/03/2002	Te Roopu Kaumatua o Whaingaroa	Hapu?	K	Multiple	n.a.	Postal Distribution	Kaeo
62K	19/03/2002	Te Hapu Tahawai	Hapu	K	Multiple	n.a.	Postal Distribution	Kaeo
62L	18/03/2002	Taupo Marae	Hapu / Marae	K	Hone Pio Rakena	Kaumatua	Fax (09) 460-4601	
62M	19/03/2002	Te Hapu o Ngatiruumahue	Hapu	K	Hare Hikuwai	n.a.	Mahinepua	RD1 Kaeo
62N	22/03/2002	Te Uri A Ngati Pakahi	Hapu	K	Karen Moana Smith	n.a.	kasim@xtra.co.nz	
63	15/03/2002	Mrs Janice Marsh-Skelton	Individual Maori	IN	Mrs Janice Marsh-Skelton	n.a.	3A Alderson Road	Hamilton
64	15/03/2002	Te Runanga o Ngati Whare Trust	Iwi Organisation	RI	James Carlson	n.a.	P.O. Box 54	Murupara
65	15/03/2002	Gerry Te Kapa Coates	Individual Maori	IN	Gerry Te Kapa Coates	n.a.	105 Wilton Road, Wilton	Wellington
66	19/03/2002	Treaty Tribes Coalition	Multi-iwi group	K	Harry Mikaere	Chairman	P.O. Box 13 046	Christchurch
67	15/03/2002	Anthony William Frith	Non-Maori individual	NM	Anthony William Frith	n.a.	Ph 09 274-7733	
68	18/03/2002	Tanenuiarangi Manawatu	Takiwa of Rangitane	K	Ruth Harris	Chief Executive	P.O. Box 1341	Palmerston North
68A	19/03/2002	Tanenuiarangi Manawatu	Takiwa of Rangitane	K	Ruth Harris	Chief Executive	P.O. Box 1341	Palmerston North
69	19/03/2002	Te Aitanga a Mahaki Trust	Iwi Organisation	RI	P Ruru	Fishing Rep	P.O. Box 2116	Gisborne
70	15/03/2002	Te Runanga o Ngati Awa	Iwi Organisation	RI	Joe Mason	n.a.	P.O. Box 76	Whakatane
71	15/03/2002	Te Atiawa Iwi Authority	Iwi Organisation	RI	Anthony Waru	Chair Fisheris Com.	P.O. Box 46	Waitara
72	15/03/2002	Ngaruahine Iwi		RI	None	n.a.	no address	
73	19/03/2002	Te Runanga o Ngati Whatua	Iwi Organisation	RI	Tom Parore	Kai Tautoko	P.O. Box 1784	Whangarei
74	19/03/2002	Te Runanga o Ngati Tamatera	Iwi Organisation	RI	Roy Piahana	Resource Management	9 Fraser St	Paeroa
75	15/03/2002	Huakina Development Trust	Pan-iwi group?	PM	Dennis Ngataki	Environment Manager	P.O. Box 319	Pukekohe
76	18/03/2002	Te Runanga o Turanganui a Kiwa	Pan-iwi group?	PM	Tracey Tangihaere	Chief Executive	P.O. Box 847	Gisborne
77	18/03/2002	Ngai Tamanuhiri Whanui Charitable Trust	Iwi Organisation	RI	Dawn Pomana	n.a.	P.O. Box 157	Gisborne
78	18/03/2002	Waikato Raupatu Trustee Company Ltd	Iwi Organisation	RI	Maria Henry	Executive Member	Private Bag 542	Ngaruawahia
79	18/03/2002	Tamaki Nui a Rua Taiwhenua	Hapu / marae grouping	K	Linette Rautahi	Chairperson	112 High St	Dannevirke
80	18/03/2002	Te Hapu o Ngati Wheke Rapaki Runanga	Hapu / marae grouping	K	Donald Couch	n.a.	P.O. Box 107	Lytelton
81	18/03/2002	Tom Petricevich	Individual Maori	IN	Tom Petricevich	n.a.	11 Nola Place	Kaitaia
82	18/03/2002	Ngati Uekaha and other hapu	Hapu grouping	K	Mike Taitoko	n.a.	479 Te Kowhai Rd	RD8 Hamilton
83	18/03/2002	Te Ngai Tuahuriri Runanga	Hapu grouping	K	Henare Rakihiia Tau	Upokoronanga	503 Tuahiwi Rd	RD1 Kaiapoi
84	18/03/2002	John Rehu	Individual Maori	IN	John Rehu	n.a.	Turiwhaia Rd	RD1 Kaiapoi
85	18/03/2002	Ngati Kahu Trust Board **	Iwi Organisation	RI	Sir Graham Latimer	Chairman	P.O. Box 611	Kaitaia
86	22/03/2002	Ngati Kahu o Torongare / Te Parawhau	Hapu grouping	K	Waimarie Bruce	Kaiwhakahaere	P.O. Box 1749	Whangarei
87	18/03/2002	Korongata Marae Komiti	Ngati Poporo Hapu	K	Lester White	n.a.	153 Ngatarawa Road	Hastings
88	18/03/2002	Betty Rickus	Individual Maori	IN	Betty Rickus	n.a.	1 Ngarimu St	Riverton

89	18/03/2002	Te Waka Hi Ika o Te Arawa	Sub-iwi grouping	K	Paul Harman	Barrister	P.O. Box 505	Wairoa
90	18/03/2002	Ms D C Webster	for hapu grouping	IN/K	Chris Webster	n.a.	P.O. Box 10804	Wellington
91	18/03/2002	Ngati Ruanui	Iwi Organisation	RI	Spencer Carr	n.a.	P.O. Box 594	Hawera
92	18/03/2002	Te Runanga-a-Iwi o Ngati Kahu **	Iwi Organisation	RI	Steve Herewini	Office Manager	P.O. Box 392	Kaitaia
93	18/03/2002	Te Whanau o Rongomaiwahine Trust	Hapu grouping	K	Miniata Te Rito-Westrupp	Heamana	no address	
94	18/03/2002	Kati Huirapa Runaka ki Puketeraki	Hapu grouping	K	Joy Smith	Runaka Co-ordinator	c/o Post Office	Karitane
95	18/03/2002	Hato Paora Co-operative Company Ltd	Maori Company?	PM	J Timoti-Hohaia	Director	P.O. Box 76-147	Manukau
96	18/03/2002	Te Aupouri Maori Trust Board **	Iwi Organisation	RI	Matiu Wiki	Chairman	P.O. Box 487	Kaitaia
97	18/03/2002	Betty Williams	Individual Maori	IN	Betty Williams	n.a.	SH 25 Manaia Rural Delivery	Coromandel RD2 Dunedin
98	21/03/2002	Te Runanga o Otakou	Hapu grouping	K	Nicola Taylor	General Manager	Tamatea Rd, Otakou	
99	25/03/2002	Mokau Kohunui Marae	Hapu grouping	K	Jim Taitoko	Fax (07) 878-6024		
100	18/03/2002	Okains Bay Longline Fishing Company	Hapu company	K	Gregory Summerton	Owner	P.O. Box 170	Lytelton
101	18/03/2002	N Z Maori Council and others	Pan Maori group	PM	none	n.a.	no address	
102	18/03/2002	Maruhaeremuri Stirling	Individual Maori	IN	M Stirling	n.a.	11 Warwick St	Richmond
103	18/03/2002	Muriel H Te H Johnstone	Individual Maori	IN	Muriel H Te H Johnstone	n.a.	4 Dallas St	Riverton
104	18/03/2002	Oraka Aparima Runaka	Hapu grouping	K	Ellen Suddaby	Admin/Com Officer	115 Palmerston St	Riverton
105	20/03/2002	Ngapuhi Takutai Moana ... Coastal Hapu	Hapu grouping	K	Violet Sade	Representative	P.O. Box 1091	Whangarei
106	18/03/2002	Ngaitakoto Research Unit	Iwi group	RI	Taira Awarau	n.a.	no address	
106A	18/03/2002	Mai Maru Marae	Ngaitakoto Marae	K	none	n.a.	no address	
106B	18/03/2002	Paparore Marae	Ngaitakoto Marae	K	none	n.a.	no address	
106C	18/03/2002	Wharemaru Marae	Ngaitakoto Marae	K	none	n.a.	no address	
106D	18/03/2002	Waimanoni Marae	Ngaitakoto Marae	K	none	n.a.	no address	
107	18/03/2002	Te Kotahitanga o Te Arawa Waka	Pan iwi group	RI	Dean Stebbing	Chairman	P.O. Box 2496	Rotorua
108	22/03/2002	Te Arawa Maori Trust Board	Pan iwi group	PM	Arapeta Tahana	Chairman	P.O. Box 128	Rotorua
109	19/03/2002	Te Runanga o Ngai Tahu	Iwi Organisation	RI	Tahu Potiki	Chief Executive Officer	P.O. Box 13-046	Christchurch
110	19/03/2002	Julia Moses	Individual Maori	IN	Julia Moses	n.a.	Waipapakauri Domain Rd	RD1 Awanui
111	15/03/2002	Mokau ki Runga Regional Management Com	Hapu grouping	K	Barbara Marsh	Marae Representative	Fax (07) 877-7740	
112	20/03/2002	Hohepa Cooper	Individual Maori	IN	Hohepa Cooper	n.a.	West Coast Road, Panguru	RD2 Kohukohu
113	21/03/2002	Te Runanga o Ngati Apa	Iwi Organisation	RI	FJP Huwylar	Operations Manager	P.O. Box 124	Marton
114	21/03/2002	Te Runanga o Te Rarawa	Iwi Organisation	RI	Gloria Herbert	Chairperson	P.O. Box 361	Kaitaia
115	21/03/2002	Te Atiawa Manawhenua ki Te Tau Ihu	Iwi Organisation	RI	Antoni Bunt	Fisheries Delegate	P.O. Box 340	Picton
116	22/03/2002	Te Atiawa Nui Tonu Fisheries	Iwi Organisation	RI	Morris Love	Director	P.O. Box 536	Wellington

117	22/03/2002	Ngati Ranginui Iwi Society	Iwi Organisation	RI	Colin Maungapohatu Bidois	Chairperson	no address	
118	22/03/2002	Ngati Koata no Rangtoto ki te Tonga	Iwi Organisation	RI	none	n.a.	no address	
119	5/04/2002	Te Runanga o Ngati Kuia	Iwi Organisation	RI	Joe Mason	Chairman	P.O. Box 968	Nelson
120	8/03/2002	Ngati Umutahi Iwi	Hapu grouping	K	Pat Hunia	n.a.	no address	

File No.	Submission No.	Iwi Organisation	File No.	Submission No.	Iwi Organisation
		NORTHLAND/AUCKLAND			TARANAKI/WHANGANUI
1.02	96	Te Aupouri Maori Trust Board	6.02	49	Ngati Tama Iwi Development Trust
1.03	26	Te Runanga o Te Aupouri Inc.	6.03		Te Iwi O Ngatimaru ki Taranaki Inc
1.04	53	RONAN	6.04		Ngati Mutunga Iwi Authority
1.19	25/25A	Ngati Kuri Trust Board	6.16	71	wa Iwi Authority
1.05	85	Ngati Kahu Trust Board	6.19		Te Runanga o Taranaki Iwi
1.06	47	Te Runanga o Whaingaroa	6.07	72	Ngaruahine Iwi Authority
1.18	92	Te Runanga-a-iwi o Ngati Kahu	6.08	91	Te Runanga o Ngati Ruanui
1.07	30	Te Runanga a Iwi o Ngapuhi	6.11		Ngarauru Iwi Authority
1.08	114	Te Runanga o Te Rarawa	6.12	17	Whanganui River Maori Trust Board
1.10	28	Ngati Wai Trust Board	6.13	113	Te Runanga o Ngati Apa
1.12	73	Te Runanga o Ngati Whatua			
					MANAWATU/HORO/WELL
		HAURAKI/WAIKATO	7.14	40	Te Runanganui o Rangitane
2.01	57	Hauraki Maori Trust Board	7.1	61	Muaupoko Tribal Authority
2.03	78	Waikato Raupatu Lands Trust	7.04	10	Te Runanga O Raukawa
2.04	50	Maniapoto Maori Trust Board	7.05	11	Te Runanganui o Toa Rangatira
2.05	18	Raukawa Trust	7.06	39	Ati Awa ki Whakarongotai
2.17	74	Te Runanga o Ngati Tamatera	7.09		Te Runanga o Ngati Hauiti
			7.1	116	Te Atiawa Nui Tonu Fisheries
		TE ARAWA/TAUPO			
					SOUTH ISLAND/CHATHAMS
3.04		Te Ure o Uenukukopako	8.02		Ngati Toarangatira Manawhenua
3.05		Tuhourangi Runanga a Iwi	8.03		Ngati Apa ki te Waipounamu Trust
3.06		Te Runanganui o Tapuika me Waitaha	8.04		Te Runanga a Rangitane o Wairau
3.07		Te Runanga o Ngati Rangitearere	8.05	119	Te Runanga o Ngati Kuia
3.08	34	Te Runanga o Ngati Rangitihi	8.06	38	Ngati Rarua Iwi Trust
3.09		Te Runanga o Ngati Pikiaro	8.07	109	Te Runanga o Ngai Tahu
3.15	12	Ngati Tuwharetoa Marine Fisheries Comm.	8.12	37	Te Runanga o Wharekauri Rekohu
3.13	107	Te Kotahitanga o Te Arawa Waka	8.16	36	Ngati Mutunga O Wharekauri
3.14		Ngati Tarawhai Trust Board	8.13	118	Ngati Koata No Rangitoto ki te Tonga
3.16		Rangiwewehi Charitable Trust	8.14	3	Ngati Tama Manawhenua

			8.15	115	Te Atiawa Manawhenua
		BAY OF PLENTY	8.17	35	Hokotehi Moriori Trust
4.01	58	Ngaiterangi Iwi Inc.			
4.02	117	Ngati Ranginui Iwi Society Inc. Ngati Pukenga Iwi ki Tauranga Inc.			URBAN MAORI ORGS
4.03			9.10		Manukau Urban Maori Authority
4.04	70	Te Runanga o Ngati Awa	9.1		Te Whanau o Waipareira Trust
4.05		Whakatohea Maori Trust Board	9.1		Te Runanga o Nga Maata Waka Inc
4.06		Ngaitai Iwi Authority	9.1		Te Runanganui o te Upoko o te Ika
4.07	56/56A	Tuhoe Waikaremoana Maori T.B.	9.2		Uenuku Murihiku Urban Authority
4.08		Te Runanga o Te Whanau			
4.12	64	Te Runanga o Ngati Whare Iwi Trust			
4.13		Ngati Manawa Incorporation			
		E CAPE/H BAY/ WAIRARAPA			
5.01	8	Te Runanga o Ngati Porou			
5.04	77	Ngai Tamanuhiri Whanui Trust			
5.12	69	Te Aitanga A Mahaki Trust			
5.13	45	Rongowhakaata Charitable Trust			
5.08	13	Ngati Kahungunu Iwi Inc.			

CRITERIA

CRITERIA

In summary the criteria contained within He Anga Mua (HAM) are:

1. Consistent with law
2. Financially viable
3. Technically feasible
4. Consistent with tikanga Maori
5. Responsive to social and economic needs
6. Capable of delivering desired benefits
7. Politically sustainable

Further explanation of the allocation and distribution criteria is documented in HAM p 19 and 20

Comment on HAM criteria and/or key considerations

Agreement with HAM criteria

The seven criteria (p 19/20) are considered appropriate and acceptable

[I 2.04] Maniapoto Maori Trust Board

[I 4.01] Ngaiterangi Iwi Inc

[K 14]

The following submissions used similar criteria for both their own and allocation purposes:

Key Criteria and Guidelines

- 2.1 *To promote and support fairness in the allocation of fisheries assets to all iwi.*
- 2.2 *To ensure the iwi assets are properly managed to maximise returns.*
- 2.3 *To ensure the iwi assets and interest are always protected by minimising risks.*
- 2.4 *To grow and expand the collective assets of the iwi*
- 2.5 *To provide benefits in accordance with policies and guidelines agreed to by the iwi.*
- 2.6 *To maintain high standards of accountability to all stake holders.*
[I 1.08] Te Runanga o Te Rarawa
[I 2.05] Raukawa Trust

We believe any model must reflect the following:

- *Consistent with the Treaty of Waitangi*
 - *Accord with Tikanga*
 - *Consistent with legislation*
 - *Benefit all Maori*
 - *Assets are returned through traditional Iwi*
 - *Urban groups deserve consideration*
- [I 4.02] Ngati Ranginui Iwi Society Inc

ASSESSMENT CRITERIA

- *Treaty of Waitangi*
- *Descent Group-Iwi*
- *Iwi ownership and direction*
- *Coastline (tikanga) has priority*
- *Customary fisheries (management & resource)*

[I 3.08] Te Runanga o Ngati Rangitahi

- *Consistent with tikanga Maori;*
- *Benefits to all maori, including urban groups;*
- *Recognises the traditional fishing practices of all Iwi.*

*Sustainable management of the taonga is the paramount priority of Whanganui Iwi. This is evident through our involvement with the Whanganui River Claim (WAI 167) our objection to the Tongariro Power Development Scheme (TPD), and the occupation held at Paikaitore in 1995¹. We perceive the role of kaitiaki measured by the availability and access to taonga, in this case **kaimoana** and **kaiawa**. Our major responsibility as **kaitiaki** is to ensure the availability and maintenance of each is upheld, for access of future generations*

[I 6.12] Whanganui River Maori Trust Board

Not one model gives any significance or importance to caring for the fishery or fostering the integrity of the fishery for itself

[IN 97]

Some submissions expressed the view that the weighting applied to certain components of the HAM criteria should be adjusted. Alternatively these submissions provided further comment on the HAM criteria

In our view, the principle which should drive the decision making to end the allocation dispute is commercial robustness...All allocation policies should be assessed against a criteria of enterprise. The clamor for the spoils overlooks the fact that to spend a dollar, one first has to earn a dollar. Enterprise is disinterested in our internal iwi conflict.

The fishing industry is cyclic, it is surrounded by complex regulations and has a huge appetite for capital. For these reasons, we believe that an economic analysis which gives a true picture as to the requirements for an isolated rural iwi to develop in the fishing industry must be completed

[I 1.02] Te Aupouri Maori Trust Board

(p 19) “Part C : Criteria, design decisions, key considerations and specific issues”.

“Proposals needs to cost effective.”

AND proposals should minimise compliance requirements.

(p 19) “any proposal should be consistent with tikanga Maori”

¹ Occupation at Pakaitore first took place on the 28 February – 18 may 1995

In arguments before Taumata Paepae...tikanga of iwi was sacrosanct...We do not believe tikanga is sacrosanct because in claims for Maori customary lands, it had to be openly explained and which was in fact challenged by other adepts

(p 20) “proposals should assist maori in economic and social terms and promote fisheries related development”.

Unbusinesslike, paternalistic and prescriptive.

(p 20) “proposals should seek to deliver benefits in terms of rangatiratanga”.

That depends on how we perceive rangatiratanga to be and not as to how TOKM would try to prescribe. TOKM can never know what makes sense for us or not.

[I 4.07] Tuhoe Waikaremoana Maori T.B

- *Consistency with the Treaty of Waitangi, recognising that the Treaty is a contract between iwi Maori and the Crown*
- *Acknowledging that property rights belong to iwi Maori and that allocation for the settlement assets must therefore be to iwi – recognising that all Maori must ultimately benefit*
- *Consistency with the terms of the settlements – meaning the specific agreements and undertakings negotiated in good faith with the Crown*
- *Consistency with the Taumata Paepae agreements*
- *Consistency with the concessions already made in developing the Optimum Allocation Model*

Four principles are about implementation:

- *That any proposals must facilitate the entry of Maori into the business and activity of fishing*
- *Promoting iwi readiness to manage their assets*
- *Ensuring iwi have the same asset rights as other New Zealanders to work effectively in a highly competitive international industry*
- *Ensuring any successor to TOKM is accountable to iwi.*

[I 66] Treaty Tribes Coalition

As to whether there should be allocation or not, the resolution the hui-a-tau in July 1992 was to find the “optimum method of allocation”. “Optimum” implies the economically most efficient. All history points to businesses having to grow larger to take advantage of the economies of scope and scale

The previous Commission recognised 78 different iwi, of these 65 are involved in unsettled disputes or have failed to meet the commission’s criteria for representation and governance. It is totally unrealistic to expect each of those iwi to be able to optimise their position and fish economically

[K 89] [PM 101]

KEY CONSIDERATIONS

KEY CONSIDERATIONS

Section A: Nature of the Settlement:

1. Traditional rights
 1. Iwi
 2. Non -Iwi
2. Socio economic need
 1. Iwi
 2. Non-Iwi

Section B: Tikanga Maori

1. Iwi
2. Non-Iwi

Section C: Allocate, Retain or Both:

1. Allocate
 1. Iwi
 2. Non-Iwi
2. Retain
 1. Iwi
 2. Non-Iwi

Section D: All to Iwi or some to Non-Iwi

Section E: New Maori Fisheries Act

A. Nature of the Settlement

A.1 Traditional rights

In brief, this view emphasises that the Settlement arose out of particular claims brought under the Treaty of Waitangi. It represents a package of assets and benefits in response to claims that Crown actions lead to the effective expropriation of rights to commercial fisheries held by Iwi and hapu. The Settlement does not restore those rights (although it does provide a contemporary right to fish in the form of quota) and the size of the settlement package is too small to represent full compensation.

Nevertheless, if this view of the Settlement is emphasised, the nature and extent of the historic harm to Iwi rights is very relevant to allocation or distribution. In turn, the extent of harm is influenced by the value of the fisheries rights and assets that should have been protected. Many of the original claims emphasised the negative effects resulting from loss of exclusive control over particular fisheries by particular hapu and Iwi. An important part of the Settlement is considered to be the re-establishment of relationships between particular people (Iwi) and particular assets (fisheries interests), albeit under a different legal framework.

Those who emphasise a rights based approach to entitlements under the Settlement tend to favour the use of coastline as a formula for allocation or distribution.

A.1.1 Traditional Rights - Iwi

...all fisheries settlement assets (both PRESA and POSA) should be allocated in a manner, which is consistent with the Treaty-guaranteed rights for which those assets were provided as compensation. We summarise the tikanga which determined the nature and extent of those rights with the phrase 'mana whenua, mana moana'

[I 66] Treaty Tribes Coalition

[I 1.10] Ngati Wai Trust Board

[I 1.19] Ngati Kuri Trust Board

[I 2.01] Hauraki Maori Trust board

[I 5.01] Te Runanga o Ngati Porou

[I 5.08] Ngati Kahungunu Iwi Inc

[I 8.07] Te Runanga o Ngai Tahu

[I 8.16] Ngati Mutunga o Wharekauri

[I 8.17] Hokotehi Moriori Trust

*The settlement was based on Article II of the Treaty that guaranteed to tribes “**their fisheries**”. I emphasise the words “their fisheries” as meaning something that belongs to them...and not to someone else [I 8.17]*

The 1989 and 1992 settlement of Maori fisheries claims by Maori came about as a direct result of Waitangi Tribunal claims in particular by Muriwhenua and Ngai Tahu and a series of Court Proceedings [I 8.07]

This series of events created a body of Treaty jurisprudence that consistently upheld iwi claims to exclusive property rights in “their fisheries” as guaranteed by the Treaty of Waitangi. This line of jurisprudence which was establishing the ‘nature and extent’ of iwi rights was effectively halted by the 1992 settlement which is said to, amongst other things, “give effect to the settlement of claims relating to maori fishing rights”² [I 8.07]

It has been argued by some, that the 1989 interim settlement and the 1992 final settlement of all maori claims in commercial fisheries somehow fundamentally changed the underlying Treaty rights on which the claims were based. There is no basis for this in the 1989 Act, the Deed of Settlement itself or the 1992 Act. Given the context in which the Deed was signed and the legislation was passed, it would take some very clear words to indicate that the 1992 settlement was not based on iwi property rights, as they were understood to be at that time. No such wording exists [I 8.07]

Proponents of the above argument often claim that the findings of the Waitangi Tribunal in The Sea Fisheries Report 1992³ were inconsistent with the two earlier reports and this throws doubt on the intention of Parliament and the parties to the Deed of Settlement. It is sufficient to say that in this instance the Waitangi Tribunal did not hear evidence on the nature and extent of fisheries rights as guaranteed by the Treaty of Waitangi, and that the report was produced after the Deed of Settlement had been executed and the draft legislation was before the House. This report cannot be said to form

² para (a), preamble to Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

³ WAI 307

part of the jurisprudence which formed the basis of the fisheries claims and the subsequent negotiated settlement of those claims [I 8.07]

The findings of the Waitangi tribunal in respect of Ngai Tahu's claims to exclusive ownership and possession⁴ of our sea fisheries were clear and unequivocal:

The tribunal finds that Ngai Tahu have:

- a) An exclusive Treaty right to the sea fisheries surrounding the whole of their rohe to a distance of 12 miles or so their being no waiver or agreement by them to surrender such right.*
- b) A Treaty development right to a reasonable share of the sea fisheries off their rohe extending beyond the 12 miles out to and beyond the continental shelf into the deepwater fisheries within the 200 mile exclusive economic zone **such right being exclusive to Ngai Tahu.** (emphasis added)[I 8.07]*

There is nothing in any other Treaty-rights claims that indicates that, as a result of Crown failure to actively protect iwi rights in forests and lands or other taonga, an economically deprived and/or populous iwi could later claim a right to compensation in the form of lands in the Waikato because their own lands are not very fertile and there are no coal deposits there, or in central North Island forests because the forests hundreds of miles away were felled by the early settlers. Equally, there is nothing in the Treaty that guarantees any iwi a share in the fisheries of another iwi or the compensation owed to another iwi in the settlement of fisheries claims [I 8.07]

Allocation of PRESA and distribution of POSA are required to be in accordance with the Treaty of Waitangi and treaty principles. There is no treaty principle that supports or justifies allocation or distribution solely on the basis of population [I 8.17]

*Annexure A to the Settlement Deed expressly states that any distribution scheme for POSA will identify "criteria to be applied to determine the **different levels of interest among iwi** in inshore quota deepwater quota, and the benefits derived from Sealord Products Limited". The important words here are "different levels of interest among iwi". It is clear to us from these words that it was **never** the intention of the Settlement to distribute POSA on a per head of population basis. What these words reflect is the **reality** that some Iwi will have greater levels of interests than others in **their** fisheries. This is also supported by statements of the Court of Appeal in *Te Waka He Ika o Te Arawa* in 2000. These statements are set out Appendix 4 of *He Anga Mua* [I 8.17]*

The claims to fishing rights were made by iwi as the Crown's treaty partner, not by all Maori on a basis of ethnicity [I 1.10]

*Nor does the statement (also in Annexure A) that any distribution system (for POSA) "should aim to achieve a fair allocation of the benefits among Maori" justify distribution **solely** on the basis of population [I 8.17]*

*It was noted by the Court of Appeal in *Te Waka He Ika* that the settlement (in relation to both PRESA and POSA) "is a **tribal settlement** – a settlement with Maori in their tribes – and that the*

⁴ Ngai Tahu Fisheries Report 1992 p 264-265

benefits which are ‘ultimately’ to be available to all Maori are to be **delivered through tribal mechanisms**” (Appendix 4, *He Anga Mua*, paragraph 183). These statements are totally inconsistent with the view that allocation/distribution be **solely** on a per head of population basis. Nor do these statements support retention of **any** *Rekohu* fisheries assets within a mainland based corporate body. [I 8.17]

In cl.4.5.1 of the Deed of Settlement there is a reference to the Settlement being “ultimately for the benefit of Maori”. This is said to suggest that this detracts from the settlement being based on rights and introducing an element of ‘equity’ or ‘fairness’. However, this ignores the words in cl.4.5.3 which refers to tribes with beneficial interest as having the right to request that Parliament refers any act dealing with their assets to the Waitangi Tribunal. *Ngai Tahu* contends that fairness is not about equality, it is about fair recognition for lost rights. Clause 4.5.5 refers to persons who have rights and interests extinguished being fairly treated [I 8.07]

The requirement that the settlement be “ultimately for the benefit of all Maori” does not translate to allocating/distributing these benefits **solely** on a per head of population basis [I 8.17]

TOKM must also consider that a compromise on Treaty principles, and presumptions of how iwi assets should be managed, would send an alarming message to the country. It would be an acceptance of:

- A belief that Treaty Settlements are not an addressing of grievances and lost property rights, but a means of addressing demographically driven social problems
- The patronising attitude that Maori through their iwi are not capable of managing their own assets for their own beneficiaries
- That the Treaty, and Treaty derived rights, can be reduced to negotiable and politically expedient arrangements [I 1.10]

Finally, the pro-population lobby also conveniently ignores the fact that the models proposed in *He Anga Mua* are already weighted in favour of population distribution by a 65:35 % ratio [I 8.17]

A.1.2 Traditional Rights - Non-Iwi

Likewise, the Treaty-rights argument is said by some to give insufficient weight to ‘equity’, ‘fairness’, and the undisputed requirement that ultimate benefit be available to all Maori. Again, TTC strongly disputes that analysis. In our view, the term ‘fairness’ has been badly misused in this debate. It is the antithesis of fairness for assets, which represent the traditional rights of one iwi to be appropriated to compensate another iwi for rights that iwi did not traditionally hold.

The territorial nature of Māori fishing rights is emphasised through the *Muriwhenua* and *Ngai Tahu* Sea Fisheries reports of the Waitangi Tribunal and, subsequently, in the courts. One early, and often overlooked, reference makes this point particularly succinctly. On 30 September 1987, the [then] Chairman of the Waitangi Tribunal for the *Muriwhenua* claim, Eddie Durie, assisted Grieg J. in his consideration of orders on relation to the Quota Management System. The Chairman stated:

“...we also found that Māori hapū and tribes of *Muriwhenua* made a full and extensive fishing use of the sea surrounding their lands and for a distance of some 12 miles out from shore....”

The overall conclusion that we would come to is that the hapū and tribes of Muriwhenua held the ‘mana’ of the whole of the zone mentioned. The nearest British cultural equivalent is to consider that they exercised ‘dominion’ over that zone, or ‘owned’ it. They were the tribe’s territorial water...

*The main finding here that we come to, that the area of seas referred to was owned, it was property in the same way as land was”.*⁵

[I 66] Treaty tribes Coalition

A.2 Social and economic need

Some people place far less emphasis on history. They focus on the Settlement assets, not in terms of rights but as an opportunity that, with appropriate management, can deliver significant future social and economic benefits to Maori. Under this view, the maximisation of social and economic benefits and their widespread distribution amongst Maori is a more pressing consideration than the re-establishment of particular resource-use relationships. The generally poor social-economic status of Maori compared with non-Maori levels is therefore regarded as the central concern

Those who give relative primacy to this concern tend to favour the retention of assets and the distribution of benefits on the basis of population

A.2.1 Socio and economic need –Iwi

Ngapuhi does not support or agree with any of the four models presented in He Anga Mua....There is no valid justification of this leaning, with the unfair result of all four models creating a social hierarchy of Maori wealth.

Allocation on the basis of fairness and in the interests of all Maori equally

[I 1.07] Te Runanga a Iwi o Ngapuhi

Many said there was no such thing as Mana Moana. It was stated that the term was inappropriate and that ones right to anything including the sea depended on the ability to defend and control the use of land or sea and its resources against abuse, unauthorized use, or invasion by others and a much more appropriate term would be ringa kaha...Those who claimed access rights were equally adamant that if there was a need to defend coastal resources which they also enjoyed they would have quickly joined any such action. They also stated they were entitled to equal consideration with their coastal dwelling kin or neighbours. One particular kaumatua said he only needed a very narrow access to launch a canoe and that narrow access had nothing what ever to do with the quantity of fish or shellfish he or his tribe was entitled to satisfy their needs. He had the view that the notion of Mana moana was absolute nonsense and not something he in his 80 or more years had even heard of

[I 7.04] Te Runanga o Raukawa

A.2.2 Socio and economic need –Non -Iwi

Refer appendix 1 [K89]

⁵ New Zealand Māori Council and anor v. Attorney General (Minister of Agriculture and Fisheries) and anor – High Court, Wellington, CP553/87 (Greig J)

B Tikanga Maori

Refer to HAM p26 for further explanation

B.1 Tikanga Maori-Iwi

The importance of whakapapa acknowledges among other relationships, our direct connection to Tangaroa and therefore the marine amenities. Whanganui Iwi acknowledges the interconnected balance of all living things. We believe that our duty to nurture nga taonga and uphold tikanga maori warrants our right of access to kaimoana within our coastal confines

[I 6.12] [I 5.01]

B.2 Tikanga Maori-Non-Iwi

Tikanga Maori is so all encompassing that few, if any, considerations can be raised without relating to some aspect of tikanga Maori. However we wish to focus on the following

1. *Kaitiakitanga – Kairakau lands Trust/Ruaumoko Incorporated has clear customary rights and management responsibility for a fishing area traditional to our Hapu. Commercial vs Customary might be settlement jargon that separates contemporary issues into convenient compartments but in te ao Maori Kaitiakitanga embraces all aspects over traditional fishing areas*

[Z 44]

2. *Rangatiratanga – Self determination of Hapu and individual whanau members is a basic element of well-being and mana for our Hapu. Not recognizing our traditional fishing areas at TOKM level or NKII level tramples on our mana and denies us resources to support hapu and individual development*

[Z 44][K 87]

C Allocate or Retain

Explanation of the issues involved see p 24 – 26 HAM

C.1 1 Allocate - Iwi

... against the imposed retention of iwi assets in a centralised body. Such an approach would be contrary to both the Treaty rights basis of the settlement and the concept of iwi rangatiratanga

[I 1.10] [I 5.01] [I 5.08] [I 6.16] [I 8.07] [I 8.13][I 8.14][I 8.17]

Ngai Tahu acknowledge that, in the interim at least, the assets must be continued to be managed pending ultimate delivery to iwi. Ngai Tahu also acknowledges that some iwi may choose to have their assets managed by an entity created for that very purpose. Ngai Tahu does not oppose the retention of iwi assets pending iwi readiness and fully supports the concept that the new Maori Fisheries Act may provide a mechanism for iwi to voluntarily aggregate some or all for their asset if that is their wish [I 8.07]

The submission of [I 8.07] outlined the following matters

- Extensive discussion of the recent history of Ngai Tahu in the business and activity of fishing. Plus the economic contribution of Ngai Tahu Seafood Group which is estimated to

be \$148,694,152 for the year ended 2001 or that for every dollar of quota currently held by Ngai Tahu Seafood Group, \$1.58 of economic benefit is generated⁶

- The opportunity cost of failure to allocate estimated at \$1 million per month⁷
- Loss of rangatiratanga and no reliable ability to predict income streams and therefore development activity could only proceed on an adhoc uncoordinated basis
- Undermines Iwi ability to make strategic commercial decisions about the future direction of their fishing and other businesses both nationally and internationally
- The viability of commercial fishers is reliant on being able to fish a full catch. This requires access to both PRESA and POSA. This may encourage dumping if the fisher does not hold the relevant quota which undermines the QMS results in increased costs inefficiencies and possible prohibitions
- If TOKM was to retain POSA quota then similar problems would result
- Although the magnitude of the problem would not be as great inshore and deepwater quota must be allocated for the same reasons noted directly above
- Shareholdings must be allocated so there is an ability to rationalise interests

[I 8.07] then assessed TOKM performance against corporate governance and financial performance:

Corporate Governance

- Iwi have never been given any indication that periodic performance reviews of TOKM occur nor have TOKM reported on such reviews
- The commission does not advise iwi of the performance of the companies in which it owns shares saying that this information is commercially sensitive. The Commission has never reported to Iwi on the value it has created (or lost) through its own investments, nor has the Commission indicated how it will meet Iwi's traditional rights

Financial performance

- Returns of related industries approximate 9% therefore on \$382 million (asset value) expect a return of \$34 million after tax. TOKM not anywhere near this figure
- Accept that TOKM has mixed objectives that the leasing of quota to iwi at discounted rates reducing returns
- After tax return on equity for commission's subsidiaries for 1992/93 to 1999/00 is 5.1%pa which is till below 9%
- Allege losses for Moana Pacific at \$32 million for 1997/98 to 1999/00 which suggests -27% return on share holder funds since September 1997

The submission of [I 8.14] outlined the following matters

- *It would require a huge centralised staff structure to cover all of the commercial fish stocks from one end of the country to the other. No central body has the local contacts which permit amalgamations, leveraging, catching arrangements and other benefits which create win win situations for all the parties and thereby enhance the returns to the iwi players*
- Comparing relative returns from HAM models with Ngati Tama returns
Ngati Tama generated at least double and sometimes triple that amount for most of the past 5 -6 years

⁶ Price Waterhouse Coopers, Examining economic, social and environmental impact – Draft, Dec 2001

⁷ NZIER Report for TTC 2000

- *Has the Commission’s own management of its corporate entities been all that efficient? \$11 million from \$800 million given the Commission has not had to acquire most of those assets by commercial purchase. Also point to Moana Pacific*
- *The Corporate model overlooks the fact that many of the iwi entities are tax exempt charitable trusts*

C.1.2 Allocate-Non-Iwi

It is plain that ‘allocate’ means handing over assets to iwi clearly, unequivocally and irretrievably. It follows that retaining assets in some form of trust and parcelling out income derived from those assets is not allocation. Nor is the allocation of shares in an imposed iwi cooperative the allocation of assets;

In relation to POSA, the reference to “distribution of the benefits of the Settlement Deed” equates with the concept of allocation to iwi, because:

- (a) Distribution means allocation – the term “distribution”, just as much as “allocation”, has the connotation of alienating irrevocably the assets received when the settlement was concluded.*
- (b) Distribution must be to iwi – it is illogical to suggest that the Crown settled with one class (namely iwi) on an interim basis in 1989 and then perfected or completed the settlement some three years later by purporting to settle with a completely different class of persons (namely Maori generally). The settlement could only be concluded between the Crown and Maori as represented by iwi and the assets attributable to that settlement must be dealt with on that basis.*
- (c) Assets, not income – it is the benefits of the Deed of Settlement which are to be allocated to iwi. The benefits of the Deed are the assets transferred pursuant to it by the Crown to TOKM, as a trustee, and the investments, improvements in value, etc, which have since accrued in respect of those assets. When trustees distribute an estate to the beneficiaries, they hand over irrevocably to the beneficiaries the assets of the estate either in specie or in monetary form. They are not entitled to give out on an annual basis income received from retaining and investing the assets or proceeds of the assets; a distribution means transferring the assets.*

Nor would the allocation of shares in an iwi ‘cooperative’ provide explicit recognition of the distinct property rights of iwi under the Treaty of Waitangi, as is required for any procedure under s 6(e)(ii)(B) of the Māori Fisheries Act.

(c) Procedure For Distribution

As noted above, s.6(e) directs TOKM to develop a procedure of identifying the beneficiaries of the Settlement Deed and distributing the benefits of the Deed to them in accordance with the principles of the Treaty of Waitangi.

It should not be noted, however, that none of the proposals in He Anga Mua could be said to propose a procedure identifying the beneficiaries of the settlement and their respective interests. Rather, those proposals contain either a methodology for allocation of the relevant assets or (in three of the four models) the retention of the assets in central control, with no clear plan for the distribution of income from them, let alone the assets themselves.

It would appear that the approach taken by TOKM to dealing with POSA, is therefore, vulnerable to criticism that it goes beyond developing a procedure for identification and distribution.

We also dispute the claimed political influence that comes from achieving critical mass. That critical mass currently exists, in the form of the present Commission, and yet we understand that Māori are still underrepresented on industry bodies. By that test, critical mass has failed. Further, the influence that is really important to tribal members is that in their own communities. It is those communities, and the attitude of the people within them towards things Māori that determine so many aspects of the Māori reality, for better or worse.

Rather than suggesting an imposed aggregation of iwi assets, TOKM should be providing opportunities for iwi to work together. Those iwi for whom this is an appropriate idea will then take those opportunities up. Any such arrangement will need to keep meeting iwi needs, however, if it is to be supported into the future. That is the tension of the marketplace that makes capitalism such a successful economic system. Māori must not be denied the advantages of those same market tests and accountabilities.

In a separate piece of research undertaken for the Coalition by NZIER, it can be shown that it is most important to adopt structures that are appropriate to the underlying business. It makes the point that TOKM's "cooperative" isn't actually analogous to a cooperative at all, and that there is no justification for introducing trust structures into the allocation discussion. It further points out that just as there are economies of scale in businesses, which Treaty Tribes notes can be achieved in voluntary arrangements, diseconomies of scale equally apply in other circumstances, some of which are also present in the fisheries sector.

Finally, the NZIER report observes that TOKM's activities to date are less than totally transparent, and that any robust model for managing aggregated assets must also provide for the owners of those assets to withdraw them if this group's performance is unsatisfactory.

Selected passages from the NZIER report follow

There is, however, a tendency as firms become larger for them to develop proportionately higher overhead costs. More specialisation occurs and more coordination is then needed. Extra layers of management are created, and the extra layers are often at a high cost. These costs increase more than proportionately with volume.

There are other aspects of scale. Larger scale enables a company to be stronger in research and development. But, on the other hand, three or four competing companies could generate more innovative approaches, and the overall success rate could be higher as a result of the competitive pressures. Similarly, larger companies can make gains through marketing programmes on a larger scale; although competing companies can have a greater stimulus and initiative to find and adopt better marketing ideas.

In the fishing industry the economies of scale are derived from the reduced capital, maintenance, fuel and labour per tonne of fish caught by larger vessels. Inshore fishing limits the size of vessel because smaller vessels are adequate for the depths and can cover similar areas as larger vessels can cover. The nature of deepwater fishing, on the other hand, enables economies to be achieved through larger vessels which can handle larger underwater gear. There is nothing to suggest that the optimum scale, where the average costs are lowest, is achieved with all the deepwater quota held by the Commission being fished by one company. It could perhaps be reached by a small number of fishing companies a fraction of the size

[I 66]

It is difficult to avoid interpreting the Commission's position as being based on a conflict of interest- you own Sealords. But in supporting such self interest you have chosen to brush off the role of smaller niche producers. They can be very effective and very rewarding and especially for Maori deserve your support

If we look to other sectors of the economy niche producers can very successful

- *Despite the economic advantages of Montana, boutique wineries do very well*
- *I currently live in Hokitika which has one of the 2 remaining independent dairy companies in NZ...doing quite nicely...do not need a giant such as Fonterra*

Similarly in fishing.

On 11 February in Murihiku you heard about the Awarua Tio Company. The next day in Otautahi you heard from a Ling fisher from Horomaka. Ngai Tahu seafood Group is a medium sized operation with a particular focus on koura & paua. It is exploiting a niche fishery very profitably

...Commission would appear to be headed down a road which will repeat the disastrous implementation of the QMS system when hundreds of Maori in areas such as Tai Tokerau were deprived of being able to fish commercially because of a myopic focus on Thinking Big.

[K 80]

C 2.1 Retain-Iwi

[I 1.02] Te Runanga o Te Aupouri Inc

[I 4.07] Tuhoe Waikaremoana Maori Trust Board

The Treaty has provided a platform for the establishment of a magnificent enterprise that has propelled Maori to the forefront in this sector [I 1.02]

However, under the models advanced by He Anga Mua some iwi will be allocated uneconomic packages. Consequently this will not lead to rapid local growth and will greatly increase the risks of commercial exposure for iwi.

As inshore fishing companies are abandoning the regions and centralizing further, why is the Commission creating a situation which could lead to poor economic results. If the largest existing companies do not have the capacity to sustain scattered operations surely it is an indication that iwi such as ourselves will not receive adequate capital from yourselves to succeed. After all our iwi will have only a fraction of the resource base of Sanfords, Leigh Fisheries etc [I 1.02]

The recent problems over the moratorium for aquaculture show that without a powerful central organisation our impact will be limited. In some small areas it may be strong where the iwi have enterprises which can afford to meet the costs of professional experts. The vast majority of iwi however under your proposals will not be able to afford such a thing. Funnily enough the iwi that desperately need these developments such as ourselves and Whakatohea will receive only paltry allocations. Rather than pricing us out this may very well lock us into our current state of under-development [I 1.02]

Therefore our preference is for economic/enterprise criteria to be the foundation building block in the implementation of the settlement. It is also our view that a dividend stream is a legitimate form of compensation for a Treaty settlement and a distribution of shares with dividend rights may very well suit iwi [I 1.02]

The Mana Orite model contains an option to create a national corporate body with Trust like functions. In principle we agree that such a body is a good idea because of the tabled models best diversifies risk and utilises existing economies of scale [I 1.02]

We note TOKM Asset Growth 1991 – 2000 p8 and conclude that TOKM has been able to weather risks rather well over the period [I 4.07]

Similar sentiments are echoed on this point by [I 7.12] Muaupoko Tribal Authority and [I 7.04] who add the opportunity to set up a national Maori Financial Institution which would pay an annual dividend may never be better

We have faith in the ability of skilled management...If quota is held together, it can provide substantial leverage for obtaining good prices and can improve profitable operations [I 4.07]

Observation is made that small companies can contribute innovation and specialisation in niche markets. We assume that this is trying to encourage us to take the assets. Such a proposal however will involve us taking many risks. Our alternative proposal would be for TOKM subsidiary to do this and joint venture with us where desired [I 4.07]

The following submissions indicated that further discussion was required

The establishment of a centralised body needs wider and longer discussion [I 1.07] [I 1.19] [I 7.04]

Commercial prudence should be the basis for any allocation retention decisions. However this does not mean that assets under a centralised management body could not be owned by Iwi [I 2.01]

In our view, such massive retention of asset as is proposed (in all but the “tohatoha” option) needs to be justified in law and in the best possible information available [I 5.01]

The following Iwi would support retention if there was majority support from Iwi [I 6.02] [I 7.12]

C.2.2 Retain-Non-Iwi

Refer to Appendix 1 [K 89]

D All to Iwi or some to Non-iwi

Within the context of key considerations, this section deals with who are the primary recipients of the settlement and those that specifically identify some distribution to non-Iwi groups.

The assets are Iwi owned, they must be returned to iwi ownership
[I 1.10][I 1.19][I 5.01][I 6.07][I 7.04][I 8.07]

...support the establishment putea for the benefit of urban Maori who either cannot or prefer not to access settlement benefits through their tribal organizations
[I 8.17]

Support development putea subject to design and detail considerations
[4.07] Purpose of development putea to fund *national Maori responsibilities not funded by government*

E. New Maori Fisheries Act

TTC is extremely concerned at the statement that:

“...POSA will be the subject of a new Fisheries Act...Parliament could enact legislation that provides for a scheme that may differ in certain respects from that contemplated under the Māori Fisheries Act and the Deed of Settlement?”

While the point is true in a constitutional sense – Parliament certainly has the authority to enact any legislation it chooses – this overlooks the fundamental fact that all of these arrangements are based on the Deed of Settlement, which is a compact between iwi and the Crown. If allocation, which is the ultimate objective and fulfilment of that compact, is to proceed on terms different from those contemplated by the Deed, that could only be by express agreement of the parties.

In the absence of such agreement, the enactment by Parliament of legislation for a scheme of allocation which “may differ in certain respects from that contemplated” would expose the Crown to claims of fundamental breach of the Deed of Settlement from those iwi who felt that their rights were inadequately provided for in the new scheme.

Further, it seems extraordinary for TOKM, a creature of statute, to propose that it is entitled to consider or recommend options which “may differ in certain respects from that contemplated” by the very statute which empowers it. It is a basic principle of administrative law that statutory bodies may only exercise such functions as are conferred on them by statute, and must exercise them in the manner contemplated by that statute. [I 66]

PRINCIPLES

3. The Waitangi Tribunal in its Fisheries Settlement Report 1992 (Wai 307).
4. The 1992 settlement with the Crown removed from Maori the right to sue for loss of their commercial fishing right.
5. . Such settlement was intended to be a just and honourable solution in conformity with the principles of the Treaty of Waitangi.²
6. Any distribution must be on a just and honourable basis recognising that all Maori have lost commercial fishing rights
7. The Waitangi Tribunal in its Fisheries Settlement Report 1992 (Wai 307) considered that any scheme of allocation should not be based on Treaty principles alone, but on broad considerations of what is tika, or fair, in all the _circumstances. Some of the factors the Commission noted were relevant included:
 - Comparable population;
 - Comparable needs especially for the Chathams and Muriwhenua;
 - Impact of past over fishing;;
 - The past user, based on the tribes historical fishing activity. There was then a particular reference to Te Arawa with a short coastline but a record of large fishing expenditures;
 - special needs of the freshwater tribes.

The Tribunal also noted that all iwi had development rights and it could be that no custom restricts iwi from developing where they will in the open sea. The Tribunal considered that mana or authority did not extend far beyond the shoreline. That means _there is no warrant for considering that this, therefore, means that authority extended out to any particular depth regardless of how far out from the shore that depth is reached.

1 Note: Recital A to the Deed of Settlement and (a) to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. *"By the Treaty of Waitangi the Crown confirms and guarantees. to the Chiefs, tribes, and individual Maori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries."*

2 See Recital J to the Deed of Settlement and (j) to the Settlement Act.

Appendix – 1 Submissions: K89`3

HISTORIC POSITION

8 . The basic approach that should be followed is that every Maori, pre-1840, had the__ same dietary needs, including the same need for_ animal protein. Fish was the principal protein source for all Maori.³ All Maori fished commercially. The greater the population of an iwi, the greater its dependence on fish in absolute terms. This is illustrated by Te Arawa with a large population, a heavy dependence of freshwater fish and also a heavy dependence on sea fishing. Historically its waka were recorded further offshore than any other tribe. That is, its dependence on fishing and its "fisheries" were not limited by its narrow coastline.⁴

9 . Inland tribes had access to the sea and were dependent on commercial fishing. They had their "fisheries" which they used to fish.

I 0 . When the Quota Management Scheme was introduced, quotas *Were* allocated in accordance with past usage. It is unfair, and contrary to the Treaty, if past usage is totally ignored in favour of a unique approach that does not reflect such usage and instead relies upon "imagined tribal sea territories"s.

UNFAIRNESS SHOWN BY THE RESULTS

2 0 . The results of such flawed approach can be seen by comparing how the resources are actually divided up by the four proposals. The Commission, in its Report, says it has assets of \$656,429,723. Using the 1996 statistics, total affiliations are counted at 570,398. Depending on which model is used and, therefore, the size of the putea, the per head allocation averages out at either \$1,116 per head or \$1,151 per head.

2 1 . Depending on which model is used, this produces, for the following groups, the following range of per head allocations and distortions (obtained by multiple affiliations by the excess or shortfall compared with the average per head allocation):

25 Any model that produces those results cannot conform with any of:

- The Treaty;
- Tikanga Maori; or
- What is tika or fair; or
- commonsense

26. The Deed of Settlement expressly recognised that the Sealords would restrict the Crown's ability to fund settlements of *otherclaims*.¹² Ngai Tahu have already received a settlement of \$170m for its land claims. On the affiliations used by TOKM that is equivalent to \$5,010 per head. It cannot be right that it now receives between \$2,638 and \$2,867 a head for fisheries, while Waikato received, in its settlement, \$4,480 per head and would now only receive between \$828 and \$879 per head (or less than a third of Ngai Tahu).

ALLOCATION AT ALL

3 O. As to whether there should be allocation or not, the resolution the hui-a-tau in July 1992 was to find the "optimum method of allocation". "Optimum" implies economically most efficient¹³ All history points to businesses having to grow larger to take advantage of the economies of scope and scale.

3 1 . The previous Commission recognised 78 different iwi, of these 65 are involved in unsettled disputes or have failed to meet the Commission's criteria for representation and governance. It is totally unrealistic to expect each of those iwi to be able to optimise their position and fish economically.

32. Accordingly, it is essential that the fish assets be kept together.

ALL MAORI

33. The Settlement Deed expressly states that the benefit of the settlement needs to be made available to all Maori. TOKM has a duty to ensure that happens.

34. The Privy Council recognised that TOKM need not produce a scheme if it is not satisfied that the scheme within its existing powers would satisfy its trust obligations

¹³ Note the obligation on the Commission in s6(d) to:

participate and assist in the promotion, reorganisation, or rationalisation of Maori fishing with a view to increasing efficiency and productivity.

¹⁴ See para. 19 of the Decision.

**THE METHODS TO BE USED TO APPORTION BENEFITS
FROM THE USE OF ASSETS**

Methods to apportion Benefits from the use of Assets

a) Appropriateness of Coastline and Population as Proxy

Submissions gave considerable thought to the use of coastline and population as the formula / method used to apportion the allocation or retention of POSA and PRESA. There are two main themes which predominate the submissions:

- Population often identified as a proxy for social equity and;
- Coastline as a reflection of the territorial fishing rights of iwi as guaranteed under Article Two of the Treaty of Waitangi.

In addition to these two options submitters also proposed the use of quota volume for apportioning shares (see “Shares” section below). Some submissions also questioned the merit of only using coastline and population in certain areas (see “Special Considerations – Other”)

Arguments for Coastline

One group of submissions supported the concept of: “mana moana mana whenua” as a reflection of the territorial fishing rights guaranteed under the Treaty of Waitangi.

Those iwi arguing for coastline as a proxy for allocation continued to support the resolutions from the 1995-1197 Taumata Pae Pae process as a political compromise in the interests of all Maori.

“Huge compromises were required between iwi with large populations and iwi with greater relationships with the sea through their coastlines, and it was agreed that any sustainable model must reflect the principles of “mana whenua, mana moana....while also acknowledging “Matotoru o Te Tangata” (the size of populations)...because it is the result of an iwi driven process the OAM still represents the most workable compromise.” [I66, I8.07, I2.01, I2.03]

In opposing the “populationist’s”, the Moriori Hokotehi Trust premised their arguments in Treaty property rights, the 1992 Deed of Settlement and legal case law. Summarised below, these arguments are:

- The settlement was based on Article II Treaty rights which guaranteed to tribes *“their fisheries”*;
- Allocation of PRESA and distribution of POSA are required to be in accordance with the Treaty of Waitangi and treaty principles. There is no treaty principle that supports or justifies allocation or distribution on the basis of population;
- Annexure A to the Settlement Deed states that any distribution scheme for POSA will identify *“criteria to be applied to determine the different levels of*

interest among iwi in inshore quota, deepwater quota and the benefits derived from Sealord Products Limited”;

- The models in He Anga Mua are already weighted 65/35 in favour of population;
- The Te Waka He Ika heard in the Court of Appeal that the settlement was a tribal settlement and that the benefits of the settlement are ultimately to be available to Maori delivered through tribal mechanisms.[8.17]

On the issue of coastline versus population the Treaty Tribes Coalition submission noted:

“Any diminution in the emphasis given to coastline in allocation would be outside TOKM’s parameters and first principles, because:

...Allocation based on coastline recognises iwi rights and access to traditional fishing grounds under article 2 of the Treaty of Waitangi. Furthermore, the Settlement deed requires that the procedure for identifying the beneficiaries and their interests under the Deed of Settlement should be in accordance with the Treaty of Waitangi.” [I66]

Arguments for Population

Looking at proposals to use population as a general method, there are two strands of logic underpinning this view. The first strand argues for use of population on the basis of traditional customary constructs specifically “ringa kaha”, and the second strand, on the basis of modern values of social equity.

In questioning the basis of the “mana moana mana whenua” concept many submitters contrasted the concept against the traditional customary exercise of “ringa kaha”;

“Many said there was no such thing as Mana Moana. It was stated that the term was inappropriate and that ones right to anything including the sea depended on the ability to defend and control the use of land or sea and its resources against abuse, unauthorised use, or invasion by others and much appropriate term would be “ringa kaha.”” [I7.04]

The Te Aupouri Maori Trust Board further argued that the application of “mana whenua mana moana” would lead to several inequitable outcomes:

- Firstly it would act against iwi in the Muriwhenua who no longer have volume of fish resource proximate to their area
- Secondly, it should confine future business prospects to historical coastal boundaries, and finally
- some iwi would receive negligible amounts of quota.

In questioning the legitimacy of “mana whenua, mana moana” as a traditional construct the Tuhoe Waikaremoana Maori Trust Board cited the decision of Judge Hingston in the 1994 Ngati Toa Rangatira (Maori Land Court) case which stated:

“Moving on to the claim of “mana moana” we are not surprised that witnesses using these words could not explain the origin of this concept other than conceding it was a very new word and used as though it had roots in Maori tikanga. When questioned no witness for either of the parties before us could give any proper tikanga related to taha Maori derivation of the concept. We believe thecrown agencies are being misled into believing that mana moana is a traditional maori concept.....it is our view that behind the use there is an attempt by its exponents to validate what is not tikanga or taha Maori but Tauwiwi. We find there is no such and never has been until very recently a Maori concept mana moana. Having made this statement we note that some witnesses accepted rather than mana moana the guiding principle in fishery control may have been “Ringa kaha”. [I4.07]

“Admittedly there is a historical and traditional dimension to the Maori fishing right. Rights though were customarily based on “ringa kinga” and the power to exclude or uphold was the final determinant as to whether a hapu could sustain long term enjoyment of their rights. In any event the mataitai regulatory scheme governing the exercise of food gathering rights...in dealing with the inshore quota ought to be a suitable compromise.” [I1.02]

The criticism of the “mana moana, mana whenua” argument was not restricted to an analysis on the basis of purely traditional constructs:

This (concept) is not in the interest of all Maori and such inequity can only result in even further division between iwi and therefore Maori. [I1.07]

This position was also supported by individual submissions supporting a population approach. [K82, IN15, K89, K82]

Poignantly, some submissions noted that the use of treaty principles recognising tribal coastlines was not designed to negotiate intra iwi disputes:

“Treaty principles have been developed to define to define relationship between Maori and the Crown not Maori inter se therefore we think that scheme should be based on what is tika”. [I4.07]

b) Inshore

Arguments surrounding the inshore quota coagulate around two main themes; allocation of inshore quota based on coastline or allocation on the basis of population. As with the debate concerning appropriateness of coastline and population as a proxy the debate concerning inshore mirrors similar argument’s regarding population as a vehicle for social equity and coastline as a reflection of territorial fishing rights embodied in Article Two of the Treaty.

Arguments for Allocation on the basis of Coastline

Iwi submissions are very strongly in favour of 100% coastline for Inshore Quota. [I3.08, I5.01, I2.05, I1.19, I2.01, I2.03, I4.01.I5.0, I6.12, I102, I1.03, I1.04, I1.05.I1.06,I1.10, I1.10, I1.12, I1.19, I2.03, I2.04, , I4.01, I4.02, I5.01, I5.04,

I5.08, I5.13, I6.08, I6.12, I6.13, I6.16, I7.05, I7.06, I7.12, I7.13, I7.14, I8.02, I8.05, I8.06, I8.07, I8.13, I8.14, I8.15]

Treaty Tribes Coalition favoured allocation of inshore quota on the basis of 100% coastline. Their rationale for this is summarised below:

- **Practical Logistics:** it is irrational to allocate 1% of Foveaux St paua to Ngati Kuri and 1% of snapper to Ngai Tahu. Iwi would not fish small parcels far from their takiwa
- **Integrated Management:** the only way to encourage this is by allowing tangata whenua to manage their own inshore fisheries according to their own local processes. It is only the tangata whenua who have the Treaty rights to do so.
- **Customary Considerations:** An extension of the Integrated Management approach outlined above, it would be impossible for the tanga whenua of an area to manage customary fishing interests in area where there are overlapping commercial inshore fishing rights.
- **Foreshore and other claims:** Foreshore claims are based on the treaty guaranteed rights of each iwi. If other iwi were given inshore quota rights this would effectively “water down” treaty property rights.
- **Aquaculture:** As with point above, right to aquaculture water space are encumbered on the iwi holding mana whenua to the land bordering the coastal space of interest. To allow other iwi to have property rights in this area would negate the Treaty right of the local iwi. [I66]

The TTC rationale is augmented by the Waikato-Tainui submission:

“Waikato-Tainui view is that inshore quota based on tribal coastline supports the Treaty right of a coastal Iwi in respect of its full and exclusive rights to its fishery as tanga whenua.....we submit that the ongoing development of aquaculture potentially impacts directly on Iwi coastal tribes. We support an iwi coastal tribes right ensuring that coastal tribes maintain a direct monitoring and consultative, and commercial involvement with potential and exiting applicants / business associates.” [I2.03]

The Ngati Kuri Trust Board supported allocation of inshore quota in accordance with an iwi’s respective coastline because this gave recognition to an iwi’s tradition and activity in fishing. They also note that allocation of inshore according to coastline:

“...recognises and returns to iwi in part, that property right lost through the acts and omissions of the Crown.”[I1.19]

Arguments for Allocation on the basis of Population

Conversely, a number of submissions argued that allocation on the basis of coastline would deliver inequitable outcomes for all Maori. Te Runanga A Iwi O Nga Puhi

opposed allocation of inshore quota on the basis of fisheries because of the following reasons:

- Coastline demarcations remain disputed and lack accuracy (i.e.: Te Wairaka/Nga Korora and Ngati Wai)
- This is not in the interest of all Maori and such inequity can only result in even further division between Iwi and therefore Maori.
- “There is no valid justification of this (coastline) leaning, with the unfair result of all four models creating a social hierarchy of Maori wealth.” [I1.07]

Te Runanga O Ngati Raukawa advocated that traditional coastal boundaries were not the only method to determine inshore iwi entitlement. In particular ongoing boundary disputes made the application of a population approach to inshore quota a more efficient methodology to apply in the interests of all Maori.

“Ngati Raukawa therefore submit that in the absence of satisfactory resolution between Iwi at least in southern FMA8 south of Whangaehu the only sensible and fair division is by population. We would also venture to suggest that population is without a doubt the fairest formula allowing all Maori to be treated equally.” [I7.04]

c) Deepwater

i) Population / Coastline Ratio

Overall two broad proposals – 50/50 population / coastline or 100% population emerged as the appropriate formula for the allocation of deepwater quota. A greater number of iwi favour a 50/50 split rather than 100% population as a ratio for the allocation of Deepwater Quota. [I1.03, I1.04, I1.05, I1.10, I1.12, I1.19, I2.01, I4.01, I5.01, I5.04, I5.08, I5.13, I6.08, I7.05, I7.06, I7.12, I7.14, I8.02, I8.05, I8.06, I8.07, I8.13, I8.14, I8.15, K98, K94, K104, IN88, IN103, IN65, IN88, IN103.]

Those opposing the view that allocation of deepwater quota on the basis of coastline, did so primarily on the basis of two arguments. Firstly, that the nature of deepwater rights was not an exclusive right in the same manner as inshore quota and secondly (and also as a consequence of the first point) that this approach would in the end lead to inequitable social outcomes.

Arguments for allocation of Deepwater quota on the basis of Population

In regards to the first argument, some submissions based their opposition to coastline on the thesis that in terms of deepwater quota all Maori had an equal right because:

- the “*Treaty Development Right*” recognised in the Waitangi Tribunal in the Ngai Tahu Fisheries Report applied to all iwi;
- b) given that iwi did not traditionally have the capability to exercise exclusive control and enforcement in the deep sea (in the same way that they did within

coastal waters) by force, deepwater quota was therefore not the sole property right of the iwi with the adjoining coastline and finally;

- c) socio-economic disparities would arise as a result of using a mixture of population and coastline.

Population as the sole proxy for allocation of deepwater quota was supported by a number of submissions. [K82, I1.02, I2.03, K46, K20, IN5, I2.03, I4.07, I6.12] Included in this category are submissions which support the Population Model.

The following submissions support this thesis:

“we call it the “offshore equation”. It is said to be based on tikanga Maori or Maori Law, in that traditionally, the tribes had authority over the seas adjoining their land, an opinion encapsulated in the recent expression, “mana moana, mana whenua”. We would hesitate to use “tikanga Maori” or “mana moana” to describe the scheme however, for it is arguable that traditionally the mana, or authority, did not extend far from the shoreline.....the authority went only so far as it could in practice be enforced, it could be said, and customarily the open seas were open.” [I102]

In supporting the need for a settlement which achieved greater social equity for all Maori, the Waikato – Tainui submission stated:

“In the view of Waikato – Tainui, the basic argument for applying the population factor in relation to deepwater quota is that population is a direct reflection of people and people represent the social element of the settlement. There is an assumption that the settlement would contribute to the socio-economic circumstances of the tribes.” [I2.03]

“The deepwater allocation to tribes promoted on an iwi coastline / population basis is in our view extremely disproportionate at a collective per capita level. The models promoted propose that specific tribes with low collective population levels, stand to gain significantly large part of the settlement whilst the majority of highly collective populated tribes stand to lose significantly.” [I2.03]

In referring to the Tribunal’s findings concerning the Treaty Development Right the Waikato Tainui submission noted:

“The findings also point out that Maori did not need to fish offshore due to an abundance of resource inshore. “If Maori did not fish the offshore fishery, that was for no other reason than they had no other reason that that they had no need to do so with an abundant fish life inshore” (Wai 22, 1998: 236” [I2.03]

Te Runanga a Iwi o Ngapuhi endorsed the need for allocation on the basis of population:

“On the basis that deepwater fish have not historically been fished or owned by iwi, these assets should be fully settled on the basis of iwi population ratios...The

deepwater fishery is a new development within the Fishing Industry and is therefore a development right for all Maori” [I1.07]

“every Iwi is entitled to advances in technology, and in that regard to be able to fish anywhere in the open seas, and in the southern FMA’s as should therefore be taken into account in allocation model.”[I4.07]

“Whanganui Iwi have the right to the deep sea fishery and therefore its development and management. We believe the deep sea is a taonga, however should be retained within a trust managed by PAC” [I6.12]

Other submissions endorsed the use of population as the appropriate formula in the allocation of deepwater quota because:

“Access to the deepwater quota is justified because iwi are able to recover losses from depletion in the inshore fishery.” [I2.03]

Arguments for a 50 / 50 coastline / population ratio

Those submissions which supported coastline as a proxy for allocation of deepwater quota grounded their arguments in Treaty principles. This paradigm was fundamentally premised on the principle of a Treaty development right which emerged from the Ngai Tahu Fisheries Report.

“The tribunal finds that Ngai Tahu have:

- a) An exclusive Treaty right to the sea fisheries surrounding the whole of their rohe to a distance of 12 miles or so there being no waiver or agreement by them to surrender such right.*
- b) A Treaty Development Right to a reasonable share of the sea fisheries off their rohe extending beyond 12 miles out to and beyond the continental shelf into the deepwater fisheries within the **200 mile exclusive economic zone such right being exclusive to Ngai Tahu.**” [I8.07]*

Despite, it’s entitlement to a exclusive right to the deepwater quota, Te Runanga O Ngai Tahu recognises that compromises would need to be made in order for a sustainable outcome to emerge:

“Ngai Tahu contends that in accordance with it’s right in fisheries as guaranteed by the Treaty of Waitangi, it is entitled to its share of assets on the basis of 100% coastline....Ngai Tahu along with other iwi who hold manawhenua mana moana... is very clear that the concessions in the OAM agreement are a tuku to other iwi rather than a compromise of our Treaty rights.” [8.07]

Te Runanga O Ngai Tahu continues to support the 50 / 50 population coastline ratio agreed to in the 1998 OAM.

Other submissions supported application of the 1998 OAM principles to PRESA and POSA deepwater quota on the basis that this represented a compromise solution. This view point is reflected in the Hauraki Maori Trust Boards submission on this issue:

“The arguments in the 1998 OAM were hard one, and represented the breaking point for all parties at that time....Accordingly, it is the Hauraki view that these compromises represent the point of balance between the differing allocation philosophies, and that this approximate half way point must continue to represent the best chance of a sustainable outcome.”[I2.01]

“TTC believes that TOKM’s invitation to all iwi to revisit the agreed 50 / 50 split is disingenuous. ...TTC iwi propose that deepwater PRESA and POSA quota be allocated on the basis of 50% population and 50% coastline as per the OAM.”[I66]

d) Shares

Submissions concerning the retention or allocation of shares can be summarised into two main groupings. Those who advocated allocation of shares on the basis of population or quota and those who advocate retention of shares with the payment of a dividend based on population.

Formula where shares are Allocated

The following statement typifies those who support allocation of shares in proportion to the volume of quota:

“Shares in all companies to iwi in proportion to the volume of quota allocated to each iwi, recognising that shares are part of the settlement package as quota.” [I8.07]

“... the Crown delivered investments in corporate entities as part of the settlement redress only because it couldn’t access another 10% of the quota. The shares are nothing more or less than a corporate substitute and they must be therefore allocated on the same basis as quota.” [I66, I1.19, I2.01, I5.04, I3.08, I4.01, I5.08, I8.07, I8.13, I7.05, I8.15, I7.06, I6.16]

The Treaty Tribes Coalition (TTC) submission suggested that iwi should have the opportunity to rationalise their shareholdings. Their submissions states:

“In TTC view each iwi should receive the opportunity to pick up their shares in each of the corporate entities owned by TOKM, according to their (by then) determined interest in the total assets base.”

Other submissions advocated allocation of POSA shares on the basis of 100% population and PRESA shares allocated relative to the allocation of quota. [Waikato – Tainui, I2.04]

Formula Where Shares are Retained

There are a number of submissions which advocated a distribution formula for retained POSA and PRESA shares (to be held by Te Ohu Kai Moana and its successor) on the basis of 100% population. [I6.12 – Whanganui Maori Trust Board, I1.05 - Ngati Kahu Trust Board].

These submissions suggests that the retention of share ownership and the distribution of a dividend on the basis of population would ensure distribution of the benefits of the settlement in an equitable manner, while maintaining overall economic muscle in the fisheries sector.

Other submissions argue for allocation of the ownership of shares on the basis of 100% population held in a Iwi trust with directors appointed by shareholders. [I5.01 – Ngati Porou]

e) Cash

Cash Allocated – How?

A majority of submissions supported the allocation of both PRESA and POSA cash on the basis of 100% population. [I1.02, I1.03, I1.04, I1.05, I1.06, I1.07, I1.08, I1.10, I1.12, I2.01, I2.02, I2.03, I2.04, I2.05, I3.13, I3.15, I4.01, I4.02, I5.01, I5.04, I5.08, I5.13, I6.08, I6.12, I6.13, I6.16, I7.05, I7.06, I7.12, I7.13, I8.14, K20, K89]

The Ngati Kuri Trust Board stated:

“Cash should be allocated in accordance with a iwi’s relative proportion of quota.”
[I1.19]

Cash Retained – How would the Proceeds be Distributed

Some iwi suggested a variation of this, whereby POSA cash would be allocated on a 50 / 50 coastline population basis. [I8.15- Te Atiawa Trust]

The Whanganui Maori Trust Board submitted that both PRESA and POSA cash be retained in a trust with the dividends distributed on the basis of 100% population

“..any cash asset from POSA should be placed into a development putea for all Maori to access. This would ensure a more level distribution with urban Maori having access to this putea also. Other advantages may include the development of aquaculture projects, availability of tertiary scholarships, and iwi / hapu development projects.”
[I6.12 - Whanganui Maori Trust Board].

The submission for Te Runanga O Ngati Porou argued for that a Development Putea be established (see below) with:

“the balance of cash being allocated to iwi on the basis of population or maintained as a capital reserve for TOKM’s commercial subsidiaries.” [5.01]

SPECIFIC ISSUES

Specific Issues

a) Chatham Islands Separate Fishery

In general, the concept of a separate island for the Chatham Islands was supported by the majority of submissions. [I2.01, I6.12, I2.03, I2.04, I2.05, I5.08, I8.17, I66]. The following statement given by Treaty Tribes Coalition expresses the general reasoning behind the support for the separate fishery:

“The TTC iwi agree that this approach is necessary in the Rekohu / Wharekauri situation so as to recognise and give effect to the true extent of their mana Whenua, mana moana relationship with the marine environment.” [I66 – TTC]

Similarly, the Ngati Kuri Trust Board in supporting the concept of a separate fishery for the Chatham Islands stated:

“Ngati Kuri agrees with the Rekohu fisheries assets being delivered in accordance with the proposed model. The model accords with Ngati Kuri’s perception of mana whenua – mana moana. It is noted that the consensus among all iwi is that the principle of mana Whenua – mana moana is able to satisfy all the perceived ill (including social) in the Rekohu setting.” [I1.19 – Ngati Kuri Trust Board]

The Ngai Tahu submission supported the concept of a separate fishery provided that:

“...along with other elements of the OAM, Ngai Tahu will honour its commitment to this element of the OAM if other iwi honour their commitment to the OAM.” [I8.07 – Ngai Tahu]

It is clear that the majority of submissions supported the concept of a separate fishery for the Chatham Islands.

The Hokotehi Moriori Maori Trust Board strongly supported a separate fishery. It submitted that

in respect of Rekohu, allocation must mean the restoration of all Moriori tribal fishing rights (PRESA and POSA, quota, shares and cash) into the direct ownership and control of Moriori. Moriori oppose retention of any of their assets in mainland dominated centrally controlled cooperatives or trusts.

As part of the argument advanced to support this, it outlined the following matters:

- *There is complete physical separation from the rest of New Zealand. Fisheries resources are central to the cultural, social and economic future of the islands*
- *Large scale enterprises controlled by mainland interests are unlikely to maximise benefits for Moriori or consider the cultural, social or economic needs of the people of Rekohu*
- *Where economies of scale are beneficial, Moriori enterprises are quite capable of entering into appropriate commercial arrangements with other parties that incorporate the special needs of Rekohu*
- *It would also create necessary incentives for the marine resources, to be better cared for rather than the ‘raping and pillaging’ that is currently going on*

- *Young people who are effectively ‘locked out’ of the industry by the high entry costs are forced into working for absentee landlords*
- *Having local control of a significant bundle of assets would provide the island with the opportunity to re invest and grown the local economy. For example, economic leverage would provide us with the opportunity to buy back Chathams quota when it comes onto the market. Currently it is being brought by those who can afford it which are the larger mainland companies*

The Hokotehi Moriori Trust

“supports PRESA and POSA being considered jointly but is concerned that the allocation proposals would mean that Moriori would receive practically nothing from POSA”

The Hokotehi Moriori Trust propose that allocation of assets from the Fisheries Settlement (PRESA and POSA) to Rekohu should be based on the following principles:

“The fish lying off the coast of Rekohu out to the 200 miles should be treated as a separate fishery and the quota for the separate fishery fully allocated to Moriori.

Shares and cash are proxies for quota and should be allocated according to Rekohu’s share of the total volume of quota received under the separate fishery

The dev elopement rights to the sub-Antartic zone should be shared equally between Moriori and mainland Iwi” [I8.17]

The Hokotehi Moriori Trust submitted that the Treaty right’s of Iwi should be given preferential treatment in the allocation of shares. They state:

“...the most effective use of a treaty right will accrue to tribes whose coastline is adjacent to the fishery. Accordingly, Moriori submit that it should be entitled to preferential access to the ownership of shares of fishing companies that are substantially or wholly reliant on fishers based in Rekohu or on resources harvested exclusively inside the separate Rekohu zone....Chatham Island Processing Limited (CPL)meets this criterion.” [I8.17 - Moriori Hokotehi Trust]

“The Waitangi Tribunal has recognised the severe restrictions on the ability of Moriori to enjoy resources because of outside encroachment” [I8.17]

Other submissions suggested that this outcome could be achieved, not through initial allocation, but by creating preferential purchase rights if the shares are subsequently sold by other Iwi

This will allow “special situations” such as the Chatham Islands Processing, to be rationalised. In our view that company should, ultimately, end up being at least majority if not wholly owned by the iwi of Rekohu / Wharekauri...In this way those iwi would be guaranteed first call on all share parcels that other iwi wish to dispose of.” [8.07]

The submission also notes Moriori concern that there remains a shortfall of some PRESA quota for some key fishstocks on Rekohu. It proposed that

“Moriiori should have the ability to preferentially access the PAU 4 held by Prepared Foods Limited in order to make up the quota shortfall.”

As part of its case for a treaty rights approach the Hokotehi Moriiori Trust opposed the use of population as a formula to be used in apportioning allocation assets. It argued:

- The settlement was based on Article II Treaty rights which guaranteed to tribes *“their fisheries”*;
- Allocation of PRESA and distribution of POSA are required to be in accordance with the Treaty of Waitangi and treaty principles. There is no treaty principle that supports or justifies allocation or distribution on the basis of population;
- Annexure A to the Settlement Deed states that any distribution scheme for POSA will identify *“criteria to be applied to determine the **different levels of interest among iwi** in inshore quota, deepwater quota and the benefits derived from Sealord Products Limited”*;
- The statement in Annexure A that any distribution system (for POSA) *“should aim to achieve a fair allocation of the benefits among Maori”* does not justify distribution **solely** on population
- The Te Waka He Ika heard in the Court of Appeal that the settlement *is a tribal settlement* and that the *benefits of the settlement are ultimately to be available to Maori delivered through tribal mechanisms*. Such statements are totally inconsistent with the view that allocation be **solely** on a per head of population basis. [I 8.17]

It noted that the models in He Anga Mua are already weighted 65/35 in favour of population

Ngati Mutunga O Wharekauri also supported the concept of a separate fishery through the establishment of a “midway rohe”:

“Ngati Mutunga require Te Ohu Kai Moana...Te Ohu Kai Moana...to actively and effectively acknowledge the middle line between Ngati Mutunga O wharekauri Rekohu and neighbouring Iwi to the west. The line is referred to by our Tipuna and kaumatua and is a line that features predominantly in whakatauke and teachings from the wananga of our tipuna. This midway boundary line establishes a financially sustainable platform for allocation of quota” [I8.12]

Further to this, Ngati Mutunga O Wharekauri sought clarification of the nature of both PRESA and POSA assets derived from the Chatham Islands fishery. In particular Ngati Mutunga O Wharekauri requested Te Ohu Moana:

“Clarify quota, species and assets acquired for both pre and post settlement distribution...An audit of accumulated quota stocks and assets handled by Te Ohu Kai Moana within Wharekauri tribal and territorial waters are required.” [i8.12]

“...identify and calculate species in Rohe by statistical area data:

a) Quantify quota species within a 200 nautical mile radius and express entitlement as full 10% (ten percent) of the TAC...

b) Quantify quota within Rohe beyond 200 nautical mile radius and express entitlement as 50% (fifty percent) of TAC..

c) To exclude the terms “EEZ and contiguous zone.

..we object to the 200 mile zone being applied as “mechanism” to disenfranchise Ngati Mutunga fisheries by the Crown or its agents to justify its obligations to “Maori”.

Ngati Mutunga O Wharekauri advocated a separate model of allocation for Chatham Islands iwi which excluded both “coastline measurement” and “population measurement.”. Further to this:

“ Ngati Mutunga O Wharekauri Rekohu Inc... do not seek quota, cash or shares West of the midway line. It is not the tikanga of Ngati Mutunga O Wharekauri to seek ownership of resources in the rohe of other iwi, not for other iwi to encroach on the mana of Ngati Mutunga O Wharekauri Rekohu and that all quota, cash, assets, and shares originating in the rohe of the Chatham Islands Iwi handed back unencumbered.” [I8.15]

b) Commercial Freshwater Fisheries

This synopsis is organised as follows:

- A. Commercial freshwater fisheries proposals in HAM
 1. Comment by Iwi
 2. Comment Supported by non-Iwi
- B. Freshwater Fisheries Working Group (FFWG) proposals
 1. Comment by Iwi
 2. Comment by non-Iwi
- C. Other Freshwater Fisheries issues
 1. Comment by Iwi
 2. Comment by non-Iwi

Commercial freshwater fisheries proposals in HAM

In summary the proposals contained with *He Anga Mua* (HAM) which seek to partially compensate the extinguishment of Maori commercial freshwater fishing rights are:

- The Allocation to Iwi of the quota received by Te Ohu Kai Moana on the introduction of any freshwater fishery into the QMS; and
- The application of a greater weighting to the population component of certain other PRESA assets and POSA benefits (including shares).

To the extent that freshwater fisheries (including eels) have been or will be introduced to the QMS they will form part of POSA quota. In this respect, we propose to allocate that quota to these Iwi whose rohe is within the freshwater QMA. It will be allocated to those Iwi on the basis of population.

There is also reference to a proposal to support initiatives, including research, to assist Maori to engage with the Crown to seek resolution of Treaty grievances. This would include claims in relation to the destruction and loss of the non-commercial component of freshwater fisheries through habitat neglect and introduction of foreign species

Comments

[I 6.12] Wanganui River Maori Trust Board

While Whanganui Iwi agree in principle with the Discussion document Recognition of Freshwater Fisheries in Allocation Proposals, we withhold our support at this time until we are certain that nay proposed “compensation” for the loss of our commercial freshwater fishing rights will not affect our negotiation with the Crown for the Awa Tupua

[K 90] support

[I 66] Treaty Tribes Coalition

This submission supports the TOKM proposal to allocate any freshwater quota received by it to those iwi with interests in that particular fishery.

TTC notes that freshwater fisheries are the purest example of the mana whenua mana moana principle. The language used by iwi, such as Te Arawa’s submissions to TOKM during the pre- consultation ‘information hui’, is absolutely consistent with the mana whenua mana moana kaupapa. Freshwater quota must go to those iwi with legitimate traditional interest in those fisheries.

...TOKM has proposed that the relative iwi entitlements be determined on the basis of each iwi’s relative population. We view this as a reasonable fall back...but note that it is not ideal. If one neighbouring iwi has a small population and a relatively large interest in the area and the other iwi has a very large population and only a very small interest in the area the latter will receive the majority of the entitlement...we believe that where there are multiple iwi interests in an area the iwi should ideally agree on the allocation of the quota amongst them...if agreements cannot be reached between the iwi then the relative population formula could be the fall back

We must recognise up front, however, that such a process creates an incentive for the iwi that gains most from the population allocation formula to ensure that no agreement is reached between iwi.

We accordingly encourage TOKM to continue to think of other ways in which a deadlock between iwi might be broken. However unattractive, arbitration might be preferable to the population-based default.

(b) Population is NOT An Appropriate Proxy For Compensation

*More than 70% of Aotearoa / New Zealand's... freshwater is in the South Island. The Te Waipounamu iwi have suffered a greater loss of their freshwater fisheries. As their populations are relatively small, as compared to their coastline interests, the allocation on a population basis would have to be **reduced** to more properly compensate those iwi for their losses*

This simple fact notwithstanding, freshwater issues are included in the raft of matters that TTC considers have already been addressed by the agreement reached in the OAM whereby 50% of the deepwater quota is allocated on a population basis.

Freshwater Fisheries Working Group (FFWG) proposals

In addition to HAM the proposals of the freshwater fisheries working group (FFWG) are:

- Where, in the QMA for freshwater species, there is more than one Iwi, the respective shares should be determined by mutual agreement using the best available information. Where agreement cannot be reached, allocation will be to each Iwi on the basis of their respective populations
- That a freshwater fisheries putea be established to also provide some direct compensation for the loss of freshwater fisheries. The putea would be available to assist Iwi to restore and recreate those relationships that have been lost and the extinguishment of commercial freshwater fishing rights.
- That a Freshwater fisheries working group be established to help coordinate efforts by Iwi to improve the management of freshwater fisheries and their habitat

Comments

[I 3.13] Te Kotahitanga o Te Arawa Waka support the proposals.

[I 6.12] Support freshwater fisheries development putea

[PM 108] support proposals but also assert

TAMTB must be reimbursed for the cost of litigation of the High Court Fresh Water case...Had this action not taken place then no tribe would be able to receive compensation for the loss of commercial freshwater fisheries. As it stands now all Iwi will benefit from this litigation though it is Te Arawa alone who have to bear the cost

We support population as the basis for distributing benefits in relation to freshwater fisheries but request that the option be left open for those tribes who can substantiate a catch history...In this way the "extra catch" of such fresh water tribes as Te Arawa can be properly acknowledged as it recognises the substantial extend to which Te Arawa was dependant on its lakes for its livelihood

[I 66] Treaty Tribes Coalition comment

(i) Freshwater Development Trust

While this idea is an interesting structural response to the outstanding freshwater issues, TTC does not believe that it is appropriate for TOKM to consider

redistributing iwi compensation into this vehicle at the time of allocation. If the idea has merit, that will be proven by the willingness of iwi post allocation ...

(ii) Freshwater Working Group

The test therefore remains the commitment of individual iwi to pledge resources towards working together, on a voluntary basis, to advance freshwater fisheries issues

All Iwi In The Same Position

We note here that Te Arawa has proposed that it might be reimbursed the costs of taking this issue to court... We note that it was only TTC iwi that accompanied TOKM to London to determine the 'iwi' question, Te Arawa and all other iwi get the very real benefits of those judgements... scarce funds were diverted to this, and other litigation, and away from much needed development programmes and other opportunities at home.

TTC is not seeking reimbursement and neither, in our view, should Te Arawa. Ultimately such a transfer is simply a charge against the other iwi owners of the settlement assets any way. If Te Arawa believes that their view is sustainable, they should approach all iwi directly to discuss these matters

(e) Compensation Is Only Partial

The crown did not transfer sufficient assets to TOKM to completely compensate iwi for all the losses suffered by them in relation to commercial fishing rights. The settlement is a political solution that provides partial compensation within numerous practical constraints

This is a characteristic of all settlements with the Crown. There is no capacity to transfer partial compensation for another aspect of the fisheries settlement to more fully compensate another aspect. Such attempts will simply create even greater dissatisfaction in other areas.

Proposals for the selective benefit of some iwi at the expense of other iwi are divisive. Given that the long-term success of iwi in the fishing sector will ultimately be determined by iwi capacity to work together, these internal redistributions must not be countenanced

(f) There Are No Additional Assets Available To TOKM

Expanding on the above point, TOKM holds a finite pool of assets. They represent only partial compensation for proven losses and rights foregone. The Crown will not be providing further compensation for commercial losses in fisheries

Obviously then, if one or more iwi are to receive special consideration for their 'unique' circumstances, that consideration must be taken from other iwi. All iwi, by definition, are unique and have unique circumstances. It is not for TOKM, or other iwi for that matter, to decide which iwi will be penalised so that some can enjoy greater benefits. Such unilateral redistribution proposals are unprincipled and offensive

(g) Freshwater Commercial Interests Only Can be Considered

Decimation of freshwater fish species by the trout fishery and resource management decisions is a grievance against the Crown, not other iwi

These are issues that do not concern TOKM, and cannot be considered in the context of allocation

(h) Other Non-Commercial Freshwater Fishery Issues

TOKM has no authority or mandate to consider these non-commercial issues of factor them into allocation of the compensation received for losses in the commercial fishery

Significant precedent already exists for iwi, sometimes in conjunction with neighbouring iwi, working to resolve these issues in their rohe

(i) Te Arawa And Tuwharetoa Actually Advantaged

Te Arawa and Ngati Tuwharetoa have received and continue to receive significant income streams from their freshwater lakes. These revenues, and other opportunities to defend and advance their iwi interests, have not been enjoyed by other iwi. These two iwi also already enjoy greater management and ownership interest in their lakes than any other iwi enjoy

C. Other Comments on Freshwater Fisheries issues

The following section outlines the main points from the remaining Iwi and non Iwi submissions.

Ngati Kuri insists on being informed and involved in the process concerning the establishment of FMAs for fresh water species [I1.19] Ngati Kuri Trust Board

Ngapuhi will therefore oppose the introduction of Tuna (eels) to the QMS until such time as a sustainable management plan has been developed [I .07] Te Runanga-a-Iwi o Ngapuhi

That up to 10% of all PRESA & POSA company shares be set aside to compensate iwi for the loss of use of freshwater fisheries [I 2.05] Raukawa Trust, [I 2.04]

Maniapoto Maori Trust Board also add...The extent and nature of the tribal area/domain is considered the most appropriate basis for determining the relative interest of iwi in freshwater fisheries assets

Hauraki views these issues as neutral between iwi, and therefore supports the Commission's view that no further allowance should be made in the allocation methodology [I 2.01] Hauraki Maori Trust Board

Commercial freshwater fisheries neutral, not more population, maybe separate fund trust [I 5.08] Ngati Kahungunu Iwi Inc

We submit that these rights must be dealt with on an Iwi by Iwi basis...

We assert 100% ownership of the Freshwater Fishery in our rohe consultation and research within the Iwi and amongst other iwi groups will have to be undertaken and commissioned.

Any other arrangement will be determined through our Waikato River Claims negotiations. Pending claims by other tribes will also have to be considered in terms of their Settlement negotiations

...we do not support the allocation of any commercial freshwater species in the Quota Management System (QMS) prior to the redress of Iwi customary freshwater fishing rights...

We believe that the Commission should set the issue of the Freshwater Fishery aside. There has been little if no research to validate the assumptions made [I 2.03] Waikato Raupatu Lands Trust

...the matter has to be addressed every Iwi has a right and the current suggestion...giving more consideration toward a population factor in allocation...is simply nonsense [I 7.04] Te Runanga o Raukawa

It is acknowledged that Te Ohu Kai moana is not able to return Ngati Tuwharetoa's Fresh Water Commercial rights. Accordingly, Ngati Tuwharetoa now assets the right with all iwi to share in the assets to be allocated by Te Ohu Kai Moana

Ngati Tuwharetoa understands that the value of assets to be allocated will fall far short of the value of all lost Maori commercial fishing rights. It is also understood that insufficient research has been undertaken to establish the true value of such total loss and the loss suffered by individual iwi

Research commissioned by us and undertaken by Dr George Habib establishes that Ngati Tuwharetoa had significant fresh water and marine fishery interests

...Te Ohu Kai Moana has failed to discharge its statutory obligation to provide for the loss of commercial fresh water fishing rights...Iwi need to be compensated for the loss of commercial rights in respect of existing and extinguished species

*In the absence of comprehensive research, Ngati Tuwharetoa believe that the equitable allocation of the Commission's assets can only be based on 100% population. No distinction should be made between freshwater and marine species
[I 3.15] Ngati Tuwharetoa Marine fisheries Committee*

We have never considered this issue to be part of assets derived under PRESA and POSA...The proposals announced last week are a conundrum for Ngati Ranginui who never had any significant, if any at all, fresh water commercial activity [I 4.02] Ngati Ranginui Iwi Society Inc

We will be satisfied as to an all population allocation by TOKM but not as any trade off of our commercial freshwater fisheries [I 4.07] Tuhoe Waikaremoana Maori Trust Board

Ngai Tamanuhiri emphatically rejects the notion of compensation for freshwater...on the basis that this approach will inevitably be a further act of raupatu on Iwi such as ours [I 5.04] Ngai Tamanuhiri Whanui Trust

The Ngai Tahu view is that there are no commercial freshwater fishery –related issues for the TOKM to consider in the context of allocation. This should not become a factor that requires any weight in allocation model. Freshwater fisheries are probably less than 1% of the total value of the commercial fishery. Any Iwi proposing that freshwater fisheries should be taken into account should note that Te Wai Pounamu has very extensive freshwater fisheries as the comparative figures below indicate [I 8.07] Te Runanga o Ngai Tahu

The position expressed by iwi such as Te Arawa is not unique; and we disagree utterly with suggestions that such iwi should be compensated in some way for their alleged losses by TOKM, or subsidised by all other iwi...such as increasing the weight to population...All iwi have grievances regarding...their freshwater fisheries and some South Island iwi have far bigger freshwater fisheries [I 8.14] Ngati Tama Manawhenua [I 8.05] Te Runanga o Ngati Kuia – expressed similar sentiments as [I 8.14]

The High Court decision on this matter seems clearcut (P15). The matter should be at an end [K 80]

During the lease rounds no allowance was made for those tribes with heavy dependence on freshwater. That loss of freshwater rights had continued throughout the 13 years of leasing but with no recognition from TOKM. E Arawa even had to pay all its own costs of clarifying the freshwater issue [K89], [PM 101]

We have Waitangi claims lodged...We submit that the Freshwater fisheries be taken out of the Act and therefore TOKM Allocations [K 99]

Mokau Ki Runga object to all Fresh Water Fisheries being putt under the Quota Management ...Mokau Ki Runga totally object to any compensation for the loss of the use of Fresh water Fisheries. Mokau Ki Runga contend that they hold and still retain their customary fishing rights as set our in article two on the Treaty of Waitangi [K 111]

c) Alleged Lease Round Inequities

The issue of alleged lease round inequities received a mixed reaction from submitters. The majority of iwi submissions either a) did not raise the issue or b) accepted the finding's of the Commission on this issue. The following statement made by Te Runanga O Ngai Tahu typifies these submissions:

“The Commission has conducted its own inquiry into these allegations and has concluded that there are no injustices to answer.....Further a very detailed analysis of lease rounds undertaken by the Commission as part of its response to the Maori

Affairs Select Committee enquiry into various allocation-related issues confirms that there are no allegations to answer.” [I8.07 Te Runanga O Ngai Tahu, I66 TTC, I5.08 Ngati Kahungununu Iwi Incorporated]

Others however did have concerns regarding lease rounds generally.

Te Waka A Ika a subgroup within Te Arawa currently seeking iwi status stated:

“Throughout the history of leasing by TOKM there has been a fundamental flaw in the lease methodology....between 1990 and 1993 the Commission used the MDI formula which favoured;

- (a) Coastline (as defined by the Commission), which is not appropriate for the reasons already given; and*
- (b) Iwi who had exclusive coastline which meant in all circumstances Ngai Tahu.*

This methodology produced extraordinary results. Ngai Tahu, with only about 5% of Maori population, received, for lease rounds 2 through to 11, 48.95% of all quota but paid only 28.25% of the total price. The average price per tonne paid by Ngai Tahu was \$296.95 whereas everyone else paid an average price of \$966.41.” [K89 Te Waka Ika, IN15B, PM 101]

This position was also supported by individual submissions [K82, IN15, K89, K82]

Iwi with Specific Concerns

Te Runanga O Ngati Whatua alleged that lease round inequities were inflicted on Ngati Whatua during lease rounds relating to the years 1994 / 95 and 1995/96. Ngati Whatua allege that:

“... Te Ohu Kai Moana had a responsibility to ensure that there was an equitable sharing of lease-round quota between iwi within the consortium. This was clearly not the case in regard to FMA’s 1 and 9....the end result of all this was a substantial financial loss to Ngati Whatua in both years 1994 / 95 and 1995/96 amounting to approximately \$600,000-00.”

d) Impacts from the Depletion of Fisheries

The issue of the depletion of fisheries received a mixed response from submitters. Two main themes were identified:

- While depletion of fisheries has occurred this has effected all iwi and the most appropriate mechanism for addressing the issue is the Quota Management System.

- Some iwi seek compensation from Te Ohu Kai Moana for the depletion of fisheries given that inshore and deepwater quota is based on the amount of fish available to be fished and;

In general submissions agreed with the Te Ohu Kai Moana's stated position that all iwi had suffered but that the Quota Management System was appropriate mechanism to deal with this.

"This is an issue which effects all iwi and therefore to a greater extent should be treated irrelevant to allocation." [I5.08]

"We recognise that the QMS has the capacity to restore depleted fish populations. The board agrees that given a) depletion is a widespread problem, b) the management regimes capacity to address depletion and the impracticalities of constantly reassessing relative levels of depletion throughout the country, the board agrees with TOKM (that depletion) is not be a factor when determining the Optimum Allocation Method... Hauraki reserves its position on this matter until and if TOKM proposes a process we seek additional redress on these grounds" – [I2.01]

"All iwi have suffered this, it was one of the factors that the Ngati Tahu report used to support its view that Ngai Tahu had an exclusive right to a reasonable share of the deepwater fishery. The costs of attempting to quantify the proportionate losses would be prohibitive. Adjustments to the models for perceived inshore fisheries depletion are inappropriate and irrelevant to allocation" – [I8.07]

The Treaty Tribes Coalition noted that:

"...reduced numbers of fish do not necessarily mean reduced productivity of the fishery... the long-term incentive must be for all rights holders to ensure fish stocks are managed sustainably. The QMS is an appropriate management mechanism for this....Further any "compensation for depletion" component of allocation would have to be constantly readjusted on an annual basis as stocks increase or decrease. This is obviously impractical and unworkable." [I66]

A number of submissions specified the manner in which depletion had affected their fisheries:

"Nor does the coastline formula allow for depletion, Depletion can be categorised into three forms:

(a) Historic depletion that has affected Maori in the past. While the impact of that may be capable of restoration (but see (b) below) the coastline formula does not allow for the compensation for the past nor compensation for the future transition period as stocks are built up;

(b) Permanent depletion caused by:

- reclamation of land;
- dredging which has destroyed spawning beds;
- pollution (including urbanm and rural run off)

Again the coastline formula does not allow for that.

(c) Temporary depletion which can be overcome by fish management techniques.

Items a) and b) apply particularly in the North Island.” [K89]

e) Development Putea

In He Anga Mua TOKM proposed through its models, a trust with broad scope to identify beneficiaries. The objective of the Development Putea is that the benefits of the settlement should be made available to all Maori including those Maori who choose not to, or unable to identify which iwi they belong to.

Arguments for the Development Putea

In general, the Development Putea received a mixed level of support from submitters. [I204, I66, I102, I102, I1.19, I2.03, I5.01, I5.08, I5.13, I7.0, I5.08, I5.01, I5.13, K90]. The main reasons for supporting the Development Putea are summarised below. These are:

- As a means of achieving an end to litigation between iwi and the Urban Maori Authorities;
- More pan-tribal organisations are likely to arise necessitating the need for such a fund;
- As a political compromise between iwi and the Urban Maori Authorities;

Other Iwi gave a more cautious support for the Development Putea:

“...Hauraki are convinced that in the short to medium term there are iwi individuals who are not able to maintain contact with their iwi and that in the short to medium terms at least there are iwi that will not be able to meet all of the needs of their members in urban situations.”

“Hauraki remains concerned that there is an adequate number of Iwi trustees appointed to this, and that its terms of reference make clear the fact that this is a distribution of iwi funds to meet the needs of their respective tribal members.” [I2.01,]

The background material supplied to TOKM by the Urban Maori Authorities (UMA) in 19 November 2001 sets out the operation and management of the Development Putea, including:

- A process for the appointment of trustees to manage the putea
- Constitutional requirements for the trust
- A 5 yearly review process for the trust
- Key purposes for the trust
- The process for applying for funding
- The objectives for the Trust. [PM 77]

In their oral submission at Orakei Marae on 6 March 2002, the UMA’s indicated that they were not opposed to the TohaToha model provided the Development Putea. The concept of a Trust (outlined in all the allocation models except for TohaToha) would

provide the means to ensure the criteria of “Ultimate Benefit” for all Maori could be fulfilled.

Arguments Against the Development Putea

There were also number of submissions which opposed the establishment of a Development Putea. [I8.13, I6.02, I6.08, I7.05, I6.08, I8.15]. The main reasons for their opposition to the Development Putea are summarised below. These are:

- All Maori have a whakapapa and therefore there is no need for a special fund;
- All Maori directly or indirectly benefit from form the settlement thus negating the need for a separate putea
- Following the decision of the Privy Council (2 July 2001) there is no need for the establishment of a separate fund.

Te Runanganui o Toa Rangatira argued that Urban Maori Authorities as service providers of article three services to Maori could not be considered representatives of Maori in areas outside this arena. They state:

“The notion that service providers....are also Treaty f Waitangi representatives in issues outside of the services they provide ... is absurd and this absurdity is highlighted as more Maori groups provide government contracted services. The runanga reject the notion that two or three Maori service providers should receive preferential treatment through inclusion in the allocation of the fisheries settlement.” [I 7.05]

“As expressed above, the past three years has been a period of significant growth for Maori organisations. This growth has been dependant on government policiesHowever, government policies are changeable ...it is unlikely that policies that have encouraged Maori development will continue indefinitely. This is contrast to iwi long-term objectives to ensure the benefits of allocation will be sustainable long-term. It is the runanga’s views that government sponsored organisations are unlikely to survive long political change, sufficient to provide long term, sustainable benefits to Maori. The runanga shares the view expressed by Judge Patterson in his decision in the High Court that there are no reasons why traditional iwi cannot develop ways to provide for all Maori to benefit in the fisheries settlement - consequently should the Development Putea proceed it must be controlled by traditional iwi.” [I7.05]

f) Problems for Small Iwi with General Framework

The Te Aupouri Maori Trust Board suggested that on the issue of cash:

“we believe it (cash) should be used to “top up” the quantum of the smaller iwi. Especially those who will receive less than \$2,000,000. We think it would be a suitable gesture of tuku aroha to those who have been forgotten about as “coastlines” and the “populationists” have fought through the media and courts. Given that the cash was initially given to the commission in 1990 to assist in the preparedness and

other matters, we are of the view that this is a reasonable use of the cash as a resource.” [I1.02- Te Aupouri Maori Trust Board]

MODELS

Models

a) General Comments

Most Iwi and submitters wanted changes made to all of the models to better reflect their aspirations – they therefore wanted changes to some features of the models. These are included in the comments under each model below and their preferences can be seen in the summary spreadsheet.

A significant number of individual, iwi and pan iwi organisations supported immediate allocation of all assets to those Iwi who were ready. This group generally supported either the Tohatoha model (see below) or a methodology based on the formulas set out in the previously proposed Optimum Allocation Model (OAM) as proposed by Te Ohu Kai Moana in 1988. This is also reported below

In contrast to those advocating allocation of all assets, other submitters voiced the need for continued retention of settlement assets:

“We are of the view that Te Ohu Kai Moana should remain in place as the overarching body for Maori to hold the assets of the settlement. Maori currently have a level of control over 40% of the entire industry, they are singularly the most dominant force within the entire sector through Te Ohu Kai Moana. It is virtually impossible to see how this will continue post allocation. Te Ohu Kai Moana has the capacity to extract monopoly profits. This will not continue after the allocation of the assets into score of pieces. Therefore the commercial option is the only avenue, which will maintain our position of strength.” [I1.05, K89, I1.03, I4.02, I5.13]

b) Putahi: Endorsed - what changes are needed?

The Putahi model received a low degree of support from submitters.

Those who supported it included.

“Ngati Apa’s ultimate goal is to be self-determining. However it is aware that it does not possess the capacity to manage and/or administer its fisheries Asset at this time..... Consequently Ngati Apa Ki Rangitikei gives its qualified support to the Te Putahi model.” [I6.13 – Te Runanga O Ngati Apa]

“Ngati Ruanui’s recommendation is for the Putahi Model as this model supports our fishing activities to date, and directly benefits the people through social and culture development.” [I6.07- Ngati Ruanui]

“This model is one we have become accustomed to so think it would meet the least resistance. The only major change we would endorse is the cash and share allocation as we have already discussed. Secondly all POSA Quota to be allocated along with the cash. The only compromise for POSA would be the shares which should possibly be kept intact. The returns from these could be utilised to fund fisheries management training and development and political aspirations of Maori in the business and activity of fisheries.” [8.06 – Ngati Rarua Iwi Trust]

In general, a common reaction to the model was its rejection on the basis of its inability to foster iwi rangatiratanga by its retention of POSA in a Trust. Many submitters who supported the Optimum Allocation Method supported support's Te Putahi's treatment of PRESA but rejected the manner in which POSA assets were retained. The following statement made by Te Runanga O Ngai Tahu embodies the general view of these submitters.

“Ngai Tahu does not support the proposed treatment of POSA shares on the following basis:

“...Retention was the ultimate denial of rangatiratanga over the fisheries rights guaranteed under the Treaty of Waitangi. There was nothing in the 1992 settlement that gives TOKM a legal basis to retain assets or to distribute the compensation on any other basis than on the basis of the Treaty based rights framework Retention of POSA quota undermines viability and increases inefficiencies. Retention of POSA shares undermines iwi ability to rationalise shareholdings and as such compromises their commercial performance. There is no indication of how the proposed Trust would operate and given TOKM's sub-optimal performance, Ngai Tahu does not support any proposal for a Post-Allocation commission to continue to manage assets on behalf of iwi. Any assets retained centrally on behalf of iwi must only be held until such time as:

- *Iwi can demonstrate their readiness to receive those assets; and*
- *Any disputes over boundaries are resolved; and*
- *Iwi request their assets.” [I8.07 - Te Runanga O Ngai Tahu]*

Similarly, the Te Atiawa Trust rejected the model on the basis of the manner in which POSA are treated:

This option is totally unacceptable to Te Atiawa Trust. In addition to issues relating to inequity over the coastline / population / quota formula for allocating PRESA Assets to Iwi Maori, this option does not allocate POSA Assets to Iwi Maori. [I8.15 - Te Atiawa Manawhenua ki Te Tau Ihu Trust]

c) Pataka: Endorsed – What changes needed?

The Pataka Model received some support from both individual and iwi submitters. A number of submitters saw the advantages of participating in a iwi co-operative while retaining collective strength in the sector. Conversely, some iwi viewed the retention of POSA as a rejection of iwi rangatiratanga and (as with the Te Putahi Model) rejected the model accordingly.

Those submissions which supported the Pataka Model recognised the potential of the model to protect assets while at the same time encouraging iwi enterprise. [K1, K44, K87, K32, K14, K19, K32]

“We support the concept of the Pataka Model because we are in favour of a single National Co-operative / organisation to be set up to administer all fishing assets for all Maori. Along with previous comments we see.

Advantages being:

6.1.1.1 Centralised control of both PRESA and POSA allocations.

6.1.1.2 All assets will be held collectively; therefore it will not diminish or dissipate our economic strength.

6.1.1.3 It would provide significant industry muscle on entry to world markets

6.1.1.4 Therefore maximising our own economic benefits

6.1.1.5 Thus providing us Te Iwi Maori with a much stronger political and industrial influence by being a single unified voice. [K87,]

Some iwi supported the Pataka model but with variations. Te Runanga O Rangitane proposed that POSA and PRESA shares and cash be allocated to iwi on the basis of 50% coastline and 50% population. Te Runanga O Rangitane also proposed that quota be allocated through a lease process for renewable period of 5-10 years. [I7.14 Te Runanga O Rangitane]. The Ngati Kahu Trust Board supported the Pataka model approach where quota could be leased in a commercial manner to create revenue. Dividends would then be paid on the basis of population with a slight weighting on coastline, catch history and resource depletion. [I1.05]

Alternatively, not all iwi were convinced of the merits of the iwi co-operative concept. In summary their criticism of this concept can be summarised as consisting of:

- *A co-operative would constrain the ability of iwi to sell shares on an open market. This would lead to the assets being difficult to utilise as security for the growth and development of iwi.*
- *TOKM had suggested that the iwi coop was analogous to the workings of Fonterra or the NZ Apple and Pear Marketing Board. However in the iwi coop it was not intended that individual fishers would become shareholders. There would therefore be no relationship between ownership and supply as in Fonterra and the NZ Apple and Pear Marketing Board.*
- *If the intention of the proposed trust is to protect the management of assets form beneficial owners it would be more satisfactory to simply create a holding company with iwi being able to appoint directors. Iwi would then be able to buy and sell shares freely. [I66]*

Te Runanga O Ngai Tahu rejected the model on the same grounds as Pataka with the additional criticism that the co-operative concept increased inefficiencies and constitutionally the coop would be required to represent both owners and shareholders. This would create the potential for conflict i.e. the NZ Apple and Pear Marketing Board and the Guinness Peat Group Interest. [I 8.07]

In general those who supported the 1998 OMA opposed the Pataka model on the basis that a) the co-op did not represent the most efficient commercial body to exercise iwi rangatiratanga by and b) the Pataka model did not follow the principles of the OMA which 76% of iwi supported. As with the Putahi model, retention of POSA was not acceptable to this group of submitters.

d) Mana Orite: Endorsed – What changes are needed?

The Mana Orite Model attracted a stronger level of support from submissions. [I6.12, I1.02, I1.03, I4.01, IN 81, K93, 47A, I1.06, K20, K16, K68, K93]

“...Te Mana Orite provides for the purchase of Moana Pacific Fisheries Limited. We totally support this move for full ownership of TOKM on behalf of iwi as a sound commercial decision that will reap benefits financially and structurally.”[I4.01]

Other Iwi saw Mana Orite as a model which would spread potential risks and encourage iwi entrepreneurialism:

“The Mana Orite Model proposal essentially spreads the risk between an asset allocation option and a consolidation strategy...Should one approach falter the other might survive. In this way there is a balance between those who favour breaking the asset base up and those like ourselves who believe the Commission, with some modifications should continue.” [I1.02]

“We see considerable merit in using the deep-sea quota in a company and distributing the dividend as foreshadowed in the Mana Orite proposalit is our view that collective strength is the only way we can possibly advance our interest in the industry.” [I1.02]

“...a complete population formula for the deep sea will give a wider spread of enterprise opportunity for iwi. It is an undeniable fact that by treating the deep sea quota in this manner the commission will increase the commercial fishing interests of 83% of the Maori population.” [1.02]

“We support the Mana Orite model because it allows the deepwater species and small volume species to be maintained in some form of multi iwi collective, which would be a price maker in a highly competitive market. Mana Orite keeps iwi interests in the fishing resource without rising having an uncommercial enterprise trying to manage the fish. It would allow Maori to get into the business and activity of fishing.” [I]

Other Iwi supported the Mana Orite Model for the following reasons:

- *It would be consistent with the law;*
- *Would be technically feasible and reasonably low cost;*
- *Would promote political cohesion and enhanced political and industry influence without negating iwi rangatiranga;*
- *Provide a positive basis for integrated fisheries management as all inshore fisheries rest with iwi, enhancing their ability to coordinate commercial and customary fishing;*
- *Provide protections for ensuring benefits for all Maori and the retention of an asset base over time, without negating iwi rangatiranga;*
- *Attracts lower implementation and management costs through central management of POSA;*
- *Is likely to enhance economic benefits, as a result of more capital leverage and improved economies of scale where these are significant; and*

- *Still allows market niche specialisation and the gains to both risk management and market returns that flow from this.* [I1.03]

To summarise while Te Mana Orite received some support during the consultation process, those submissions that did support it sought a holistic approach to resolving the problems of achieving a sustainable settlement for all.

e) Toha Toha: Endorsed - What Changes are needed?

The Toha Toha Model received strong degree of support from submitters. [I1.18, I8.15, I1.19, I615, I8.14, I5.12, I66, I8.05, I7.12,]. Of the four models outlined in He Anga Mua, the Toha Toha Model most clearly reflects the principle of allocation as outlined in the Optimum Allocation Model (OAM) proposed by Te Ohu Kai Moana in 1997.

The Ngati Kuri supported the Toha Toha model subject to the following modifications:

- *Treats PRESA and POSA in a similar manner;*
- *Allocated now;*
- *Allocates to iwi;*
- *Establish dialogue with Ngati Kuri concerning the establishment of any post-allocation Commission.* [I1.19]

The Muaupoko Tribal Authority supported the TohaToha model on the basis that:

The Tohatoha model offers much more in terms of iwi fully managing their own fishing assets themselves right now. [I7.12]

Ngati Rarua Iwi Tust while endorsing aspects of the model sought more information on the distribution of shares based in individual quota. [I8.06]

The TTC developed evaluation matrices to evaluate each of the four models outlined in *He Anga Mua*. Each model was evaluated against the following set of principles:

Allocation Principles

- Consistency with the Treaty of Waitangi
- Acknowledges iwi property rights
- Consistency with fisheries settlements
- Consistency with Taumata Paepae
- Consistency with the OAM

Implementation Principles

- Facilitates Maori into business and activity of fishing
- Promotes iwi readiness to manage assets
- Ensures iwi the same rights as other New Zealanders
- Ensures any PAC is accountable to iwi

On the basis of this framework the Tohatoha model was ranked the highest of all four models.[I66]

Although the Toha Toha model was not the preferred model for Ngai Tahu (that being the OAM) Ngai Tahu did support the intention of the model to allocate all assets to iwi. However, Ngai Tahu rejected the Toha Toha model on the following grounds:

- *“Comes closest to Treaty test but fails on the basis that the distribution is skewed to population rather than property rights.*
- *Comes closest to meeting all legal requirements except that there is no legal foundation for failing to distribute according to Treaty guaranteed property right.*
- *It does not follow the OAM agreed upon 76% of iwi in 1998*
- *In relation to the sale of PRESA and POSA application of the OAM model” [I8.07]*

Optimum Allocation Model

A significant of individual, iwi and pan iwi organisations rejected TOKM’s four allocation models and supported immediate allocation on the basis of the principles agreed to in the Optimum Allocation Model (OAM) as proposed by Te Ohu Kai Moana in 1998. [I8.13 - Ngati Koata, I2.01, I1.10,K-94, K-80, K82, K98, K104, IN 88, IN 103, I1.19, I66, I7.05 Ngai Toa, 8.15 - Te Ati Awa Trust Board, I7.06, I7.13, I110,] Fundamentally, these submitters believe the OAM best reflects their treaty entitlements while achieving a sustainable political outcome for all. This viewpoint is encapsulated in the following statement by the Treaty Tribes Coalition (TTC):

“Huge compromises were required between iwi with large populations and iwi with greater relationships with sea through the sea through their coastlines, and it was agreed that any sustainable model must reflect the principles of “Mana Whenua, mana moana” (iwi rights to fisheries attach to iwi rights to land) while also acknowledging “Matotoru o te tangata” (the size of the tribal populations). Because it is the result of an iwi –driven process, TTC maintains that the OAM still represents the most workable compromise of the various competing views allocation should occur. TTC reiterates its view that any imposed solutions will be doomed to fail, as evidenced by TOKM’s own experiences attempting to resolve boundary and hapu disputes.” [I66]

SUCCESSOR TO TE OHU KAIMOANA

Successor to Te Ohu Kai Moana

Three main issues are commented upon in submissions. Most comments on each theme can be summarised as:

a) Role of a PAC:

- should include policy, advocacy and asset management
- some form of Trust is necessary
- more information and analysis is required
- should be limited to policy and advocacy
- Trusts are not necessary or appropriate
- Acknowledge the need for a PAC but role to be determined.

b) Process for establishment

- Need for representation to be by Iwi mandate
- Need for process of establishment to be equitable
- Election should be based on Maori Electoral Districts
- Support electoral college option
- Oppose electoral college option
- Comments on number and term of Commissioners

c) Funding base

- Funding should be based on levies on transferred assets

More detail is set out below.

a) Role of a PAC:

Should include policy advocacy and management role.

Submissions from Iwi

Some submissions support the PAC having a role that includes policy advice, advocacy and asset management [I 1.02; I 1.06; I 1.19; I 4.02; I 5.01; I 5.13; I 6.12; I 7.06]. For example, the PAC should:

- *“be the principal advocate and coordinator of Maori within the fishing industry...run its companies on a total profit maximisation basis and continue the task of broadening the Maori marine resource asset base...The functions and operations of the Commission represent the best model available” [I 1.02].*
- *“benefits accrued” would be “made available to iwi or individuals for the purposes of educational and developmental advancement of Maori [I 1.06]*

- *“be required to act as corporate managers, legislature watchdogs, political lobbyists and industry advocates for Maori”* [I 1.19]
- *“handle in Trust, PRESA and POSA shares and distribute a yearly dividend”* [I 4.02]
- *“Broker for iwi quota! We appreciate the reservations”* [I 5.13].
- be important for *“Iwi who do not meet mandate and structural requirements”* [I 5.13]
- Secure 20% of new species [I 5.13]
- *“Facilitate management of both commercial and customary fisheries...Facilitate the current training and education role...Monitor commodity levy proposals...Act as kaitiaki for any Development Putea inclusive of aquaculture and freshwater”...Ensure sustainability and “Form a special relationship with whanaunga o Te Moananui a Kiwa”*[I 6.12]
- Represent *“members on the Boards of TOKM subsidiaries”* [I 7.06]
- Manage a *“Development Putea apportioned from asset assigned for the distinct purpose of dispute resolution, industry training, administration and logistical expenses”* [I 7.06].

Submissions from others

One submission supports the establishment of a post allocation Commission to *“manage our interests and advocate on our behalf with all other parties”* [K 32].

Another submission proposes that a Trust should remain in place to play a role in representing Maori interests in the industry, advocating before Government, represent cultural interests in environmental protection, “ensure investment management is commercially and legally”, enhance education opportunities (“specifically in marine sciences and aquaculture development”), and assist with iwi capacity building and research. [PM 76].

Where the Commission will hold and manage assets, a number of other issues arise:

Some form of Trust is necessary

Submissions from Iwi

Some submitters support the trust concept. One believes that it would be a mistake to dissipate Maori influence by the fragmentation of Iwi. *“Individual Iwi would not have the resources, skills, knowledge or influence as a body representing all Iwi; therefore it is essential that a preferred model is conducive to the retention of a Post-Settlement Maori Fisheries Commission Trust”* [I 4.01].

Another notes that the *“model submitted by Te Runanga o Whaingaroa will require the retention or establishment of a Trust”* [I 1.06].

More information and analysis on options is necessary

Submissions from Iwi

Some submitters who have responded to this issue state there is a need for more information about different options and how they might work [I 4.01; I 66; I 2.05]:

- *“It would have been useful to set out what a Charitable Trust can do to be able to qualify for the tax Exemption”* [I 4.01]
- *‘It is the view of TTC that the proposals for the imposed retention of Iwi assets in a trust or a misnamed “cooperative” lack sufficient information to make them meaningful...TOKM has not done all that it could have to encourage meaningful and thoughtful contributions from Iwi on the asset aggregation options available to them’* [I 66]
- TOKM should *“commission an independent evaluation...on the viability, performance and risk factors of both the national Iwi co-op and national Maori trust options, as part of a due diligence process”* [I 2.05].

Information provided by the NZIER and attached as an Appendix to one submission [I 66], suggests that the analogy that TOKM has made between the type of cooperative that could be set up under the Pataka model, and cooperatives in the dairy industry, is incorrect. *“In the dairy industry, farmers supply milk to their cooperatives...They...form their own cooperative companies in order to control the downstream processing and marketing”*. Thus, *“the principle is that shareholding goes with supply... In Te Pataka model for Maori fishing, the cooperative company would carry out the fishing, not the shareholders. It would be no more than a single Maori owned fishing company with Iwi as the shareholders... For it to be analogous to the cooperatives in the dairy and other primary industries, the individual fishers (not Iwi) would hold the shares in the cooperative, and in proportion to their supplies”* [I 66].

Submissions from others

One submission notes that: *“there is no analysis of the “trust model”, how effective and accountable will such a centrist model be to the aspirations and growth needs of Iwi...How will Iwi be able to plan for and influence positively their own growth and capacity building into the new era if they are “dependant” on an annual dividend, the actual generation of which they are separated from?”* [K 98].

One submission notes that there are principles put forward by the International cooperative Alliance (ICA) that should be adopted for the ownership and operation of the assets of the settlement. The ICA issues a statement of cooperative identities containing a definition, values and principles [M 41].

Functions of the PAC should be more limited

Submissions from Iwi

Some submissions, while supporting a PAC, see its role as more limited to functions such as: *“allocation to Iwi; provision of management services; securing additional 20% of new species, but not centralised management of assets, e.g. through a centralised “Super Trust”* [I 5.08], participation in fisheries management processes

(such as annual stock assessments and TAC setting for commercial and customary harvest) and government reviews and representation on and inputs into fishing industry bodies [I 8.14, I 8.15].

One submission notes the need for “*an entity in Te Tau Ihu which can deal with generic issues*” ...in so saying, the submitter notes that “*there is a tendency for quota management to devolve towards species management companies*” which “*tend to have voting rules for contentious issues based on the tonnage held. These rules favour large stakeholders over smaller stakeholders, such as iwi. This results in minimal input of Iwi Maori stakeholders to the decisions made relating to their fisheries.*” There is a “*need for adequate checks and balances in order that Iwi Maori input to the sustainable management of their fisheries is neither lost or weakened*”. The submitter’s comments on the funding base of the PAC suggest that they do not support the PAC having a role in asset management (see further comments on funding base, below.) [I 8.15].

“*The functions of TOKM II must be limited and Ngai Tahu does not see a role for this body as a manger of assets*” and “*Any successors to TOKM as described by the Treaty Tribes Coalition submissions should set and achieve the highest standards possible*” [I 8.07].

“*The functions tend to be weighted in retaining the Quota and assets therefore seem to be inappropriate. They key interest for NRIT is what the functions would be if there is a total distribution of all the assets. This would allow them to assess the need or the total number of commissioners required, if any. If there is a need for a PAC and self funded by Maori then the choice of participants should be made by Maori*” [I 8.06].

One submission outlined in some detail a proposal for the “*TOKM successor era*”. In summary, this would consist of “*three discrete but related entities...*”:

1. *AlloCo – a trust-like entity with a limited lifespan and the single function of interim management of assets until they are allocated to iwi, with iwi being able to uplift their assets on a staged basis, if they desire;*
2. *FutureCo – an iwi-owned company in which iwi could chose to exchange their allocated asset for shares, or could retain ownership of those assets and negotiate a commercial management contract with the company;*
3. *TOKM successor – effectively an iwi stakeholder group, fulfilling policy rather than asset management functions, as well as being responsible for securing and allocating 20% of new species as they are introduced into the QMS”* [I 8.66].

A diagram of this proposal is attached.

Information attached to the above submission and provided by NZIER raises concerns about lack of transparency in the way that fisheries assets have been managed by TOKM, and cite a number of examples, e.g.: “*returns achieved by the Commission on the various assets it holds cannot be established from published data. The 2000 annual report (page 8) quotes a market value for the quota of \$668 million; yet the discussion document shows quota values at \$275 million at the same date. This*

inconsistency needs an explanation. If total assets less the annually leased quota are worth \$405 million, they should be earning a return of at least 8% per annum or \$32 million per annum". Concerns are also expressed about a lack of accountability of Commissioner to the beneficial owners, for example: "if the Commission revealed its performance in sufficient detail, and if it proved inadequate, the beneficial owners of the assets are not in a position to remove and replace the commissioners".

The final point made by NZEIR is that transparency and accountability are not sufficient and that *"Iwi should still have the ability to sell their holdings of the assets and reinvest the proceeds outside the fishing industry if their expectations are not met and they identify better avenues for their investment"*.

Trusts are not necessary or appropriate

Submissions from Iwi

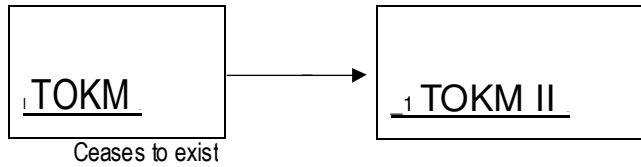
1 submission is against the formation of a Trust setup to manage the distribution of PRESA and POSA because Trusts are *"another pakeha legal entity trying to control Maori resources who can be easily directed/influenced by Government policy... Maori are capable of writing their own policies and making accurate decisions for their people"* [2.01].

Another submitter disagrees with the analysis of Treaty principles contained in He Anga Mua (p 16). *"We believe that the over extended interpretations and findings of TOKM is flawed and consider that TOKM cannot be the judge of the Treaty of Waitangi and its principles... the assets should be distributed to Iwi as shares as soon as possible"* [I 4.07].

Comments provided by the NZIER, attached as an Appendix to submission [I 66], do not support the need for a trust. They note, *"in particular, as the shares in Sealord are readily divisible and easily allocated to Iwi, it is difficult to see why they would need a trust to be created to hold them at all. There is no reason for Iwi not to own them directly and to deal with them as they see fit..."*.

They also comment that *"in theory, a trust can be structured so that trustees can be readily changed. In practice however, trusts have tended to be self-perpetuating and therefore lacking in transparency and accountability. They tend to remove power from the beneficiaries...if any assets are to be retained, ...simply have a holding company with shares issues to Iwi, and Iwi being able to appoint directors through an electoral system. Iwi should also be able to buy and sell the shares freely"*.

Transitional Arrangements Diagram Annexure E



Policy

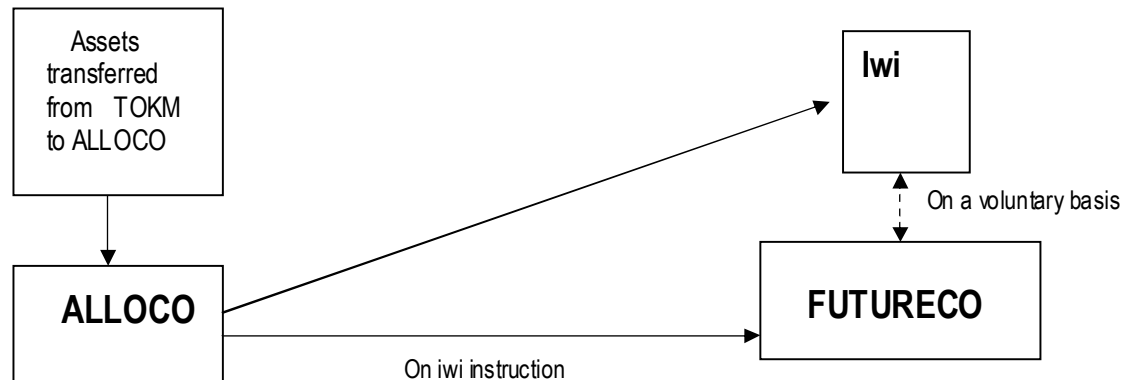
Role

- Policy agency
- Receives Quota from new species and allocates (to ALLOCO or Iwi)
- Ombudsman function
- Iwi Industry representative

Structure

- Iwi votes based on tonnes of quota held
- Compulsory levy based on quota

Asset Management



Role

Conservatively manage assets on behalf of Iwi
 Determine Iwi readiness to receive assets
 Establish disputes resolved prior to allocation
 Allocate assets to Iwi

Structure

Not for profit entity
 Charges management fee for asset management
 Continues preferential 'use rounds until assets allocated

Role

Private Iwi fishing company - in the business of fishing
 Outsourcing company - will manage the Iwi assets according to risk profile indicated by Iwi

Structure

Company solely owned by Iwi who transfer their assets in and become shareholders.

Charge management fee for outsourced Iwi management where Iwi which retain their assets but not actively manage them.
 May have a brokerage function

Submissions from others

One submission asks “*what is preventing Iwi entering into their own arrangements with other Iwi - stimulating growth and expertise at the “flax-roots” level*”. *Holding the assets under the control of a “Trust/s” will deny Iwi the growth that will emerge from planning for and managing their own resources*” [K 98].

Acknowledge the need for a PAC but role to be determined

Submissions from Iwi

One submitter “*agrees there will be a need for a post allocation body to carry out various tasks for and on behalf of Maori. At this time we have made no decision as to what extent or role this body should play*” [I 8.05].

Submissions from others

One submission supports the establishment of a PAC, but says that “*the proposed legislation includes a sun-set clause disestablishing the PAC within 5 years*”. It also raises questions about costs of running the PAC, whether “*the payments to professionals be those presently being paid*”, whether “*current staffing levels would remain the same, and when it would/would not act as an advocate*”.

b) Process for establishment

Need for representation to be by Iwi mandate.

Submissions from Iwi

Some submissions support election to a PAC by Iwi directly [I 2.03; I 5.08; I 5.13]

Another suggests that “*it could have been expected that TOKM would have come out strongly advocating for a system of election or appointment to any successors to TOKM to clearly restore the rangatiratanga of iwi. Any body succeeding TOKM, or which is set up even in the interim to manage the assets pending allocation must be more accountable to the iwi owners*” [I 8.07].

Need for process of establishment to be equitable

Submissions from Iwi

In addition, “*the process by which this is determined needs also to be equitable to all Maori. Therefore Iwi distribution should not be part of the mechanisms as smaller iwi like Quota shareholders in Stakeholder groups are totally disenfranchised*” [I 8.06].

Election to be based on Maori Electoral Districts

Submissions from Iwi

One submission suggests that membership of the Trust should “*be on the basis of the Maori electoral Districts, Thus there would be as many members on the Trust as there are Maori electorates*”. Election “*could take place at the same time as the General Election*” [I 1.06].

Submissions from others

One submission proposes that a PAC be “*established to manage the POSA Trust*” and that the Commissioners (who would be the trustees) “*be elected during the General Election in all Maori Electorates*” [???

One submission proposes that TOKM be reconstituted as “*The Treaty of Waitangi Treaty Tribes Fisheries Commission, and that it be established by the Maori Electoral Vote of Iwi*” [IN 112].

The electoral college option has merit

Submissions from Iwi

Many submissions made more specific comments on the concept of an electoral college option for appointing Commissioners, and agree that it has some merit [I 1.02; I 1.03; I 1.05; I 1.19; I 6.12; I 8.05; I 8.14, I 8.15]

- “[The PAC] *should be accountable to Maori through an electoral college,... [which] should be elected on a regional basis to ensure it is not unwieldy*” [I 1.02].
- There is a place for an Electoral College option when PAC is established, but the selection of Commissioners should be the responsibility of the iwi and any other relevant party [I 1.03].(see other statement re that there are elections similar to national elections).
- “*The electoral college option has merit. The Crown’s control of the appointment process is repugnant to Ngati Kuri’s perception of tino rangatiratanga*”. However, “*who will represent Ngati Kuri? It is observed that ... the views of all Muriwhenua based iwi have been ignored in the current appointment process. Could this process allow the reconstitution of the Taiopuru and is this desirable?*” [I 1.19]
- “*Voting by Iwi should be undertaken through an electoral college in which every iwi has one vote*” [I 8.14].

One submitter supports the concept in principle but wishes to see more detail: “*It will require legislation and should be placed before our people. Until the exact details are spelt out by yourselves ... it is difficult to respond other than in a very general manner*”[I 1.05].

Submissions from others

One submission supports the electoral college option but suggests that another option that could be used is STV (Single Transferable Vote). [K 90]

Oppose electoral college option

Submissions from Iwi

One submission “*unequivocally opposes the electoral college option*” and points out that there is “*no reason why the methodology which works for SeaFIC should not equally apply to iwi interests in a body which is largely concerned with industry related matters. Iwi representatives should be appointed proportional to their interest in any assets managed by the successor structure*” [I 8.07].

Number and term of Commissioners

Submissions from Iwi

One submitter suggests that current Commissioners will have a better idea of the necessary size, and that current company requirements, if followed, would be adequate [I 1.03].

Another suggests there would be 7-9 members, nominated by Iwi, with a terms of 3 years with rotational appointment, and should contain a cross section of skills [I 6.12].

Another says there should be as many commissioners as Maori Electoral Districts and that the term of office should be three years [I 1.06].

“*Numbers should be limited to 7 and rotated on a 2-3-2 basis every 3 years with a 2 term maximum. This will allow for continuity as the last person would serve 5 years before their election took place*” [I 8.07].

Submitter I 8.05 believes that “*the number of representatives should be reduced*”.

Submissions from others

One submission proposes that “*only Maori who are members of te iwi Maori can be eligible*’ and that there should be “*no government appointments*”. If there have to be such appointments, then they should be limited to 2 years “*with no replacement government appointments ... terms of Commissioners should be restricted to one term in order to bring new commissioners into the governance and advocacy role and to enhance their thinking and gain experience*”. A transition period “*should include the retention of only 2 existing members – who then must resign at the end of the first three year term*” [k 90].

Another suggests that shares “*should be allocated on a population only basis and may well be the criteria for determining the number of trustees each Iwi would be entitled to appoint*” [K 20].

c) Funding base

- *Should be based upon a levy on transferred assets*

Submissions from Iwi

Those who made specific comment on the funding base considered that:

- *“Funding for this organisation should be by levy on the transferred assets. This could be on the same basis as the levy imposed to fund SeaFIC. Potentially the PAC could form part of SeaFIC or potentially replace SeaFIC”* [I 1.19].
- funding should be *“by Iwi levies or contribution on their settlement entitlements* [I 5.08].
- *“funding of a TOKM successor should be through a levy on quota”* [I 66].
- Submitters I 8.14 and I 8.15 do not agree that *“post allocation, such a body should fund itself by retaining and operating Article II assets...such a suggestion is equivalent to saying that SeaFIC should fund itself by becoming an actual fisheries operator holding a 50% stake in the seafood industry... we believe that such a Commission should be funded from levies charged to iwi against the value of the Article II assets what have been transferred to them”* [I 8.14, I 8.15].

BENEFITS FOR ALL MAORI

Benefits for all Maori

Constitutional requirements

- Support Commission representation and structures policies. [I8.06, I8.17]
- Support Commission criteria in principle. Commission must adopt a set of arrangements that will allow Iwi to receive its assets in a form best suited to the tribe's needs and "social reality". Do not believe that a single checklist approach achieves this effectively. Support use of an independent expert panel. [I5.04, I5.08, I8.15, I8.17]
- Commission must be explicit and consistent in what it sees as necessary constitutional thresholds for Iwi to meet. [I1.02]
- Requirements ensure beneficiaries are enfranchised and accountability will provide for "all Maori". Fishing claims made by Iwi not by all Maori on ethnic basis. [I1.10]
- Trust Board Act is not ideal to drive Maori business growth – need new statutory body as overall settlement infrastructure. Acknowledge reasons for Commission requirements and in process of developing new Iwi Authority. [I1.02, I1.03]
- Agree with procedures which guarantee participation of Iwi members but there is no similar process set out for appointment of directors of the Iwi fishing company. Some proposals "from TOKM staff" for governance of Iwi fishing companies have been totally unrealistic. [I8.14]
- Support comprehensive and transparent governance structure as allocation pre-requisite, but there must be a balance between the cost of the administrative structures and the security of assets to Iwi. [I8.15]
- Commission has yet to specify the minimum structural requirements – this is a burden on Iwi organisations because of long lead in times – *Given the emphasis that TOKM is, quite reasonably, placing on the Iwi readiness question it is incumbent on the Commission to notify Iwi of their requirements at the very earliest opportunity... TOKM must recognise existing sound operations and their Iwi-determined operating processes, and retain flexibility in its determination of each Iwi's compliance with the yet to be announced requirements.* [I2.01, I8.07, I.66]
- *As an Iwi we are committed to open, transparent and accessible structures that separate commercial management from political government.* Concerned that

non-negotiable postal voting right cutting across processes which might be more appropriate to a particular Iwi. Want more judgement and fewer templates in this matter. [I5.01]

- Five minimum standards [p.51] are reasonable but concern that they may devalue role of marae and marae groupings in Iwi decision making process. [I2.04]
 - Sound governance and eligibility rules are without question but *How Iwi should account should be their right to specify*. Accountability to every individual is unrealistic and impractical. Commission compliance requirements should be relaxed for those taking the Pataka Model. Prefer to delay constitutional restructuring until outcome of Raupatu claim is known – need to reserve some funds to meet future constitutional requirement costs. [I4.07]
 - Refers to *Maori ability to not only choose their leaders but also to have faith and trust in their decisions*. [I7.04]
 - Does not support *election of representatives solely through a postal process*. Need significant role for internal Iwi institutions. Cost of postal voting may exceed income from assets. Cannot guarantee *that all Maori who are resident or transient in our rohe will directly benefit from assets transferred to it*. [I7.05]
 - Ngai Tahu ready to receive and manage fisheries assets. Any entity receiving assets must have constitution which directors / trustees ensure is adhered to [lists nine bullet points as essential features of that arrangement]. Commission should not impose higher standards on Iwi than it is prepared to meet. Notes that many criteria set by Commission are already in their constitution but does not accept that Commission can impose different criteria on an Iwi than those which their people and Parliament consider to be appropriate for their needs. Strongly oppose any requirements on how Iwi organisations distribute benefits. [I8.07]
 - Do not need another Crown agency telling them how to run their business or to dictate governance and constitutional issues. [I8.13]
 - Generally support constitutional requirements. [K80, K90]
 - Their Iwi organisation does not have sufficient capacity to accept assets. [K87, K90]
 - Need for each Iwi organisation to have satisfactory financial plan and competent team of administrators. [IN2]
 - Commission should provide positive steps to build capacity of Iwi. [IN65]
- Registers, MRS,**
- Iwi Helpline should help limit uncertainty. Accept MRS proposal. [I1.03]
 - Already maintain a comprehensive tribal register. [I2.03]

- *An appropriate mechanism for population stats, analysis and census is required with funding being provided.* [I2.17]
- Requested Commission to fund and establish Iwi registers – a more accurate record than the national census; need for at least three registers: census of total Maori population; individual Iwi register; individual hapu register. [I7.04]
- How many Iwi have registers which match census data? [K4A]
- Oppose any move to recognise only those Maori on Electoral Rolls. [K20]
- Why would Iwi organisations want to duplicate their efforts? Do not support Commission funding MRS. [K90]

Ongoing performance requirements if assets retained

- Support conditions being placed on recipient organisations to ensure accountability. Commission could use progressive restrictions on Iwi access to POSA benefits with ultimate de-recognition. [I1.03]
- Effective governance and management mechanisms are necessary to protect interests of Iwi members. [I2.04]
- Support use of progressive restrictions on access to POSA benefits and dividends, and Commission establishing a formal dispute resolution procedure. [K90]

Asset retention mechanisms

- Ngati Kuri interests to be protected before they agree to any central organisation holding and administering any of their assets. [I1.19]
- Some form of control needed to protect tribal assets from uncertainty, especially with any advent of pan-tribal organisations formed for Maori who do not know their Iwi. [I1.03]
- Iwi should also have constitutional obligation to reinvest returns from such sales into alternative assets. [I2.01]
- Mechanisms needed to facilitate asset rationalisation “within the Iwi asset holder family” in the first instance, including external exchange if there is no net loss of asset. Right of first refusal mechanisms should be in place in order of neighbouring Iwi, other Iwi, other Maori companies and finally the open market. PAC could act as broker [I2.01, I8.07]
- Support Option 3 [I1.03, I2.04]
- Support protection in perpetuity to be enshrined in legislation so that alienation of settlement assets can only occur to other Iwi, but perpetual lease to be proscribed.

[I4.02]. All sales be banned for ten years and then only to PAC. [I4.07] Assets returned at allocation to be held as non-saleable, non-bargaining asset. [I5.12]

- Do not support any restriction which would limit Iwi ability to manage assets according to their own preferences. [I5.08, I8.06]
- Option 3 has some merits but Iwi will end up funding PAC and it could become the “dumping ground” for uneconomic species. [I8.06]
- Total ban on Treaty quota sales would prevent rationalisation. [I8.14]
- Cannot accept that ownership or care of resources be removed from Chathams. [I8.16]
- Totally support kaupapa of asset retention by Iwi but must be able to compete with big non-Maori companies. Disagree with PAC right of first refusal. Allocated quota should be “memorialised”; then offered to neighbouring Iwi, other Iwi, finally open market – brokered by PAC. Iwi must have right to sell and reinvest outside of fishing industry. [I.66]
- Allocate to hapu co-operatives with no right of sale. POSA assets into a trust. [K19]
- Support mechanisms to protect assets from being sold or mis-managed. [K44]
- Oppose any retention. [K52]
- Support central retention of assets. [K90]
- Quota needs to be protected at all costs. Pro Option 3. Need for further discussion on whether “allocated uneconomic quota” can be traded through the cooperative model. [K90]

Transitional arrangements

- PAC should be 7-9 with appointments managed by SSC based on Iwi nominations. Up to 1/3 of present Commissioners should be maintained for stability. Directors on the company should be elected by shareholder Iwi. [I4.07]
- Allocation to Iwi who are ready should not be delayed by those Iwi who are not. [I5.01] [I8.06]
- Supports PAC concept but not to be funded through asset retention but through levies on transferred assets.
- Any transition PAC must be more accountable than TOKM to Iwi owners. Not all Iwi will be ready to receive assets and any PAC must be in a position to continue this process as Iwi meet the criteria. [I8.07]

- Obvious that a holding pattern will be needed while Iwi and Commission complete allocation tasks – could take years. Suggest a new statutory entity “AlloCo” to allocate assets to Iwi owners once they are ready to receive them. Asset protection would be its principal aim. “FutureCo” proposed as a company for all Iwi who want to manage some / all of their assets with other Iwi. Two tier system would allow Iwi to leave their assets while they reached the standards. [I.66]
- Any central retention body must be fully transparent and accountable and give regular financial reports to Iwi. Iwi would also need ability to remove Commissioners / trustees / directors if their performance was unsatisfactory. [I.66]
- Propose a proportional “regional allocative distribution” to Te Tau Ihu Iwi to be held in a pan-Iwi entity with a “without prejudice” sharing of assets. Stage Two would be a final allocation when population and coastline issues were resolved. [I8.15]
- Moriori must assume full ownership of assets. [I8.17]
- Some Iwi might want Commission to hold their assets while they build up capacity with Commission assistance. [K52]
- Penalise Iwi organisations which are in breach of their responsibilities. [K90]

TECHNICAL ISSUES

Technical Matters

Coastline

- Whangaroa Harbour should be included in coastline length. [I1.06]
- *The boundary issues amongst the Muriwhenua Iwi are matters that we exclusively must determine and abide by.* [I1.02] Coastline boundaries are for Ngati Kuri and Te Aupouri to resolve. Support juridical bay formula [I1.19]
- Commission should take a more proactive role in resolving coastline overlaps. [I2.03]
- *... the southern FMAs should ... be taken into account in an allocation model.* [I4.07]
- Iwi of southern FMA8 should agree *for one moment in time to equal sharing of coastline.* Ngati Awa claims 52 km and will never agree to a 12 km allocation basis. [I6.13] There has never been agreement on a coastline allocation in southern FMA8 – traditional land boundaries do not need to be used to determine Iwi entitlement to allocation. Commission should accept any agreement in southern FMA8. Some Iwi in southern FMA8 have made frivolous claims. No (coastline) allocation until research has justified any agreement the Commission might accede to. [I7.04] Do not agree with calculations for Muaupoko coastline. [I7.12]
- Establish a midway rohe boundary between the Chathams and the mainland. Object to 200 mile zone being applied. Oppose coastline component in separate Chathams fishery as their coastline runs unbroken by boundaries. [I8.16]

Islands

- *The separate treatment of Rangitahua is offensive to Ngati Kuri. Rangitahua forms part of Ngati Kuri's rohe.* FMA10 should be treated as other FMAs. [I1.19]
- Coastline of Motiti and Tahua Islands should be added to Ngaiterangi coastline as they meet criteria in App. 5. [I4.01]
- Model should include off shore islands *over which they have exclusive or overlapping mana interests.* [I7.13]

- Stewart Island is included in the coastline formula when there was little fishing carried out there but Kaipara, Hokianga, and others with “huge fisheries” are excluded. Ngai Tahu get access to FMA 6 rights even though they did not traditionally fish them; also get inshore fisheries from Campbell and Auckland Islands – 300-400 miles offshore. [K89, PM101]
- Must include Kapiti Island in coastline [I 7.06]

Population

- Census data does not give true reflection – Maori *quite capable of doing their own accurate Census themselves*. [I2.17]
- Iwi registers should be used rather than the census. [1.06, I2.03, I5.04, I6.08, I8.14, I8.06, I8.15]
- Do not agree with calculations for Muaupoko population. [I7.12]
- Te Atiawa should be considered as a single population, applying the whole population to each takiwa coastline. Need for a common benefit pool for those who do not wish to make a primary Te Atiawa affiliation by rohe. [I7.13]
- Oppose population component in separate Chathams fishery. [I8.16]
- Should use Iwi registers rather than census data. [K99]
- Maori Electoral Roll should be used as beneficiary list. [K14, K44, K87]