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TE OHU KAIMOANA
(MAORI FISHERIES TRUST)

2015 Review:
Information for the Reviewer

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Summary

Introduction

1. The Fisheries Deed of Settlement, entered into between the Crown and Maori representatives on 23 September 1992, was ultimately for the benefit of all Maori. The Treaty of Waitangi Fisheries Commission was established with the task of developing a model for the allocation of commercial fisheries settlement assets. Following extensive consultation and debate, the Commission delivered its allocation proposals to the Minister of Fisheries, satisfied that it had secured the maximum possible support from iwi and Maori.
2. The Maori Fisheries Act 2004 (MFA) implements the Commission's proposals by establishing the regime for allocating fisheries settlement assets to iwi. It also establishes the governance arrangements for the entities: Te Ohu Kaimoana, Aotearoa Fisheries Ltd (AFL), Te Putea Whakatupu (TPW) and Te Wai Maori (TWM). These governance arrangements include Te Kawai Taumata, who is responsible for appointing the directors of Te Ohu Kaimoana, and the shareholding arrangements for AFL.
3. At the time of the passage of the MFA, concerns were raised by some iwi and officials that the proposed settlement entities would not make sufficient progress towards achieving their purposes. In particular, many feared that Te Ohu Kaimoana would not transfer settlement assets to iwi within an acceptable timeframe. As a result, the final MFA provided that from the date of enactment, performance audits at Years 4 and 8 would be required, as well as completion of a review of the governance arrangements for the entities before the end of Year 11.

The audits

4. As the MFA provides that the Reviewer must take into account the 2008 and 2012 Audits, we have cross-referenced the Auditors' recommendations at the pertinent parts of our Report.

The 2015 review: key questions

5. The 2015 review of the settlement entities requires an assessment of the performance of each, the benefits they've delivered and the consistency of both with the purposes of the Act. Ultimately, an assessment must be made of the effects the governance arrangements have had on these outcomes.
6. If problems are identified options for improvement should be explored, either through changes in approach to the work of each entity, or by amending the governance arrangements themselves. The right solution will depend on the nature of the problem:
 - a. is it one-off and historical?
 - b. is it on-going?
 - c. can problems be resolved within the current governance arrangements?
 - d. do they require more fundamental change?
 - e. are the proposed solutions fit for purpose now and in the future (rather than for past problems that no longer exist)?
7. This report describes the performance of each of the entities, the benefits they have provided and the consistency of their activities with their purposes. It then comments on the relationship between these matters and the governance arrangements. Where relevant, proposals to assist the entities advance the settlement are outlined. These matters are summarised below.

The role of Te Kawai Taumata

8. Te Kawai Taumata has appointed a good blend of directors to the board of Te Ohu Kaimoana and as a result Te Ohu Kaimoana has been able to deal with issues on behalf of all iwi (and as a consequence all Maori) regardless of their size or influence.
9. Members of Te Kawai Taumata are selected by the 11 electoral colleges – ten of which involve regional iwi groupings. The role of Te Kawai Taumata and its processes is to ensure the Te Ohu Kaimoana board collectively possesses a set of skills to assist it govern for the benefit of all iwi. However it is not clear that iwi fully understand Te Kawai Taumata's role and the significant influence they can exercise within the existing governance arrangements for Te Ohu Kaimoana and through it, AFL. We propose that at the first meeting of Te Kawai Taumata in any year Te Ohu Kaimoana's executive management team brief members on our medium term strategy and current work plan.

Te Ohu Kaimoana

10. The MFA has now been in place for ten years. During that time, Te Ohu Kaimoana has allocated most of the fisheries settlement assets to iwi, exercised its governance role in respect to the other three entities, and acted to protect and enhance the fisheries settlement on behalf of all Maori. A summary of the benefits Te Ohu Kaimoana has delivered and our conclusions on the influence of the governance arrangements on our ability to deliver these benefits is set out below.

Allocation

11. Te Ohu Kaimoana has made good progress in allocating fisheries settlement assets. To date \$543 million worth of fisheries assets are in the hands of iwi. Te Ohu Kaimoana is placing priority on allocating the remaining assets by 2016. Over \$100 million has also been allocated to iwi as part of the Aquaculture Settlement and Te Ohu Kaimoana is assisting iwi to settle additional Crown obligations in respect of new space. Much of the progress in this area is due to the commitment of key staff and the relationships built with iwi, along with the willingness of iwi to meet the requirements for allocation.
12. We do not consider that changes to Te Ohu Kaimoana's current governance arrangements would or could have accelerated this process.

Protecting and enhancing the settlement

13. Te Ohu Kaimoana is the corporate trustee of the Te Ohu Kai Moana Trust. As such its responsibility is to protect and enhance the interests of all iwi – both large and small. Te Ohu Kaimoana's efforts in this regard involve:
 - a. influencing industry and government to ensure that their policies and activities do not adversely affect the fisheries settlement interests of iwi (for example through the contribution to industry organisations and efforts on Marine Protected Areas, FCVs and EEZ consent applications)
 - b. assisting iwi and their hapu to manage their commercial and non-commercial fisheries in an integrated way (for example through the pataka system)
 - c. supporting collectives of iwi to enhance the value they obtain from settlement assets (for example through the support for better management of scallops and proposals for a JV involving surf clams in FMAs 2 and 8).

14. Te Ohu Kaimoana continues to have obligations to protect and enhance the fisheries settlement under the MFA. The existing governance arrangements enable us to continue to do so through the income we receive from the investment of our capital and our AFL income shares.

Governance of the subsidiaries

15. Fishing is a complex and risky business and while there have been challenges, which we outline in this report, we consider that the concept of centralised management under an apolitical board should not be changed. The separation of iwi politics from commercial governance has been largely successful.
16. The performance of Sealord and its effect on AFL's bottom line has been cause for concern for iwi and for Te Ohu Kaimoana. However in the last year, the company has turned a corner and its performance in 2014 has improved significantly. Sealord and AFL are working more closely together for mutual benefit – and ultimately for the benefit of their shareholders. They are also demonstrating increasing responsiveness to iwi. The recent Anton's purchase and Sealord's Ihu To Mai programme are good examples of growing cooperation and responsiveness.
17. Sealord's governance arrangements are shaped by the joint venture between Nissui and AFL. While Sealord is a key part of the settlement, Te Ohu Kaimoana is only able to influence Sealord through AFL – the 50:50 joint venture owner with Nissui. At the same time, Sealord's accountability arrangements with AFL could be further improved. AFL's appointed directors on the Sealord board should be largely made up of either directors on the AFL board and/or AFL's Chief Executive. This would help create better information flows and relationships.
18. Te Wai Maori and Te Putea Whakatupu are both delivering benefits. However they have, from time to time, had problems achieving their objectives because of directors' difficulty in gaining a quorum when they meet. The quorum required by the MFA is equivalent to the full number of directors. Some amendments to the quorum and appointment of alternates could assist in addressing these problems in future.
19. Working within the governance arrangements created by the MFA has been challenging: there is more to do to strengthen relationships between Te Ohu Kaimoana, iwi and other settlement entities. That does not mean the governance arrangements created by the MFA are broken. While we identify problems that have arisen, we conclude that they have either been addressed, or can be addressed within the existing governance arrangements. The only exception relates to the need for legislative changes to either reduce the quorum for Te Putea Whakatupu and Te Wai Maori from 3 to 2 directors, or to increase the number of directors from 3 to 5.

Restrictions on the sale of settlement assets

20. We recognise that most iwi hold parcels (in some cases very small parcels) of quota for low value stocks. A key issue facing iwi is how they might rationalise the assets they hold.
21. The MFA contains processes for iwi to sell or exchange their quota shares. For instance it is possible for iwi to sell their shares as long as they are replaced with shares in another stock of equivalent value. So far these processes have not been used.
22. We will be assisting iwi gain better value for small parcels of quota and to reduce the costs of holding unused quota. While some would argue they should be able to sell these parcels on the open market, we consider the overall quantum of the settlement quota should remain in the Maori pool to ensure that the settlement endures and future generations continue to benefit from it.

Other challenges

23. As iwi finalise their Treaty settlements with the Crown, they have been required to put new “post settlement governance entities” (PSGEs) in place to receive their new settlement assets. The Crown’s requirements in respect of individual Treaty settlements have generated a new area of work for iwi and Te Ohu Kaimoana – meaning that both need to go through the MIO approval process for a second time if iwi wish to combine their fisheries assets with other settlement assets under the one entity. To facilitate the process, Te Ohu Kaimoana sought and succeeded in gaining an amendment to the MFA to ensure that the transfer of fisheries assets to the new entity was not deemed to be a “sale”. Without this amendment, iwi would have had to offer their fisheries assets for sale to all eligible MIOs, which would have been contrary to the intent of the sale provisions.
24. Separately, while MIOs are compliant with the MFA, there are questions as to whether their structures are overly complex and therefore fit for purpose for the size of the putea they are managing. Are there ways of reducing the overheads they have to cover? The reviewer may wish to discuss these matters with iwi.

Introduction

25. This paper forms the basis for discussion between the reviewer and Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana). It outlines:
- the background to the development of the allocation model
 - the rationale for the governance arrangements that formed Te Ohu Kaimoana and other settlement entities that manage assets on a national basis
 - Te Ohu Kaimoana's observations on the effect of the governance arrangements on our ability along with that of other settlement entities to achieve our purpose, based on our experience since 2004
 - preliminary ideas about aspects that could be improved.
26. The 2015 review of the settlement entities requires an assessment of the performance of each, the benefits they've delivered and the consistency of both with the purposes of the Act. Ultimately, an assessment must be made of the effects the governance arrangements have had on these outcomes.
27. If problems are identified options for improvement should be explored, either through changes in approach to the work of each entity, or by amending the governance arrangements themselves. The right solution will depend on the nature of the problem:
- is it one-off and historical?
 - is it on-going?
 - can problems be resolved within the current governance arrangements?
 - do they require more fundamental change?
 - are the proposed solutions fit for purpose now and in the future (rather than for past problems that no longer exist)?
28. This report describes the performance of each of the entities, the benefits they have provided and the consistency of their activities with their purposes. It then comments on the relationship between these matters and the governance arrangements. Where relevant, proposals to assist the entities advance the settlement are outlined. These matters are summarised below.
29. Our comments are based on our experience over the last 10 years. They recall the rationale for the allocation model developed by the Treaty of Waitangi Fisheries Commission (the Commission), reflected in the purposes of the Maori Fisheries Act 2004 (MFA).

Development of an allocation model

30. The MFA was the culmination of more than 10 years of discussions, consultation, court decisions and numerous hui among iwi to formulate a method to allocate the Maori Fisheries Settlement Assets to iwi organisations.
31. The development and formulation of an allocation method was the responsibility of the Treaty of Waitangi Fisheries Commission (the Commission), the predecessor of Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Limited.
32. In 1986, the Crown introduced the Quota Management System (QMS). Maori objected to the effect of this action – which effectively dispossessed them of their property rights in fishing, guaranteed under Article II of the Treaty of Waitangi. Maori took the Government to Court. The

Courts recognised Maori ownership of fisheries and recommended to the government of the day that it negotiate with Maori (see Appendix 1).

33. In the years following the 1989 Interim Settlement and the 1992 Final Settlement, the Commission operated within an environment where many Maori and the iwi organisations representing them believed that what they had lost far outweighed the redress provided by the Crown. The benefits provided by the Maori Fisheries Settlement represented a significant compromise on the part of Maori. Iwi organisations felt that they were being asked to compromise further because of the way the Settlement was proposed to be allocated. Because there were different issues to be weighed, the Commission developed its model based on criteria that had to be balanced. This means that individually iwi considered that if too much weighting was given to some criteria, they would receive a smaller share of settlement assets than would be the case if the criteria were weighted in other ways.
34. In completing an allocation proposal, the Commission was guided by a range of considerations: any allocation model had to be legally possible, financially viable, technically feasible, consistent with tikanga Maori, responsive to social and economic needs of iwi and Maori, capable of delivering the desired benefits and politically sustainable. The model was underpinned by two further important considerations – compromise among the 57 iwi organisations, and durability: the settlement must remain accessible to future generations of Maori.
35. In order for the allocation model to be durable, broad levels of support were required from iwi organisations and the wider Maori community. It was necessary to strike a balance between various and often divergent interests. The views of iwi, as well as the wider Maori community, were reflected in the final model through: direct allocation of quota shares and cash to iwi organisations, the centralised retention of commercial operations in Aotearoa Fisheries Limited (AFL), the creation of Te Putea Whakatupu Trust and Te Wai Maori Trust and oversight of these three entities by Te Ohu Kaimoana. This combination gained widespread support which satisfied political considerations.
36. The method of allocation was set out in the Commission's report: "*He Kawai Amokura: A model for allocation of the Fisheries Settlement Assets, Report to the Minister of Fisheries*" in 2003. The report, which included a Draft Maori Fisheries Bill, represented a finely balanced set of compromises that, taken individually and separately, were unlikely to achieve widespread agreement among iwi. However, considered as a whole, the model achieved agreement to proceed from 93.1 per cent of iwi organisations, representing 96.7 percent of the iwi-affiliated population of Maori. Furthermore, it should be noted that no iwi rejected the allocation proposals outright. Some iwi embraced the proposal fully, while others rejected certain minor aspects but accepted its major components.
37. The model for allocation, *He Kawai Amokura* and the Draft Maori Fisheries Bill, was further debated in Parliament and through the Parliamentary Select Committee process. Iwi organisations, Maori Representative Organisations, individuals and fishing industry members were able to have further input into development of the legislation codifying the allocation proposal. Through this process, aspects of the model were amended, changed or removed from the final MFA.

Key elements of the allocation model

38. The Commission considered that the allocation model should ultimately be able to deliver benefits to all Maori, for present and future generations, as agreed in the Deed of Settlement between Maori and the Crown, through –
- economic wealth creation,
 - influence with Government (in respect of protecting and enhancing the Settlement),
 - influence within the New Zealand fisheries sectors,
 - integrated management of fisheries, and
 - rangatiratanga.¹
39. *He Kawai Amokura* proposed a number of elements through which all Maori would be able to benefit from the Fisheries Settlement in this way. These included:
- allocation of assets to iwi, based on iwi meeting certain governance criteria
 - establishment of Te Kawai Taumata, based on 11 electoral colleges, to appoint directors to Te Ohu Kaimoana
 - establishment of Te Ohu Kai Moana Trust and Te Ohu Kai Moana Trustee Ltd as trustee for the fisheries (and later the aquaculture) settlement
 - establishment of Aotearoa Fisheries Limited to centrally manage the commercial fishing activities, but with its directors appointed by Te Ohu Kaimoana
 - establishment of Te Putea Whakatupu
 - establishment of Te Wai Maori and
 - restrictions on the sale of settlement assets.
40. These elements, which are now included as part of the Maori Fisheries Act 2004, are summarised below.

Model for allocating assets to iwi

41. The Commission proposed a model to allocate settlement assets to iwi as follows:
- through the immediate transfer of ownership of quota shares, cash and income shares in AFL once an iwi became a Mandated Iwi Organisation and met minimum governance and management requirements. The Commission considered that this would empower iwi to develop their own assets as they saw fit²
 - there would be an allocation of benefits continually from AFL through the distribution of dividends, and the availability of grants from both Te Putea Whakatupu Trust and Te Wai Maori Trust (see below)
 - the Commission envisaged there would be a progressive allocation of quota to iwi as the Crown brought new species into the Quota Management System, of which 20 per cent would be transferred to Maori; the income generated from use of quota or the sale of Annual Catch Entitlements would be direct income for iwi
 - iwi would be the final beneficiaries of Te Ohu Kai Moana Trust, AFL, Te Putea Whakatupu Trust and Te Wai Maori Trust should any of them be wound up. Any surplus of assets would be distributed to iwi.

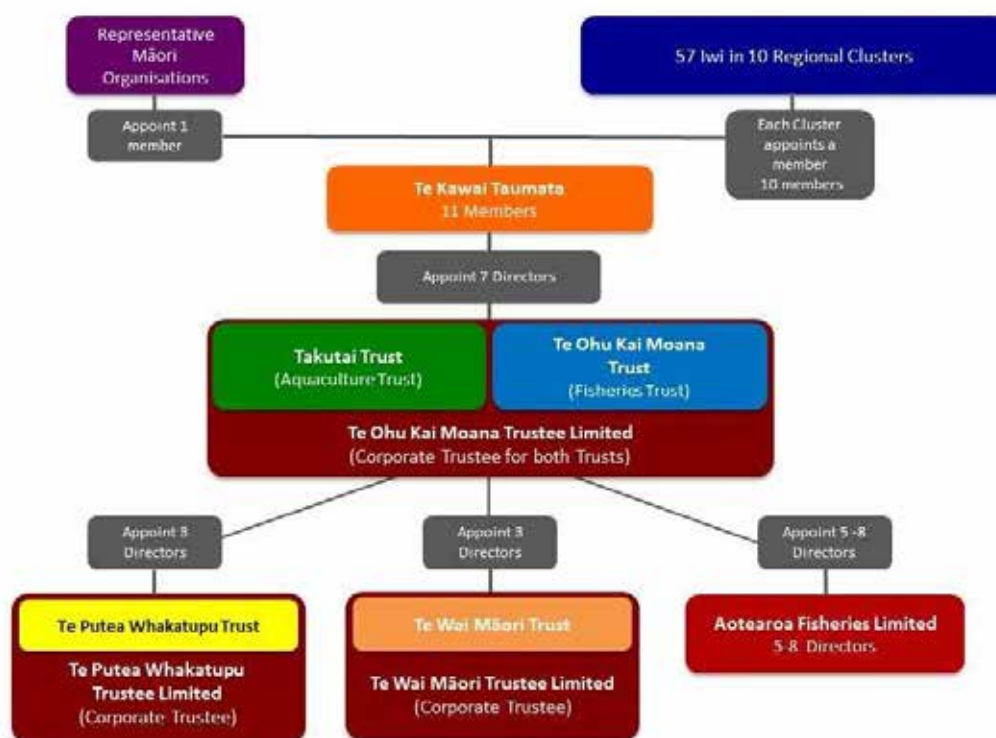
¹ Treaty of Waitangi Fisheries Commission (2003): *He Kawai Amokura – a model for allocation of the Fisheries Settlement Assets*, p 31, para 45.

² Ibid. p 6

Te Kawai Taumata

42. The role of Te Kawai Taumata is to appoint and remove the directors of Te Ohu Kaimoana. Te Kawai Taumata is an electoral college made up of 11 members. There are 10 regional groupings of iwi and one grouping of national representative Māori organisations that appoint a member. The Commission stated that members of Te Kawai Taumata would not act as representatives of the regional group who appointed them, but would be required to appoint the directors for Te Ohu Kaimoana solely on merit. Their job would be to select board members to do a job for all iwi collectively, not to elect members to reflect regional preferences. The objective of Te Kawai Taumata would be to appoint a group of directors who collectively possess the requisite skills and experience to ensure Te Ohu Kaimoana could carry out its functions effectively³. The design of Te Kawai Taumata (and other structures below) included a number of important disciplines aimed to make governance robust.
43. The relationship between Te Kawai Taumata, Te Ohu Kaimoana and other settlement entities, discussed below, is illustrated in Figure 1.

Figure 1: Settlement Entities



Note: Te Putea Whakatupu Trustee Limited and Te Wai Māori Trustee Limited are the corporate trustees of the respective trusts. The directors of these companies are effectively acting collectively as trustees for their trusts.

³ Treaty of Waitangi Fisheries Commission (August 2002) *Ahu Whakamua – Report for Agreement*, pp 32 - 33

Te Ohu Kai Moana Trust and Te Ohu Kai Moana Trustee Limited

44. Te Ohu Kai Moana was established as an overarching trust to succeed the Commission to:
- implement the allocation model
 - act as kaitiaki on behalf of iwi interests in seafood by being the eyes, ears (and sometimes mouthpiece) of iwi in both industry forums and with the Crown (at a technical level)
 - provide appropriate governance to all the entities managing settlement assets held centrally.
45. The Commission envisaged that Te Ohu Kaimoana's emphasis would evolve and change as the settlement was allocated and the allocation model implemented.⁴

Aotearoa Fisheries Ltd

46. A core component of the allocation model included centralised management of the commercial fishing activities through the establishment of Aotearoa Fisheries Limited (AFL), required to manage its assets in a commercial manner and use its best endeavours to work with iwi on commercial matters.
47. The companies brought together under AFL included Pacific Marine Farms, Chathams Processing, Moana Pacific, Prepared Foods Processing as well as two 50/50 Joint Ventures – Prepared Foods and Sealord Group. The latter – which holds 22% of the shares of deepwater stocks – is a joint venture arising from the purchase of 50% of the shares by the Commission in 1992. When Brierleys sold its share in Sealord Group, the Commission played a significant role in selecting Nippon Suisan Kaisha, Ltd (Nissui) as its 50/50 JV partner. As part of this deal, the quota previously owned by Sealord Group was moved to Pupuri Taonga Trust, whose corporate trustee was transferred to AFL as part of the allocation model. Under the terms of the trust deed, Sealord has full economic use of the quota.
48. AFL was established with two types of shares:
- voting shares, 100 per cent allocated to Te Ohu Kai Moana Trustee Limited
 - income shares, 80 per cent of which would be allocated directly to AHCs owned by Mandated Iwi Organisations and 20 per cent to Te Ohu Kai Moana Trustee Limited.
49. The Commission considered that in order to maximise the value of the companies and assets they held, they needed to be integrated under a central management structure. Commissioners considered that “governance of those companies should not be distracted by regional or iwi factional agendas because financial performance would rely upon the unified governance and direction of AFL”.⁵ Because of the experience gained through its involvement in several joint ventures, the Commission considered that any split on the board of directors of AFL arising from regional differences among iwi could, in particular cases, result in the collective interests of iwi having less influence in the joint venture. If that were the case, the Board would be unable to advance a clear strategy that adds value to all iwi shareholders, with ramifications for the value and benefit derived from those companies and the durability of the Settlement⁶.

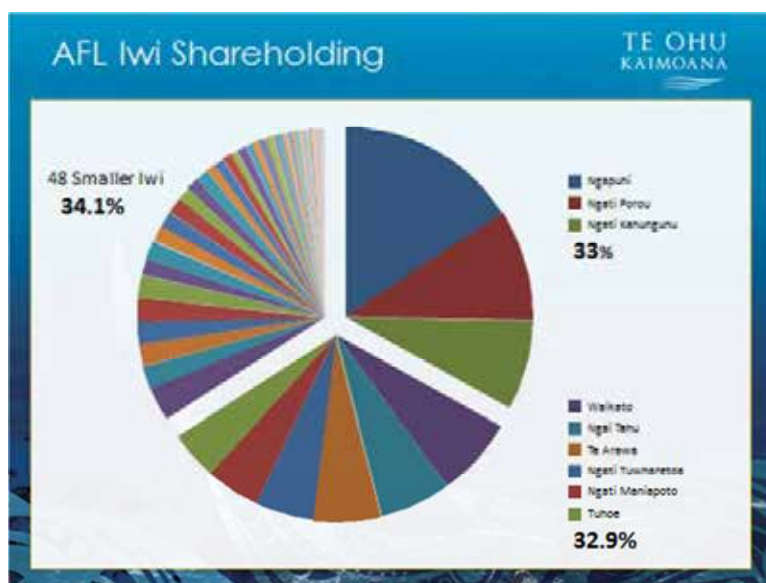
⁴ Treaty of Waitangi Fisheries Commission (2003): *He Kawai Amokura – a model for allocation of the Fisheries Settlement Assets* pp80 – 81.

⁵ Ibid. p 74, para 70

⁶ Ibid. p 74, para 71

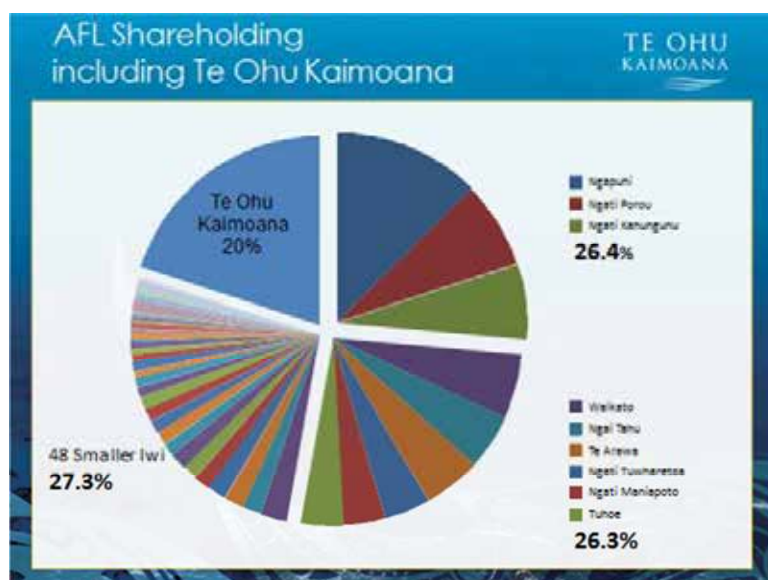
50. Excluding Te Ohu Kaimoana, the shareholding of AFL by 57 iwi means that three iwi hold around one third of the shares in AFL, six medium sized iwi hold another third, with the remaining third shared by 48 smaller iwi (see Figure 2).
51. The Commission also noted that the experience across the private sector, under a standard company structure, was that decisions requiring agreement of 50% or more in practice were often dictated by shareholders holding as little as 30% of the shares. Within AFL this could be achieved by 3 iwi and could therefore jeopardise a durable settlement. If the same standard company shareholding was used, the 75% threshold for a major transaction – including sale of the company – could be approved by less than 25% of iwi i.e. 75% of iwi would have no say in the decision. For these reasons Commissioners determined that it was beneficial for all iwi if Te Ohu Kaimoana held and exercised the voting shares on behalf of all iwi. Income shareholders, through the electoral college process, appoint the directors of Te Ohu Kaimoana who in turn appoint the AFL board. Thus a significant amount of influence is retained within the company governance structure for iwi.
52. The reason for aggregating the assets was to provide a sustained income stream to iwi. The Commission therefore provided iwi with income shares. The Commission envisaged that through the income shares, iwi would receive a larger and more regular dividend stream into the future than if the assets were either held in smaller companies specialising in one sector, or distributed into much smaller parcels across all iwi.

Figure 2



53. The shareholding including Te Ohu Kaimoana's interest in income shares is illustrated in Figure 3.

Figure 3



54. Central to the Commission's thinking in relation to the income shares was that a significant source of Te Ohu Kaimoana's income would be sourced from the 20% income shares it would hold in AFL. This aligned Te Ohu Kaimoana with iwi in working towards the success of AFL and its ability to pay dividends.
55. A number of measures are included in the MFA to protect the interests of income shareholders, including section 62 (1) (j) which requires a 75% majority before any rights of income shareholders can be modified.

Establishment of Te Putea Whakatupu

56. The establishment of Te Putea Whakatupu Trust was aimed at developing Maori human capital. The Commission considered that if Maori were to become a key part of the seafood sector it would need skilled Maori at every level of the industry. That meant there needed to be effort and resources provided to create those skills.
57. The settlement aims to provide benefit for all Maori. As iwi receive settlement assets in their hands, it could be expected that they would invest in the skills they need to manage their assets. However the Commission was aware that for a number of reasons not all Maori maintained a connection with their iwi. The Commission decided that a development putea with a requirement to ensure it implemented policies that assist Maori who do not know the identity of their iwi or do not have strong connections to their iwi would ensure these individuals would not be excluded from accessing the benefits of the settlement⁷.

⁷ Ibid. p88

Establishment of Te Wai Maori

58. Te Wai Maori Trust was established to advance the interests of Maori in freshwater fisheries management. The Commission proposed that the trust would be empowered to work with iwi to assist in coordinating and funding initiatives for the development of freshwater fisheries management with an initial capital sum of \$10 million, increasing over time to \$20 million⁸.
59. The Commission proposed that the activities of the Trust would, among other things, be to:
- undertake or arrange for the undertaking of research, development and education for the benefit of Maori freshwater fishing interests
 - promote and enhance the habitat and nourishment of freshwater fisheries in lakes and rivers, and more particularly those which have traditionally supported iwi and have been the location for marae of those iwi
 - use its resources to directly or indirectly benefit Maori freshwater fishing interests.

Restrictions on the sale of settlement assets

60. The settlement is a “full and final” settlement of Maori commercial fisheries claims. One of the key objectives of the allocation model was to maintain the durability of the Settlement. For this reason the model required the quota allocated to iwi and AFL shares to remain in Maori ownership. The Commission considered that if the settlement is to endure, settlement quota and AFL income shares should only be sold to other MIOs, or the Te Ohu Kaimoana Group. Special provisions are included in the MFA to enable sales of these assets but only within the “Maori pool”.
61. To provide some flexibility, the MFA enables iwi to ‘swap’ quota bundles outside the pool provided the same value of quota remains held by the iwi. Te Ohu Kaimoana developed the additional rules and processes for this mechanism in conjunction with FishServe soon after the MFA commenced and distributed information on it to all iwi and AHCs.
62. The quota directly transferred to MIOs became “settlement quota”⁹. While the quota that was part of AFL and Sealord’s assets was not classified as settlement quota, it was intended that if either company was to permanently dispose of quota they would provide iwi with a right of 1st refusal, unless they were exchanging the quota as part of a commercial deal.

The 2008 and 2012 Audits and the 2015 Review

63. At the time of the passage of the MFA, concerns were raised by some iwi and officials that the proposed settlement entities would not make sufficient progress towards achieving their purposes. In particular, many feared that Te Ohu Kaimoana would not transfer settlement assets to iwi within an acceptable timeframe. As a result, the final MFA provided that from the date of enactment, performance audits at Years 4 and 8 would be required, as well as completion of a review of the governance arrangements for the entities before the end of Year 11.
64. In 2012 on completing their second audit, the auditors reported they were satisfied Te Ohu Kaimoana had complied with the requirements of the MFA by:

⁸ Ibid. p91

⁹ “Settlement quota” as per s 157 of MFA and s152A of Fisheries Act is identified separately from “normal quota” on FishServe’s register.

- a. establishing objectives for the effective implementation of its statutory functions
- b. formulating policies and strategies to enable it to achieve its objectives and perform its functions
- c. producing timely and informative reporting documents
- d. making substantial progress towards allocating and transferring settlement assets
- e. assisting iwi to meet the requirements for recognition as mandated iwi organisations.¹⁰

65. The auditors recommended that Te Ohu Kaimoana “ensure it has strategies and plans in place so that as far as possible the allocation phase is completed by 2015 and that any gaps in the current arrangements have been identified and the appropriate action taken” and “decide how it is going to handle any outstanding allocation issues by the time of the 2015 review¹¹”.
66. The auditors also commented that Te Ohu Kaimoana should “establish its on-going role more formally¹²” and recommended that it “continue its discussions with iwi on the on-going role of Te Ohu and seek agreement on how that would best advance the interests of iwi¹³”.
67. In relation to the governance of Te Putea Whakatupu and Te Wai Maori Trust, the auditors recommended that Te Ohu Kaimoana “examine the strategies and plans of Te Wai Maori Trustee Limited and Te Putea Whakatupu Trustee Limited to establish whether they need any assistance or encouragement to ensure they have fulfilled the objectives they might reasonably have been expected to achieve by 2015, with particular reference to section 35 (c) of the Maori Fisheries Act that the primary focus of the mechanisms set up under the Act should be on “fisheries, fishing or fisheries-related activities”¹⁴.
68. The auditors were satisfied that AFL had, in all respects, successfully fulfilled its obligations¹⁵.
69. The following observations concern the matters that are to be considered as part of the 2015 Review. Additional comments made by the auditors are referred to where relevant.

¹⁰ Hunn, D. and Mason, K. (2012) *2012 Four Year Audit Reports*, p9

¹¹ Ibid. p12

¹² Ibid. p10

¹³ Ibid. p12

¹⁴ Ibid.

¹⁵ Ibid. p36

Te Ohu Kaimoana's observations

Te Kawai Taumata

Matters to be reviewed

70. Section 1 of the terms of reference for the review states that “to the extent included by the definition of “governance arrangements” in s 122 (2) of the MFA, the procedures and criteria to appoint the members and alternate members of Te Kawai Taumata are included as matters to be reviewed. The procedures and criteria for Te Kawai Taumata to appoint the directors of Te Ohu Kaimoana also form part of the governance arrangements under review.

Function and procedures of Te Kawai Taumata

71. Section 56 (1) of the MFA provides that the sole function of the members and alternate members of Te Kawai Taumata is to appoint and remove directors of Te Ohu Kaimoana. The procedures for Te Kawai Taumata to appoint the directors of Te Ohu Kaimoana are set out in Part 2 of Schedule 8 of the MFA.

Comments

72. The Board of Te Ohu Kaimoana consists of 7 directors. Te Kawai Taumata has made 16 appointments or reappointments to the Board since its establishment.
73. The make-up of the 10 regional iwi seats on Te Kawai Taumata was based on natural geographical groupings of iwi that traditionally worked with one another. Balancing the number of Maori in each grouping was one of the considerations of the Commission to ensure equity, as far as possible, was maintained between them. We are not aware that any concerns have been raised on this issue.
74. Te Kawai Taumata was designed to ensure that Te Ohu Kaimoana directors would be selected based on competencies and not elected as part of a popularity contest. The Commission considered that a system involving direct voting by iwi would have encouraged the latter approach. Te Kawai Taumata's design also intends to discourage regional political interests being brought to the table, which is the reason why the 11 members of Te Kawai Taumata vote for 7 directors. In addition there are restrictions placed on members of Te Kawai Taumata to ensure that they cannot lobby one another for selection – no member (or alternate member) of Te Kawai Taumata can be appointed to the boards of any of the central entities until at least 2 years after stepping down from being a member of Te Kawai Taumata.
75. The use of the Te Kawai Taumata model to appoint Te Ohu Kaimoana's directors has created a blend of people who may have, in the past, opposed parts of the allocation model, and those who have been supportive. We consider that as a core part of the allocation model, Te Kawai Taumata is achieving what it was meant to achieve. As a result Te Ohu Kaimoana has been and is able to deal with issues on behalf of all iwi regardless of their size or influence.
76. Section 44 (2) (f) of the MFA makes it clear that Te Ohu Kaimoana directors collectively must have commercial expertise and business skills, and be well versed in matters of tikanga Maori. It could be argued there is an assumption that those involved in the processes to appoint Te Kawai Taumata members and in turn, Te Ohu Kaimoana directors, understand the purpose, duties and

functions of Te Ohu Kaimoana, and therefore the skills that its Board should have if it is to achieve its purpose.

77. Members of Te Kawai Taumata are selected by the 11 electoral colleges – ten of which involve regional iwi groupings. However it is not clear to us that iwi fully understand that Te Kawai Taumata and its processes seek to ensure the Te Ohu Kaimoana board collectively possesses a set of skills to assist it govern for the benefit of all iwi, or the significant influence iwi can exercise within the existing governance arrangements for AFL.
78. There are few opportunities for the executive of Te Ohu Kaimoana to present material on key aspects of the medium to long term work programme. It could be useful for such presentations to be given on a more regular basis - at least prior to any appointment process being undertaken. The reviewer may wish to interview Te Kawai Taumata representatives and iwi to establish the level of their understanding of the work Te Ohu Kaimoana undertakes and their awareness of the types of skills the Board requires.

Matters to be reviewed

79. The review covers the effect on Te Ohu Kaimoana of the governance arrangements provided for under the MFA as they relate to the following matters:
- performance of Te Ohu Kaimoana in performing its duties and functions
 - the ability of Te Ohu Kaimoana to deliver benefits to their beneficiaries
 - the ability of Te Ohu Kaimoana to contribute to achieving the purposes of the Act.
80. The relevant governance arrangements include:
- the appointment of members of Te Kawai Taumata
 - the appointment and removal of directors by Te Kawai Taumata
 - the shareholding structure of AFL, which provides Te Ohu Kaimoana with 20% of the income shares and 100% of the voting shares

Purpose, functions and duties

81. The MFA states the purpose of Te Ohu Kai Moana Trust is to:

advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:

- ultimately benefit the members of iwi and Maori generally;*
- further the agreements made in the Deed of Settlement;*
- assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and*
- contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement (section 32).*

82. The beneficiaries of Te Ohu Kaimoana are the beneficiaries of the Deed of Settlement.
83. The Te Ohu Kai Moana Trust has only 1 Trustee – Te Ohu Kai Moana Trustee Limited which has both duties and functions. Te Ohu Kai Moana Trustee Limited is to administer the Fisheries Settlement assets in accordance with the purposes of the Act and its purposes (s32). The duties of Te Ohu Kai Moana Trustee Limited (which strongly relate to allocating the Fisheries Settlement assets and managing the Te Ohu group) are prescribed in Section 34 of the MFA (see Appendix 2).
84. The functions of Te Ohu Kai Moana Trustee Limited are prescribed in Section 35 of the MFA and are to further the purpose of Te Ohu Kai Moana Trust by, inter alia, protecting and enhancing the interests of iwi and Maori in fisheries, fishing and fisheries-related activities and performing the functions of the voting shareholder in Aotearoa Fisheries Limited (AFL). The functions of Te Ohu Kai Moana Trustee Limited are provided in Appendix 3. Key financial information is provided in Appendix 7.

Te Ohu Kaimoana is also trustee for the Maori Commercial Aquaculture Settlement Trust (known as the Takutai Trust)

85. The MFA, which commenced on 26 September 2004, stated that Te Ohu Kai Moana Trustee Limited was to only have 1 job – trustee of Te Ohu Kai Moana Trust.

86. However later in 2004, without consultation and agreement with Te Ohu Kaimoana, Parliament enacted the Maori Commercial Aquaculture (Claims Settlement) Act which implements a settlement of all Maori claims to commercial aquaculture within the coastal marine area. The Government regarded this settlement as an extension of the Fisheries Settlement, with the agreement that iwi would be provided with a representative 20% of all aquaculture space created since September 1992 (or its equivalent).

87. Under the Maori Commercial Aquaculture (Claims Settlement) Act 2004 (“the Aquaculture Settlement Act”), Te Ohu Kai Moana Trustee Limited was deemed to be the Trustee for the Maori Commercial Aquaculture Settlement Trust (known as the Takutai Trust). The Crown decided this was the best arrangement as it was linked to the Fisheries Settlement and the Crown was confident the same structure would be appropriate for delivery of the Maori Aquaculture Settlements.

88. Please note that the Crown, through the Ministry for Primary Industries (MPI), provides funding to Te Ohu Kaimoana to carry out this role.

89. We have structured our observations into three areas relating to our duties and functions:

- a. allocation of assets to iwi
- b. protecting and enhancing the interests of iwi and Maori
- c. Te Ohu Kaimoana’s governance role.

The allocation of assets to iwi – delivery of benefits

Fisheries

90. Te Ohu Kaimoana has applied appropriate priority to our allocation duties, consistent with the purpose of the Act.
91. The 2012 Audit Report on Te Ohu Kaimoana comments that “Te Ohu has almost completed its prime initial purpose of mandating iwi and distributing their fisheries settlement assets to them. While some residual matters from this first phase remain to be resolved, most of these will be agreed by the end of 2015”¹⁶.
92. Allocating the remaining assets presents a greater challenge, given the challenges facing the iwi concerned. These involve the need to meet governance requirements (2 iwi) and resolution of coastline claims where there continue to be disputes between the iwi concerned.
93. The progress we have made since the audit should mean that most outstanding issues will be resolved by 2016. As the 2012 auditors recommended¹⁷, we have developed a strategy to complete the allocation process, using tools available to us in the MFA. In our annual plan for 2014 – 15, we have set the following objectives:
 - a. to have transferred, by 30 September 2015,
 - i. population based assets to 56 iwi
 - ii. 100% of freshwater settlement quota to North Island iwi
 - iii. 90% of coastline based settlement quota to iwi.
94. Providing applications to the Maori Land court have been resolved, we envisage that the outstanding issues will relate to approving Whanau a Apanui as a MIO, and finalisation of an allocation agreement between South Island iwi for eels (freshwater settlement quota).
95. Progress on allocation to date means that considerable economic benefits have been delivered to iwi. \$543 million worth of fisheries assets are now in iwi hands. \$49 million remains to be allocated. The attached maps show the progress in recognising MIOs, the coastline where agreements have been reached and those remaining stretches of coastline where agreement is still to be reached (see Appendix 4).
96. This good progress is due to:
 - a. assistance we provided to iwi to achieve MIO status and ensure their Asset Holding Companies (AHCs) were compliant with the MFA. We provided template models for management and governance as well as assistance with iwi registers, helping speed up the process for iwi and keep their costs down
 - b. the interpretation of the MFA by Te Ohu that, as soon as an iwi achieved MIO status, it could receive its population based assets (75% of deepwater quota, all HMS quota, income shares and cash). Fifty five of the 57 iwi organisations have now received settlement assets
 - c. providing options for iwi to agree on the allocation of inshore quota based on relative proportions, without having to agree on fixed boundary points. This has been particularly useful where iwi have different views of their respective histories. Te Ohu Kaimoana has provided resources for external expertise to facilitate these

¹⁶ Hunn, D and Mason, K (2012), *2012 Four Year Audit Reports*, P9

¹⁷ Ibid.

coastline agreements. The process has generally encouraged iwi to develop positive relationships with their neighbours.

97. The constitutional documents we provided assisted MIOs and AHCs to qualify as charitable where they wished, and therefore to be tax-free, enabling them to gain maximum benefit from their assets.
98. The Board has delegated a number of duties relating to the allocation of settlement assets to the Chief Executive, including powers to determine coastline agreements, approval of constitutional documents and use of tools in the act to help iwi conclude the allocation process. It is common for these kinds of administrative functions to be delegated to assist efficiency, allowing the Board to focus on governance and strategic matters. This delegation also addresses any perceived conflicts of interest.
99. Those iwi who have yet to receive their full entitlements are still able to benefit from the use of settlement assets. Te Ohu Kaimoana has continued to make ACE available to iwi who have yet to receive all their assets. This has delivered between 60 – 90% of the ACE value directly to iwi since the commencement of the MFA.
100. On another matter, as iwi have entered into Treaty settlements, the Crown has required them to establish “post settlement governance entities” (PSGEs) to receive their settlement assets. This means that iwi are applying to Te Ohu Kaimoana for a second time, seeking approval for these new entities to be recognised as MIOs. This has created considerable extra work for iwi and Te Ohu Kaimoana, not anticipated when the MFA was first enacted (see also “Other Challenges,” paras 214 - 217).

Aquaculture

101. In 2004, aquaculture was stated to be the “unfinished business of the Fisheries Settlement”. The Maori Commercial Aquaculture (Claims Settlement) Act 2004 was enacted as part of its overall reform of the aquaculture regime.
102. The Aquaculture Settlement was designed to be settled in three phases:
 - a. the pre-commencement phase – space approved between 21 September 1992 (from the time of the signing of the Fisheries Settlement) and December 2004
 - b. the interim phase – between 1 January 2005 and 30 September 2011
 - c. the new space phase - from 1 October 2011.
103. There is no single settlement. Instead there are regional settlements based on regional coastal boundaries. Where the use of marine space for aquaculture is approved in a particular region, the Crown must provide the iwi of the region with 20% of all that space. This 20% must be representative of the space that has been approved.
104. Two sets of agreements are needed for each regional aquaculture settlement. This first is an agreement between the iwi of the region and the Crown. The second is an allocation agreement between the iwi of the region. There is no default allocation model for aquaculture. The law states that all iwi with coastline in a region can receive a share although the Maori Land Court is directed to look at coastline proportions within the region if iwi cannot agree¹⁸.

¹⁸ Aquaculture space is not as easily divisible as quota. Not all space is equal: the productivity between 2 sites within the same bay (and different bays) can be vastly different.

Pre-commencement space

105. The Settlement provided three options for the Crown to settle its pre-commencement obligations. The Crown could use a cash option if other options could not be delivered.¹⁹
106. In response to discussions with Te Ohu Kaimoana and iwi, the Crown agreed to negotiate a cash option earlier than required. In October 2008 agreement-in-principle was reached on settlement of the Crown's pre-commencement obligations in inshore sheltered space, where the most significant amount of aquaculture had been developed²⁰. Between the time the settlement deed was signed in 2009, and the date of transfer, this settlement was worth more than \$100 million²¹. Te Ohu Kaimoana played a key role in facilitating this settlement with its advocacy and modelling work, based on industry data along with farm productivity data.
107. The Crown offered to settle its remaining pre-commencement space obligations based on the per hectare values agreed in the first settlement. These offers amount to around \$4 million, and in some cases are still being finalised with our assistance.
108. Marine farms that been approved in deep open water also generate pre-commencement obligations on the Crown. Te Ohu Kaimoana and iwi engaged with the Crown to agree on the value of the Crown's obligation for 20% of this space. Through this process and the considerable efforts of Te Ohu Kaimoana, the Crown increased its offers by approximately 30% to just over \$5 million.

Interim settlements

109. Interim space (created within interim Aquaculture Management areas or "AMAs") has only been approved in the Waikato and Tasman regions. Within interim AMAs, iwi can only receive authorisations to apply for consents to undertake marine farming.
110. In the Waikato Region, iwi are due to receive authorisations for 182 ha of space²². Te Ohu Kaimoana has worked closely with iwi, developers and the council to agree on where the 20% settlement should be located – taking into account the need for the space to be representative. In the case of the 104 ha block, Te Ohu Kaimoana has already received the authorisations.

¹⁹ Initially the Crown could require Councils to provide additional space in any new Aquaculture Management Areas (AMAs) enabled under the 2004 Aquaculture Act. However no new AMAs were approved. From 2008 onwards the Crown could purchase marine farms. However purchasing farms meant agreement would be needed on their value as part of all aquaculture in a relevant region. From 2013 the Crown could, after undertaking an assessment of the whole area developed, pay the cash equivalent of a representative 20%.

²⁰ The space concerned was in Te Waipounamu (Southland, Canterbury, West Coast, Marlborough and Tasman) and the Hauraki Gulf (Waikato Region)

²¹ Our work helped lift the Crown's offer from \$53 million in the first instance, to \$97 million after negotiation. Interest accrued from the time of agreement to the date of transfer brought the value to over \$100 million.

²² The space involved:

- 104 hectares of space in Wilson's B block (approved under the former regime)
- 18 hectares of space in Wilson's C (applied for under the former regime and confirmed by legislation)
- 60 hectares of space in Coromandel Fish zone (developed through a special process and confirmed in legislation)

111. In the Tasman District, there have been proposals to approve AMAs since 1996. The Ministry for Primary Industries (MPI) has just reassessed the effect of the AMAs on fishing. Their preliminary view that there is no undue adverse effect on fishing, meaning all 2002 hectares can be developed. If this view is confirmed, 400 hectares will be provided to iwi.

New space

112. The aquaculture regime introduced in 2004 prohibited aquaculture outside Aquaculture Management Areas (AMAs). Iwi would obtain 20% of any space created within AMAs. This space was classified as “new space”. A few years into this new regime, no AMAs had been created – with no “new space” to allocate to iwi. It was generally agreed that the regime did not work.
113. As a result, the regime was reviewed again in 2009. A key member of Te Ohu staff was placed on the Ministerial Review team to re-design the aquaculture regime. New measures came into effect from 1 October 2011. The removal of the prohibition on aquaculture outside of AMAs was a key change, and applicants can now apply directly for consent to carry out aquaculture activities.
114. This new regime meant that the settlement measures in the Aquaculture Act could not work as they relied on the creation of AMAs. Te Ohu worked with MPI to establish new ways to settle the Crown’s new space obligations, and it was agreed that the Crown should settle in advance. Te Ohu has been working with MPI and Aquaculture New Zealand for the last year or so to forecast aquaculture development out to 2035. The forecast forms the basis of an estimate of the Crown’s new space obligations over that time. We are now satisfied that the forecast is robust enough to use as the basis for negotiations. Under new space settlements, iwi are able to choose in what form they will receive their settlement assets: authorisations for space, a cash equivalent, services from the Crown or a combination of any or all of these²³. Te Ohu and MPI have developed valuation models for the various forms of aquaculture to help agreement on the overall value of the forecast space, and as a consequence, the settlement.
115. The Crown has recently offered iwi in a number of regions a combined total of \$68 million to settle their entitlements to new space. These offers need to be negotiated and finalised in 2015 within timeframes set by the Crown. Te Ohu is facilitating the negotiation of final agreements between the relevant iwi and the Crown.

Effect of governance arrangements on delivery of allocation benefits

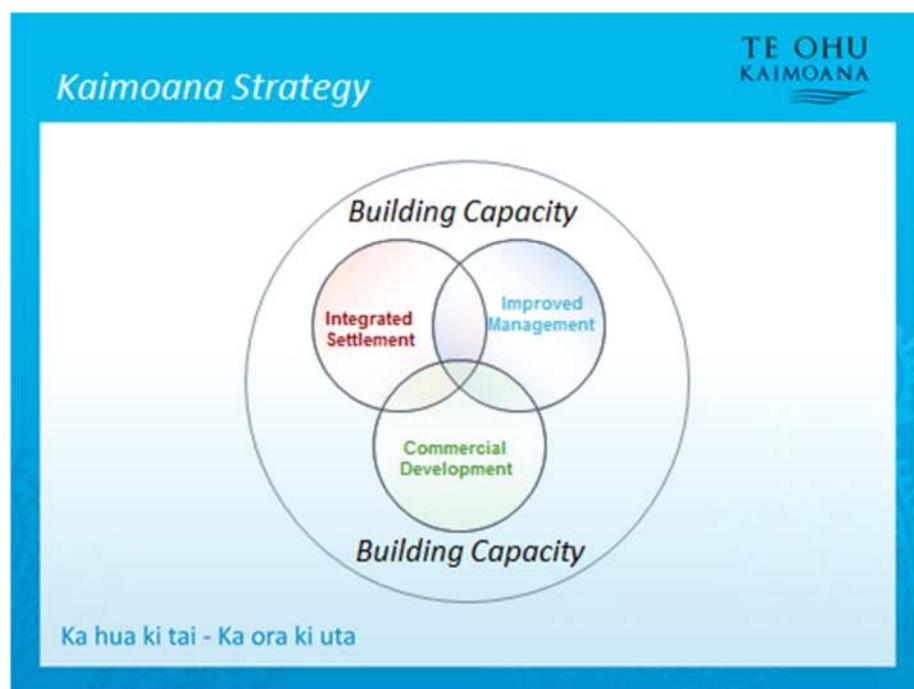
116. Good progress has been made in relation to allocation, and as a result, considerable economic benefits have been delivered to iwi. Much of the progress in this area is due to the commitment and diligence of our key staff and the relationships built with the iwi involved.

²³ This shows new space agreements are much more complex than either of the others and hence the need for an independent expert to assist iwi. That expert cannot be the Crown (who is on the other side of the table) nor can it be an expert engaged by only one iwi or one region.

Protecting and enhancing the settlement

117. A key function of Te Ohu Kaimoana is to protect and enhance the interests of iwi and Maori in fisheries, fishing and fisheries-related activities²⁴. When it developed the allocation model, the Commission recognised that the ability of iwi to continue to use their fisheries assets would be eroded if they did not engage in fisheries management or influence decisions that affect their interests. The Fisheries Settlement is a political settlement not an economic one. Most iwi earn insufficient annual income from the use of their fisheries assets to employ fisheries specialists to protect their interests, for example by being involved in industry and government decision-making.
118. Since 2009, Te Ohu Kaimoana has developed the “Kaimoana Strategy” – a framework for identifying priorities for action. We identified four key priority areas:
- improved management: this means working with industry and iwi to achieve good management of fisheries, and protecting the settlement from the adverse effects of government initiatives
 - integrated settlement: the regulatory framework established to implement the settlement did not connect the commercial and non-commercial interests of iwi and hapu. Iwi and hapu need to manage these aspects together
 - commercial development: commercial assets are held by iwi and AFL. Te Ohu Kaimoana can assist iwi collectively develop their assets and align iwi initiatives with those of AFL
 - building capacity: involving iwi in the above processes and targeting additional assistance to Maori to build their skills in fisheries will contribute to the capacity of iwi to be involved in fisheries management and development.

Figure 4: Kaimoana Strategy



²⁴ See s 35 (1) (c) of the MFA

119. The five “desired benefits” identified by the Commission are being delivered through the strategy (see discussion on “Key elements of the allocation model”, para 37 - 39). For example economic wealth is created by facilitating greater alignment between iwi and AFL. Improved management is achieved by influencing government, industry and other fisheries sectors. Better integration will evolve through greater alignment between iwi and hapu. By increasing their capacity, iwi can increase their self-reliance and build the relationships they need to influence the way fisheries are managed, consistent with rangatiratanga.
120. Examples of our approach to each of these focus areas and outcomes are provided in the following sections.

Improved management

121. Maori customary rights to fishing include commercial and non-commercial dimensions. In the knowledge that these rights are holistic, Te Ohu Kaimoana promotes a marine management regime that works in an integrated way across all sectors. One of our goals is to achieve and demonstrate sustainability in fisheries and marine ecosystems. We have built relationships with government, industry and other sectors in our efforts to contribute to improved fisheries management. Te Ohu Kaimoana has generally been among the more conservative voices when allowable catches are being set²⁵.

Building influence with Government

122. Te Ohu Kaimoana participates in all major government initiatives that have potential to affect the Fisheries Settlement. As a minimum we will prepare submissions, but we do more to influence government policy and minimise its adverse effects on the settlement by working with government at different levels. Examples include:
- participating in government led working groups on key areas requiring change (e.g. the Discards Working Group, the Cost Recovery Working Group)
 - building relationships with Ministers, departmental heads, officials and MPs, for example on the 2004 and 2011 aquaculture reforms and charitable trust regulations
 - the Chief Executive’s appointment to the Snapper 1 Working Group set up by the Minister for Primary Industries, and the involvement of staff in the Hauraki Gulf Spatial Plan working groups
 - supporting Iwi Leaders Groups with technical advice
 - advocacy and expert advice to select committees
 - science working groups run by MPI: our participation has built a profile of the organisation and an acknowledgement of our expertise.

²⁵ For example, in the case of hoki, Sealord, Sanford and ourselves called for substantial cuts when we had greater concerns about the health of the fishery than government officials. We have also helped set higher objectives for management (such as higher percentages of biomass that must be left in the water) than those required by the Fisheries Act. We have been similarly conservative with other fisheries such as bluenose and rocklobster.

123. These relationships strengthen our ability to advocate for Maori Fisheries and to act as the “eyes and ears” and voice for iwi. Major policy issues that we have been involved in include:
- a. advocating for iwi interests over proposed changes to the Fisheries Act. For example in 2008, the Minister of Fisheries proposed to change the Act to require a more cautious approach to decision-making. This additional caution would have reduced the benefits industry and iwi received from the use of fisheries resources, and undermined the value of the Settlement. By advocating across industry and Parliament, Te Ohu Kaimoana ensured these changes were not enacted.
 - b. Marine Reserves and Marine Protected Areas. Marine “protection” is a highly political issue. The reasons for setting aside areas for protection (and requiring fishing to cease) are not always clear. We were successful in halting the passage of a new Marine Reserves Bill because it was likely to have the effect of closing down areas to fishing without good reason. The issue remains unresolved and we continue to advocate for a sensible science based regime for establishing marine reserves and other protected areas.
 - c. Foreign Charter Vessels (FCVs): Te Ohu Kaimoana provided considerable assistance to the Iwi Leaders Group on FCVs to develop alternatives to the proposal to reflag foreign fishing vessels to New Zealand. We were a core part of an iwi technical advisers group, who worked with officials to analyse the proposals as they were developed, and who advised the ILG. The ILG had a direct relationship with the Minister for Primary Industries. While we did not succeed in gaining everything we advocated for, we were able to have the scope of the FCV bill amended so that it did not capture the inshore fleet – a major benefit to iwi fishing businesses.

Building influence within the New Zealand fisheries sectors

124. Fishing industry organisations represent quota holders, both regionally and nationally. Similarly, the aquaculture industry organisations represent companies involved in marine farming. There are many fisheries management problems that need to be addressed across the country including programmes to better demonstrate sustainability of the fisheries and the light environmental footprint of harvesting activity. These can only be done effectively by having all industry participants, including iwi fishing companies, commit to long-term programmes of action.
125. As a quota holder and trustee for both the fisheries and aquaculture settlements, Te Ohu Kaimoana (and before it the Commission) involves itself in national and some regional industry bodies. In a number of cases we participate as directors, in others as quota owners. Through our involvement we advance iwi interests and ensure the organisations are well focussed, coherent and sufficiently resourced to be able to discharge their role. In the last few years our efforts have focussed not only on the individual operations of these organisations, but also on the organisational restructuring that has been occurring across the industry. The main organisations we are involved with are:
- a. Seafood New Zealand (SNZ) – representing the seafood industry as a whole. SNZ undertakes key strategic projects: industry reputation, legislative changes and cost recovery. Te Ohu has a director on the Board;

- b. The Deepwater Group (DWG) - representing deepwater quota owners. Membership is voluntary. It includes the larger fishing companies (Sealord, Sanford and Talleys) along with AFL and many iwi fishing companies. Deepwater fisheries are those generally caught from 300 to 800 metres deep and are valuable for all iwi through their ownership of settlement quota and their interests in Sealord. The deepwater sector provides a large portion of the revenue that iwi receive from their seafood interests. Te Ohu has a director and alternate directors on the board. As part of our involvement with the DWG we have actively encouraged industry to gain Marine Stewardship Council (MSC) certification, which has proven to be valuable in maintaining access to overseas markets and increasing returns for fish products. We also played a key role in the development of a joint industry/government 10 year research programme which has enabled the industry to gain better value from the research it funds;
- c. Fisheries Inshore New Zealand (FINZ) - representing quota holders for most major inshore and pelagic finfish species, was established in 2013, largely through the efforts of Te Ohu Kaimoana. Inshore fisheries are those generally caught within an iwi's rohe moana and at depths from 10 to 250 metres. They are caught recreationally, for customary communal purposes and commercially. Te Ohu Kaimoana worked collaboratively with AFL, Sanfords and a number of smaller companies to establish FINZ and to develop the organisation's work programmes. An increasing number of iwi are joining the company. AFL, Sealord and Te Ohu Kaimoana all have directors on the board and we expect that Ngai Tahu will in the near future;
- d. Aquaculture NZ (AQNZ) - this organisation was formed in 2007 as a single voice for the aquaculture industry, with our assistance. Given the interests of iwi in aquaculture, and our involvement in the organisation's establishment, AQNZ invited Te Ohu and an additional iwi representative to join as directors. Our involvement in this organisation has been crucial to developing a good relationship with industry on behalf of iwi who will obtain aquaculture space under the Aquaculture Settlement;
- e. The Eel Enhancement Company (Eeco): AFL and ourselves have had directors on Eeco for many years. One of our staff is a director on Eeco and has helped to build a constructive working relationship with the industry, and broker discussion with iwi about the management of eels.

126. Te Ohu has played a leadership role in specific fisheries through our work with other industry and fisheries management bodies, including the National Rock Lobster Management Group (NRLMG), the Paua Industry Council (PIC) and various Paua Management Companies (PAUAMACs). Considerable effort has gone into brokering relationships and cooperation between iwi and these various sector bodies. For example:

- a. when the PAU2 Industry Association proposed to subdivide the quota management area for PAU2, Te Ohu provided an analysis of the proposal and helped establish and service an iwi working group to respond the rest of industry. This work continues;
- b. Te Ohu Kaimoana took the lead in helping the Coromandel Scallop quota owners to develop an efficient and cost-effect process to manage their fishery and their combined ACE, significantly increasing the value to quota owners;

- c. we have helped to broker a relationship between iwi and Cloudy Bay Clams with the aim of establishing a joint venture to develop the surf clam fishery (see below).

127. Te Ohu Kaimoana has been active in seeking innovative ways for industry to gain better information and improve the management of our fisheries. Initiatives include:

- a. net trials in Hawke's Bay to minimise small fish by-catch
- b. developing systems to allow successful trawling without bottom contact
- c. investigating whether commercial catch can be made of some species in dolphin-risk areas using risk-free methods,
- d. increased use of smart technology in reporting commercial catch
- e. becoming a foundation member of Trident – an industry-owned research company looking to better utilise fishing data to manage our fisheries.²⁶

Integrated settlement

128. Te Ohu acknowledges that customary non-commercial, commercial and recreational fishing are important for Maori and that Maori customary fishing rights consisted of all three. Te Ohu Kaimoana is the only body that can represent Maori collective interests across all three sectors. The involvement of the Chief Executive in the SNA 1 working group established by the Minister for Primary Industries reflects this broad interest.

129. Te Ohu Kaimoana has developed innovative tools to assist kaitiaki gather information on customary catch in a way that assists them to manage their responsibilities under the Customary Regulations and work with other sectors in an informed way. Our electronic reporting system – IkaNet – is being trialled by iwi and kaitiaki in a number of areas. One of the advantages of the system is that it encourages iwi organisations to provide administrative support to kaitiaki. This support helps all Maori participants in fisheries (the MIO, the AHC, the kaitiaki as well as the hapu/ marae) to better understand one another's roles and develop good working relationships.

130. IkaNet is also being used to support pataka systems. These systems – operating in inshore fisheries – enable kaitiaki to issue a customary permit to a commercial vessel to gather seafood for customary purpose and store it for distribution at a later date. The IkaNet system tracks the issuing of permits to the vessels, creates and updates an inventory of fish held in storage on commercial premises, and tracks the distribution of the fish to marae. Iwi run the system for the benefit of their marae/ hapu. As a result, good relationships have developed between iwi organisations and their hapu.

131. Te Ohu Kaimoana is currently assisting Sealord and its Ihu to Mai iwi partners to develop the systems and gain the approvals needed to establish a similar pataka for deepwater fisheries.

Commercial development

132. Te Ohu Kaimoana is in a good position to assist iwi collectively to develop new fisheries, such as deepwater crabs, geoduck and surf clams, which were introduced into the QMS from 2006. Soon after their introduction, we trialled collective development of these fisheries with iwi and industry.

²⁶ Trident is working jointly with Snap-IT to develop on-vessel camera systems that will provide very valuable information for managing our fisheries. They have been used as part of the trial in Snapper 1. AFL is also a foundation member of Trident.

133. Iwi are exploring options to develop the surf clam fishery in FMAs 2 and 8. Te Ohu Kaimoana has brokered a relationship between Cloudy Bay Clams, AFL and iwi quota holders, who have agreed to work towards a joint venture between all parties. Te Ohu Kaimoana is facilitating the process. This kind of approach is a blueprint for assisting iwi in other fisheries in the future.
134. We are also aware that most iwi have small parcels of quota that they are unable to utilise (see our discussion on restrictions on the sale of settlement quota). We are investigating how we might better assist iwi to gain greater value from these small parcels. This may include helping iwi to collectivise their ACE and sell jointly. We are also exploring options to reduce costs – for example by seeking changes to the cost recovery rules as they apply to unutilised quota and ACE.
135. Other commercial initiatives are discussed in relation to our joint work with AFL - particularly the Anton's purchase.

Building capacity

Working with iwi

136. In their 2012 Audit Report the auditors recommended that Te Ohu Kaimoana assess “whether its communication processes with iwi are sufficient to ensure the free flow of the information and guidance they may need”²⁷.
137. Te Ohu Kaimoana supports the work of a number of regional iwi fisheries forums, alongside MPI. These forums provide a useful context for communication of fisheries information. We also support particular groups of iwi on particular projects, such as the subdivision of PAU2, better management of Coromandel scallops, IkaNet and surf clam development. Where we engage directly with groups of iwi on particular projects, we are able to develop good working relationships and assist the iwi concerned to be involved in management or development of their fisheries.
138. Te Ohu Kaimoana staff act as a “helpdesk” for iwi who need information – particularly on the responsibilities of quota ownership, levy payments and ACE transactions.
139. During the year, we also support the Maori Fisheries Conference and run workshops to explore fisheries-related issues of the day. Our website also contains information on our work, and that of subsidiary trusts.
140. Despite this the scope of the work that Te Ohu Kaimoana does to protect and enhance the Settlement does not appear to be well understood by iwi. Communicating our work, particularly our policy work, is challenging. Within the last year we have established a National Iwi Fisheries Forum to help enhance communication nationally, and to discuss and test new ideas. The future role and focus of the forum is a work in progress, and we need to place greater priority on supporting the development of a fully functioning group.
141. As noted earlier, the auditors also recommended Te Ohu Kaimoana continue its discussion with iwi on the on-going role of Te Ohu and seek agreement on how that would best advance

²⁷ Hunn, D and Mason, K (2012) *Four Year Audit Reports*, p 12

the interests of iwi.²⁸ Immediately after this Review is completed, Te Ohu Kaimoana will renew its strategic plan for the next five years including taking account of the Review as part of that process. In the meantime we continue to discuss key priorities with iwi.

Scholarships

142. Te Ohu Kaimoana, in partnership with TPW, funds scholarships for individuals to attend the Westport Deepsea Fishing School and the Bay of Plenty Polytechnic.
143. Every year we run the “Global Fisheries Scholarship” programme with Nissui – in which an individual spends a year in Japan working with Nissui. Of the 17 scholars who have been selected since 2002:
- eleven are employed in Maori/iwi business entities, either within the Te Ohu Kaimoana Group (Te Ohu Kaimoana, AFL and Sealord) or iwi-owned entities
 - two are involved in fisheries at a government level (NIWA and MPI)
 - four are not involved in the industry, having left New Zealand to travel or have chosen to undertake further academic study.

The effect of governance arrangements on Te Ohu Kaimoana’s ability to protect and enhance the settlement

144. While the focus of Te Ohu Kaimoana’s work on allocation will decrease in the next year or so, we have ongoing obligations in relation to governance and protecting and enhancing the settlement. Our ability to do this work depends on the income we receive from investments and AFL income shares.
145. We are aware of ideas being proposed by some iwi that assets held by Te Ohu Kaimoana (e.g. funding reserves or income shares) should be distributed amongst iwi and that those iwi who wish to obtain services from Te Ohu Kaimoana should then directly pay for them. While we can see that there may be particular services that could attract a user pays approach, that kind of approach would not give Te Ohu Kaimoana either the stable income base or the focus it needs to be able to continue advocating on behalf of iwi collectively.
146. As already noted, most (more than 50 of the 57) iwi do not have the resources to employ their own fisheries specialists - any transfer of assets currently held by Te Ohu Kaimoana will not significantly change their underlying asset base to allow them to fund services on a user-pays basis. Our experience with the restructuring of fishing industry organisations and the “user pays” approach applied to the funding of SNZ by five Sector Representative Entities (SREs) suggests that the transaction costs of negotiating priorities and securing annual funding with 57 iwi organisations would be disproportionate compared to the benefits we could provide.
147. The Deed of Settlement is clear that the Fisheries Settlement is for the benefit of all Maori. Our focus is on the total settlement, not each share. The “user pays” approach would not enable Te Ohu Kaimoana carry out its function to protect and enhance the settlement.

²⁸ Ibid. p 12

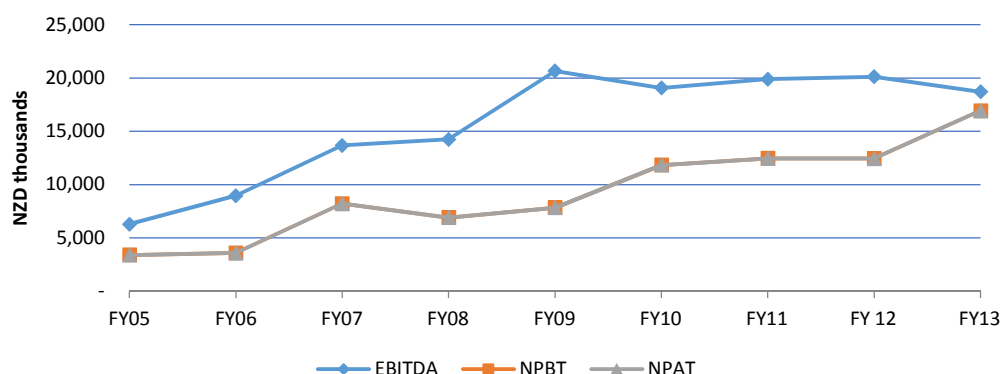
Aotearoa Fisheries Ltd (AFL)

148. Section 34 (m) of the MFA states that one of Te Ohu Kaimoana's duties is to appoint the directors of AFL. The appointment of directors is the primary means for Te Ohu Kaimoana to influence the direction and performance of AFL. This process has evolved significantly since the original directors were appointed. Extensive national publicity calling for applications, and an independent formal assessment of candidates' skills against those required by the board, ensure a high calibre of candidates is available for appointment.
149. Other ways to influence direction and performance include the ability to comment on AFL's annual plan, discuss progress against the plan with AFL during the year, including any relevant strategic issues. The recently adopted "Letter of Expectations" and collaboration by senior executives of AFL and Te Ohu Kaimoana has helped each to gain a better understanding of the other's role and perspectives.
150. AFL has a duty to manage its assets in a commercial manner (s 61 (1) of the MFA). AFL must also use its best endeavours to work with iwi on commercial matters (s 62(1)(g)).
151. The beneficiaries of AFL are its income shareholders, who are iwi AHCs and Te Ohu Kaimoana.

Delivery of benefits to beneficiaries

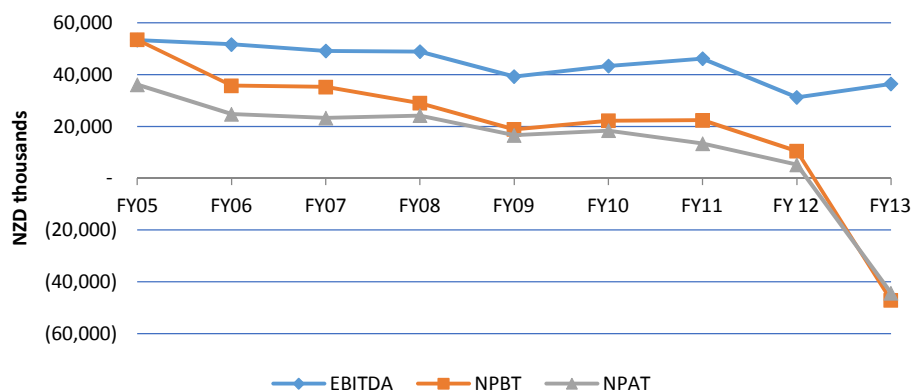
152. AFL's performance has seen steady improvement over the last 10 years. The 2012 Audit report commented that AFL's business objectives since 2008 were achieved by 2012, satisfying the requirements of section 108 of the MFA.²⁹ In the last two years, AFL's performance has continued to move in a positive direction. In 2013, its net profit after interest and tax but before the inclusion of Sealord was \$16.9 million - \$4.5 million above the previous year's result. See Figure 5 below, and Appendix 5.

²⁹ Ibid p 34, para 16.

Figure 5: AFL performance**Aotearoa Fisheries Limited (consolidated less Sealord)
Historical Earnings**

153. A key part of the allocation model was for AFL to provide a steady stream of “cash flow” to iwi via a regular dividend of no less than 40% of its Net Profit After Tax (NPAT). AFL’s dividend is heavily influenced by the performance of Sealord, as it is calculated on the consolidated group profit. If Sealord does not pass cash to AFL by way of a dividend, it could make it difficult for AFL to pay dividends to iwi.

154. The performance of Sealord since 2005 has been a concern. Sealord has shown a declining profit between 2005 and 2012, culminating in the loss of \$44 million in 2013 following the sale and write down of its Argentinian investment. See Figure 6 below and Appendix 6.

Figure 6: Sealord Performance**Sealord Historical Earnings**

155. When the Sealord loss is taken into account AFL reported a loss of \$6 million for the 2013 year.³⁰ AFL, therefore, did not pay a dividend for the 2013 financial year.

³⁰ Te Ohu Kaimoana (2013), *Annual Report 2013*, p 48.

156. However, as a result of collaborative work between Te Ohu Kaimoana, AFL and Sealord, considerable economic benefits associated with settlement assets were still able to be delivered to iwi. A total of \$30 million of Maori Authority Tax Credits (MATCs) was made available to AFL shareholders following a bonus issue of shares. Most iwi entities were able to claim these credits as refunds from Inland Revenue resulting in cash receipts equating to between 2.5 and 4 times the annual dividend that AFL had previously paid.
157. We are encouraged that, during the financial year ended September 2014, Sealord's performance has improved significantly and their 2015 plan continues the same positive trend.
158. The international fisheries environment is very competitive and the performance of both companies needs to be measured in that broader context. New Zealand can supply only 1% of international seafood and where it sells its fish as a commodity product can only be viewed as a price taker. New Zealand has little to no ability to set price in this section of the market. There is also strong competition from other protein sources from 3rd world countries – including poultry and aquaculture.
159. The 10 year period under review also spans the global financial crisis that commenced in 2008. The economies in many countries that are key markets for our fish are still in recovery with the level of activity not yet back to early 2008 levels.
160. The international exchange rate for the New Zealand dollar (NZD) in our key markets has created difficulties for many exporters, particularly those that could not adjust their prices to compensate for the rising value of the NZD. A graphical summary of the two key market exchange rates for our seafood is provided in Figures 7 and 8 below:

Figure 7: NZD - AUD Exchange Rate

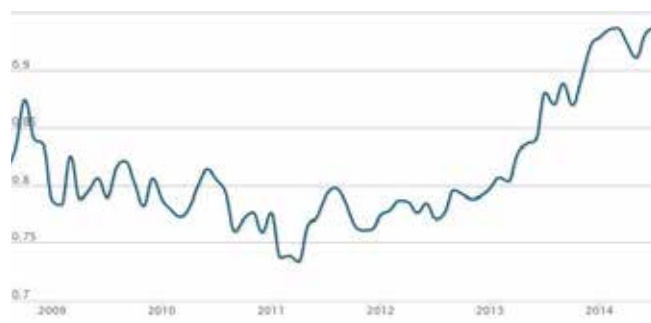
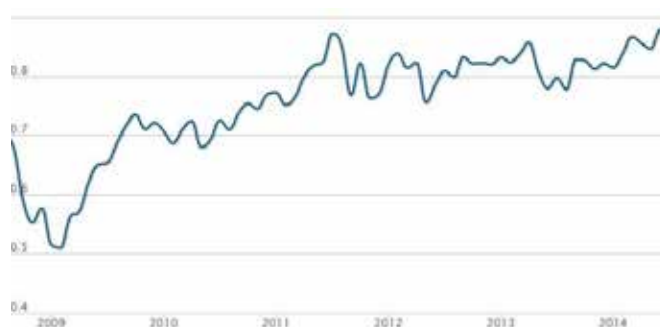


Figure 8: NZD - USD Exchange Rate



161. During this period, while AFL faced headwinds created by an appreciating exchange rate, it also faced substantive cuts to the TACC for bluenose³¹ as well as cuts to TACCs for orange roughy.
162. In this period Sealord was still adjusting to the substantial cuts in the volume of hoki it caught and processed.³² The fishery been slowly recovering since that time. At the same time the TACC for the orange roughy fisheries was substantially reduced.³³ The squid catch also varied substantially.³⁴ Lower catches make it much more difficult for a company to achieve the economies of scale required to operate in the deep water fishery.
163. Until recently, there was very little real alignment between the operations of AFL and Sealord because they operated in different areas of the fishing industry.
164. Sealord was largely a deepwater fishing company in New Zealand and international waters. It supplied most of its fish into the international commodity market although one of its operations supplied fresh fish sourced from Iceland into English supermarkets. It was also involved in mussels and supplied processed product into New Zealand supermarkets. Recently Sealord has begun to develop salmon and barramundi aquaculture in Australia.
165. AFL is a company based on inshore finfish, pacific oysters, paua and rock lobster. Its inshore finfish business has evolved to supply quality chilled product to New Zealand, Australia, Asia and US.
166. The lack of alignment between the companies was not a major problem as long as their strategies did not collide. However more recently both companies have begun pursuing similar strategies to market fresh chilled product - and are also beginning to chase the same customers – particularly in Australasia.
167. In 2011, after AFL had considered a range of options to address these converging strategies, it submitted a proposal – known as “Project Mata” - to the Te Ohu Board. Because the proposal involved a substantial sale of assets to a related party (Sealord), it required the approval of the Te Ohu Kaimoana board acting as voting shareholder. The proposal involved selling AFL’s inshore fishing assets into Sealord in exchange for additional shares in Sealord. These additional shares would carry no voting rights. Following a thorough due diligence process, the Te Ohu Kaimoana board declined the proposal. The Board was not convinced of the economic merits or robustness of the proposal given that AFL would have no greater control of the company. Even though the quota assets would be put in a trust that already holds the Sealord quota, Sealord would have had total control of the assets and could have chosen to dispose of them without any reference back to AFL and iwi. Upper-most in the Te Ohu Kaimoana board’s mind was its duty to ensure the fisheries settlement remained durable and enduring. There is little doubt that without the Te Ohu Kaimoana Board’s oversight, this project would have gone ahead. The decision was strongly supported by iwi. The subsequent performance of the 2 companies has not led to any calls to revisit the proposal.

³¹ Bluenose was cut from 3233 tonnes in 2004/5 to 1110 tonnes in 2012/13

³² The TACC for hoki was cut from 200,000 tonnes in 2002/03 to 100,000 tonnes in 2004/5 and then 90,000t in 2007/8.

³³ The TACC for orange roughy was cut from 15921 tonnes in 2005/06 to 12532 t in 2008/9 and down to 6941t in 2012/13.

³⁴ Squid catches fell from 46311 tonnes in 2008/9 to 24636 tonnes in 2012/13.

168. Since that time, the companies have begun to work together more closely, sometimes with Te Ohu Kaimoana's involvement and assistance. The recent purchase of Anton's quota is a very positive example of collaboration between Te Ohu Kaimoana, AFL and Sealord. Te Ohu Kaimoana's move to purchase a share of the Anton's quota when the deal was being negotiated meant we were able to secure a \$5 million parcel of quota to be made available to iwi in a time frame that was realistic for them to make investment decisions. Such was the level of interest from iwi offers exceeded the quota available and each bid had to be scaled back.
169. The implementation of this combined project has led to significant and expanding cooperation between the two companies as they choose the best route to market for all their fish. Both companies are now taking advantage of the other's networks and markets and choosing to operate in a manner that is yielding greater returns to each than they could have gained through their own channels.
170. The 2012 Audit report showed the auditors were satisfied that AFL had fulfilled its obligations under s 110 (1) (a) of the MFA to work with iwi on commercial matters. AFL and Sealord continue to make considerable efforts to develop their relationships with iwi. Examples include the JV between AFL and the Iwi Collective Partnership (ICP), and the profit share arrangement Sealord has developed with a number of iwi (Ihu to Mai).
171. Sealord's objective to establish a deepwater pataka system with their iwi partners is also positive and innovative. Te Ohu Kaimoana is providing assistance to Sealord and the iwi involved to gain the necessary approvals from MPI and develop suitable systems to implement the pataka.

The effect of governance arrangements on delivery of benefits from AFL

172. Fishing is a complex and risky business and while there have been challenges, as outlined above, we do not consider the concept of centralised management of the commercial assets under an apolitical board should be changed. The separation of iwi politics from the commercial governance of AFL has been largely successful.
173. It is important to ensure the structure (including governance) is fit for purpose. The companies' strategies and the need for adequate access to capital are key issues in determining what this should be. AFL's vision is to be the investment medium of choice for iwi, maximising the value of Maori fisheries assets. It aims to be recognised by customers and consumers as a consistent and preferred supplier of sustainable high quality wild harvest and farmed seafood, and to expand iwi investment and participation in the full value chain - from quota owner to customer. The opportunities it wishes to offer iwi can be both active and passive. AFL is investing in innovative smart technology to both improve the quality of product it can sell and minimise the footprint of its whole operation. Sealord is doing likewise³⁵.

³⁵ AFL, Sealord and Sanford have contributed to the \$52M Public Good Partnership in Precision Seafood Harvesting - a completely new way to harvest fish that will result in significantly better quality of fish after harvest. Sealord and the Australian research agency CSIRO have also developed the use of an Acoustic Optical System (AOS) to better demonstrate the abundance of our orange roughy fisheries. This data has already improved our management of orange roughy and will assist gaining MSC approval.

174. There are some that express concern about the ability of AFL to gain access to the capital required to undertake this course and take opportunities to expand. Some even suggest that to enable any such expansion, voting shares will need to be transferred to iwi.
175. Te Ohu Kaimoana does not hold substantial concerns about the ability of AFL to gain access to the capital it needs to fund its development. AFL is carrying modest levels of debt relative to its equity (largely through ownership of quota).
176. An alternative way to gain additional investment from willing iwi investors could be for future arrangements to be considered along the lines of the model used in the collaboration over the Anton's quota purchase. Substantial opportunities for further investment, in particular ventures with iwi as partners with AFL, are likely to remain.
177. Growing in this manner does not cut across the core vision of AFL to be the investment medium for all iwi. Transferring control shares could lead to changes in focus of the company to the point where AFL no longer operates for all iwi, raising concerns about the durability of the settlement. Te Ohu Kaimoana does not recommend a change in the share structure of AFL at this time.
178. Another reason offered by proponents for change to the voting shares is to provide iwi with an option to influence the company directly. Holding voting shares would enable iwi to appoint (and remove) directors. It is suggested that this option will better ensure AFL is responsive to iwi by giving iwi "direct" control. Te Ohu Kaimoana is not aware of any evidence that AFL is not being responsive to iwi proposals that would benefit both parties. It does not make any sense for AFL to pursue options that don't create benefit for both. In addition, as we have already noted, iwi are already able to exert considerable influence through the existing governance arrangements (see para 51).
179. There have been other proposals to radically change the structure of AFL. One suggests the transfer of all quota owned by AFL into separate trusts under the collective control of iwi. These trusts would be different from the Pupuri Taonga Trust, which secures the economic use of quota for Sealord in perpetuity and allows Sealord to use the quota as security for debt. The proposed trusts would be governed by boards appointed directly by iwi and there would be no long-term rights of access by AFL to the use of the quota. Instead it appears there would be annual or at least periodic agreements over access, subject to the highest bidder and open to other industry participants. We do not consider this structure would improve the returns generated by the quota or company and would not lead to strategic long term investment in the industry by Maori. We consider it would create incentives for other industry participants to 'crowd out' AFL. AFL's asset base would not be sufficient to provide security to banks to provide capital to undertake developments that would enhance value across AFL's brand - whether these are improving quality, reducing footprint, providing greater transparency on provenance or developing new products. We know of no other substantial competitors that have demonstrated the success of a strategy of this type.
180. 'The Sealord deal' was a key part of the full and final settlement of Maori fisheries claims. It provided Maori with the ability to invest in Sealord. In practice, Sealord is very much the exception in the way it fits within the Settlement. The relationship with Nissui was originally forged by the Commission. In light of this background, and Te Ohu Kaimoana's role in appointing AFL directors, iwi often consider that Te Ohu Kaimoana has a more direct role in Sealord and is accountable for its performance. While we continue to run the Global Fisheries Scholarship programme with Nissui, we have no other direct links to the company. In practice it

is the joint venture relationship between Nissui and AFL that shapes Sealord's governance arrangements.

181. At a headline level the governance arrangements for the Sealord Board have remained the same since 2001. The partners of the JV appoint equal numbers of directors and the Maori partner appoints the Chair. However between 2001 and now, AFL has changed its approach to appointing directors in response to changing circumstances and particular issues and pressures. It is worth reflecting on the implications of these changes when considering what could be improved.
182. When the Commission and Brierleys first invested in Sealord, Sir Tipene O'Regan, who was chair of the Commission, became Chairman of Sealord. This helped align the interests of the Commission, Sealord and the joint venture partner (Brierleys, followed by Nissui). When the Commission first worked with Nissui, Shane Jones, who was chair of the Commission, also chaired the Sealord Board. After AFL was established in late 2004, Rob McLeod, who was a member of the Te Ohu Kaimoana board, became Chair of AFL. In September 2005 he also became Chairman of Sealord. When Rob resigned in May 2007, Robin Hapi (who had been Chief Executive of AFL since September 2004 and a board member of Sealord since July 1998) resigned and became Chairman of both AFL and Sealord. In September 2011 he resigned.
183. This means that until September 2011, the Chairman of AFL and Sealord were one and the same person. Following Project Mata, the AFL board decided to improve accountability, and decided that the Chair of AFL and the Chair of Sealord should be different people. Following Robin Hapi's resignation, Matanuku Mahuika (who had been a Board member of AFL from November 2004 till September 2011) was appointed Chairman of Sealord. From that time he ceased to be a member of the AFL board.
184. Up until 2011, the other AFL appointed directors of Sealord had also generally been directors of AFL or the Chief Executive of AFL.
185. From June 2012, AFL appointed two directors who were not members of the AFL board and had no previous direct experience of AFL's perspectives and strategy. From this time there was therefore no direct link between AFL and Sealord, either at a board or management level. Without in any way detracting from those directors' abilities, Te Ohu Kaimoana considers that this separation of knowledge and personnel does not help the companies collaborate as the independent directors are unlikely to know enough about the operational opportunities that exist for cooperation.
186. Also in June 2012, to assist communication across the group, the Kura Board (the shareholder of Sealord) was reorganised to include the chairs of Sealord, AFL and Te Ohu Kaimoana.
187. Given the importance of Sealord's performance to AFL's success, involving, as a minimum, the AFL Chief Executive as a director or alternate director on the Sealord Board makes sense. It would ensure good information flows between the companies and enable detailed analyses of strategies and conflicts to be made available to the other AFL appointed directors. It appears to be a reasonably common practice for New Zealand's larger companies to have representatives from the parent management team appointed to major joint ventures or associated companies.
188. When one of the independent directors resigned due to ill health in 2014, AFL replaced him with a director who is also a director of AFL. This is helpful in encouraging the two companies to

collaborate. As suggested above, appointing the Chief Executive of AFL as an alternate director or director on the Sealord board would increase the opportunity for collaboration.

189. This recommendation does not need any changes to the governance systems of AFL. It is already available to the directors of AFL if it is a policy they support.

Te Putea Whakatupu

190. The purpose of Te Putea Whakatupu is:

...to hold and manage the trust funds for and on behalf of the beneficiaries under the Deed of Settlement, in order **to promote education, training, and research, including matters that relate to fisheries, fishing and fisheries related activities**, but not in a manner that could adversely affect the charitable status (if any) of the Trust ((s81), MFA).

191. The beneficiaries of the trust are those individuals and groups entitled to apply for distributions provided for under the distribution policy of Te Putea Whakatupu's trust deed (s 122 (2) (c), MFA).

192. In the 2008 Audit report, the auditors noted with concern that on occasions, the board had been unable to meet because of its inability to provide a quorum of three members" and that "for a substantial period, Te Putea Whakatupu was in a state of limbo and that some fairly urgent remedial action was required".³⁶

193. This is a concern shared by Te Ohu Kaimoana. Actions taken by our board to remedy it at that time included a change to the constitution to enable an alternate director to be appointed.

194. The auditors, in their 2012 report, noted that there is much to admire in the progress that had occurred since 2010 but identified two matters requiring further consideration. These were:

- a. a need for the Trust to broaden its horizon to build skills in the food technology/production industry and the skills associated with that industry
- b. establishment by the Trust of a review process to gauge the success rate of its scholarship recipients and others funded by the Trust.

195. In turn the auditors recommended that Te Ohu Kaimoana examine the strategies and plans of Te Putea Whakatupu (along with Te Wai Maori) to establish whether they need any assistance or encouragement to ensure they have fulfilled the objectives they might reasonably have been expected to achieve by 2015, with particular reference to section 35 (1) (c) of the MFA that the primary focus of the mechanisms set up under the Act should be in "fisheries, fishing and fisheries-related activities"³⁷.

196. In our response we commented that our oversight would ensure that the general direction of the wider group is well understood and supported. We also commented that we had begun to involve all our trusts and companies in the development of an overall strategy³⁸.

197. Te Ohu Kaimoana has initiated a process to help ensure there is alignment between us and all our subsidiaries. We developed "Letters of Expectation" to each entity setting out the Te Ohu Kaimoana Board's general expectations in relation to information sharing, reporting, and annual planning, including what the subsidiaries can expect from Te Ohu Kaimoana. Additional key objectives were identified in relation to management of budgets, conflicts of interest and measurement of outcomes.

³⁶ Hunn D and Mason K, (2012), *2012 Four Year Audit Reports*, p 53

³⁷ Ibid. p 20

³⁸ Ibid.

Effect of the governance arrangements on delivery of benefits from Te Putea Whakatupu

198. Despite some of the positive progress made by Te Putea Whakatupu, it continues to be of concern to us that Te Putea Whakatupu Board is still hampered by an inability to make decisions and to achieve all of its objectives because of the requirement to have a quorum that is equivalent to the total number of directors appointed.
199. Quorum arrangements for each of the trusts can be a significant problem when directors are not willing to work together and not commit to attending meetings. Some of the issues between directors on Te Putea Whakatupu have been exacerbated by the relationship between the National Urban Maori Authority (NUMA) and Te Ohu Kaimoana in recent times. NUMA has a view that it should control Te Putea Whakatupu because of its involvement in the allocation debates in the 1990s and early 2000s, which resulted in court action. Te Ohu Kaimoana will continue to consult with NUMA in respect of the appointment of directors “to ensure that the directors have knowledge of, and are able to represent the interests of Maori who reside in urban areas of New Zealand” as required by section 88 (2) of the MFA. That is however the extent of the obligation on Te Ohu Kaimoana in respect to NUMA. Te Ohu Kaimoana is very conscious of its obligations towards both Te Putea Whakatupu and Maori who live in urban areas.
200. Initiatives that would ensure Te Putea Whakatupu can continue to make progress include:
- a. changing the quorum to be two out of the three directors
 - b. increasing the number of directors from 3 to 5. This option would strengthen the range of skills, experience, gender and age available to the board.
201. Each of the boards is able to appoint alternates. We suggest that Te Ohu Kaimoana Board should have final approval of these appointments and that an alternate is able represent any one of the directors. We envisage that the appointment of alternates would be more important for a board of three directors rather than five.
202. Ultimately, Te Putea Whakatupu needs a team of directors that is willing to work together. At different times, the current arrangements have adversely affected their ability to make advances for Maori. A change to the current provisions would ensure the situation does not arise again.

Te Wai Maori

203. The purpose of Te Wai Maori is set out in the MFA as:

*...to hold and manage the trust funds on trust for an on behalf of the beneficiaries under the Deed of Settlement, in order to **advance Maori interests in freshwater fisheries**, but not in a manner that could adversely affect the charitable status (if any) of the Trust (section 94).*

204. The beneficiaries of Te Wai Maori are all iwi, hapu and whanau, however, in reference to the MFA:

...The directors of Te Wai Maori may make distributions to Maori, mandated iwi organisations, and other Maori organisations for the purpose of Te Wai Maori Trust, subject to any conditions provided for by the trust deed (section 98(1)).

205. Te Ohu acknowledges that in its initial years, Te Wai Maori did not make significant progress. The audit reports of 2008 and 2012 identified this lack of progress as a concern and acknowledged that in part, this lack of progress was due to an inability of all board members to meet:

We note that Te Wai, like Te Putea, has experienced quorum problems which resulted in meetings being cancelled on occasions...obviously the inability of the board to meet in a timely fashion is in itself an impediment to progress.

206. Te Wai Maori's board is currently working constructively with the support of an additional alternate director and Te Ohu Kaimoana providing a more supervisory and advisory role. Appointing a second alternate director has served the Te Wai Maori board well in developing future directors and getting broader perspectives on the issues.

207. Appointing a Te Ohu director and the Te Ohu Chief Executive as an alternate director on Te Wai Maori's board has created stronger links and communication with the Te Ohu board. Administration of the Trust by Te Ohu Kaimoana is also beneficial for both.

208. The "Letter of Expectation" that has been developed by Te Ohu Kaimoana has enhanced the working relationship between Te Wai Maori and Te Ohu Kaimoana, and the Te Ohu Kaimoana group in general. Making clear each subsidiary's role within the group creates opportunities for the different entities to work together to achieve the ultimate purpose of the MFA.

209. Te Ohu Kaimoana provides policy and advisory support to Te Wai Maori, and over last two years has done much of the groundwork for Te Wai Maori's work programme. This has involved:

- a. rights and interests in freshwater: responding to government policy on freshwater where Maori interests in freshwater fisheries are likely to be affected
- b. Wai Ora Fund: establishing a contestable fund which is open to applications from iwi, hapu and other Maori groups and individuals every year. At the end of its second year, the fund has supported 11 projects, including a catchment enhancement project run by the Whangawehi Catchment Management Group. The Group's project won the Pride of New Zealand Environment Award for its work. The Group has also been nominated for the Trust Power National Environment Awards

- c. developing a partnership between commercial and customary non-commercial eelers: Te Wai Maori brought together a working group of commercial and customary eelers to identify practical measures that can be applied to improve the management of eels, particularly long-finned eels. The group worked together to provide support a pilot project in Ngati Hine's rohe. The primary aim of the project was to investigate the status of eels and their habitat in the area, and as a result, build a good working relationship between the sectors. Following the pilot, Te Wai Maori supported members of the group to present information to the International Review Panel on eels³⁹, and to run a successful symposium on eels. Wai Maori has included some of its recommendations from the symposium in its work programme for 2014 – 15.

Effect of the governance arrangements on delivery of benefits from TWM

210. Members of the Te Wai Maori Board are working together. However to prevent problems in future, we consider the changes we have suggested for Te Putea Whakatupu apply also to Te Wai Maori.

³⁹ The panel was set up as a result of recommendations made by the Parliamentary Commission for the Environment in 2013.

Restrictions on sale of settlement assets

211. As we have already identified, most iwi also hold parcels of quota for low value stocks. A key issue facing iwi is how they might rationalise the assets they hold.
212. The MFA contains processes for iwi to sell or exchange their quota shares. For instance it would be possible for iwi to sell their shares for a stock, as long as they replace that stock with another of equivalent value. So far these processes have not been used. While information about the process was distributed to iwi some years ago, it is possible that the information has not been received by the right people.
213. As we have already identified, we intend to work more actively to assist iwi to gain better value for small parcels of quota, and to reduce the costs of holding unused quota. While some would argue they should be able to sell these parcels, we consider that the overall quantum of settlement quota should remain in the Maori pool to ensure that the settlement endures.

Other challenges

214. On a related matter, we referred earlier to the Crown's requirement that as part of settling Treaty claims iwi establish PSGEs to receive their settlement assets. In late 2009 several iwi approached Te Ohu Kaimoana with an interest in creating PSGEs to manage and control all their Treaty settlement assets (including fisheries settlement assets). For at least three iwi including Ngati Apa (North Island), consolidation was a matter of urgency and would allow for the establishment of their preferred PSGE structure within the broad settlement timeline agreed with the Crown.
215. Two actions were needed to ensure a PSGE could hold fisheries settlement assets. First, Te Ohu Kaimoana would need to recognise the new entity as a MIO and derecognise the existing MIO. Second, the fisheries settlement assets would need to be transferred to the new entity. However, under the provisions of the MFA at that time, any such transfer of fisheries assets would have triggered the sale provisions requiring iwi to offer their settlement quota and AFL shares for sale to all eligible MIOs. Such an outcome would be contrary to the original intent of the sale provisions and would defeat any proposed consolidation. Te Ohu Kaimoana sought and succeeded in gaining an amendment to the MFA, enabling a new MIO to replace an existing MIO and settlement assets to be transferred to the new MIO's AHC without triggering the sale provisions of the MFA. The amendment became law on 15 September 2011.
216. It is likely that those iwi who have yet to conclude their Treaty settlements will approach Te Ohu Kaimoana to have their PSGEs approved as MIOs - effectively applying for MIO status for a second time. This creates considerable additional work for iwi and Te Ohu Kaimoana which was not anticipated when the MFA was first enacted.
217. Separately, while MIOs are compliant with the MFA, there are questions as to whether their structures are overly complex and therefore fit for purpose for the size of the putea they are managing. Are there ways of reducing the overheads they have to cover? The reviewer may wish to discuss these matters with iwi.

Appendices

Appendix 1: New Zealand Court recognition of Maori ownership of fisheries

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

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

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

Justice Greig NZ High Court 1987

Appendix 2: Duties of Te Ohu Kai Moana Trustee Limited

Section 34, Maori Fisheries Act 2004

The duties of Te Ohu Kai Moana Trustee Limited are to administer the Settlement assets in accordance with the purposes of the Maori Fisheries Act 2004 and perform the following duties:

- (a) as required by sections 7 and 196, to determine the appropriate classification of quota shares; and
- (b) as required by section 157, to apply to register settlement quota interests against—
 - (i) the quota shares listed in Schedule 1; and
 - (ii) any quota shares allocated under section 44 of the Fisheries Act 1996; and
- (c) to allocate and transfer the settlement assets; and
- (d) to manage on a transitional basis, collectively or separately as Te Ohu Kai Moana Trustee Limited considers appropriate, the settlement assets to be allocated to an iwi, until they are transferred to the mandated iwi organisation of the iwi; and
- (e) to determine the coastline entitlements of iwi under section 11 and Schedule 6; and
- (f) to maintain the iwi register required by section 40 and to record the matters relating to mandated iwi organisations required by or under this Act; and
- (g) if Te Ohu Kai Moana Trustee Limited is satisfied that each commercial fisher is wholly owned by 1 or more mandated iwi organisations, to advise the chief executive of the Ministry of Fisheries as to those commercial fishers who are approved entities for the purposes of section 74(2A) of the Fisheries Act 1996; and
- (h) to make extracts of the iwi register available, on request, to mandated iwi organisations or members of iwi, in accordance with any policy prepared under section 53; and
- (i) to assist recognised iwi organisations to establish a register of iwi members that includes the contact details and date of birth for every person included in that register; and
- (j) to assist iwi to meet the requirements of sections 14, 17, and 130(3); and
- (k) where the lack of a mandated iwi organisation for an iwi prevents the mandated iwi organisation of another iwi from making its coastline claims under clause 3 of Schedule 6, Te Ohu Kai Moana Trustee Limited must give priority to assisting the iwi that does not have a mandated iwi organisation, as provided for in paragraph (j); and
- (l) to the extent that they relate to matters provided for by or under this Act, to approve constitutional documents under section 17 and any changes made under section 18 or required under section 25; and
- (m) to appoint the directors of Aotearoa Fisheries Limited; and
- (n) to establish Te Putea Whakatupu Trust, appoint the directors of Te Putea Whakatupu Trustee Limited, and make the payments required by section 90(1) and (3); and
- (o) to establish Te Wai Maori Trust, appoint the directors of Te Wai Maori Trustee Limited, and make the payments required by section 103(1), (3), and (4); and
- (p) to consider and, if satisfied, approve the annual plans of Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited; and
- (q) to prepare the final financial statements of the Treaty of Waitangi Fisheries Commission, as provided for in section 197; and
- (r) to perform any other duties prescribed by or under this Act or any other enactment.

Appendix 3: Functions of Te Ohu Kai Moana Trustee Limited

Section 35, Maori Fisheries Act 2004

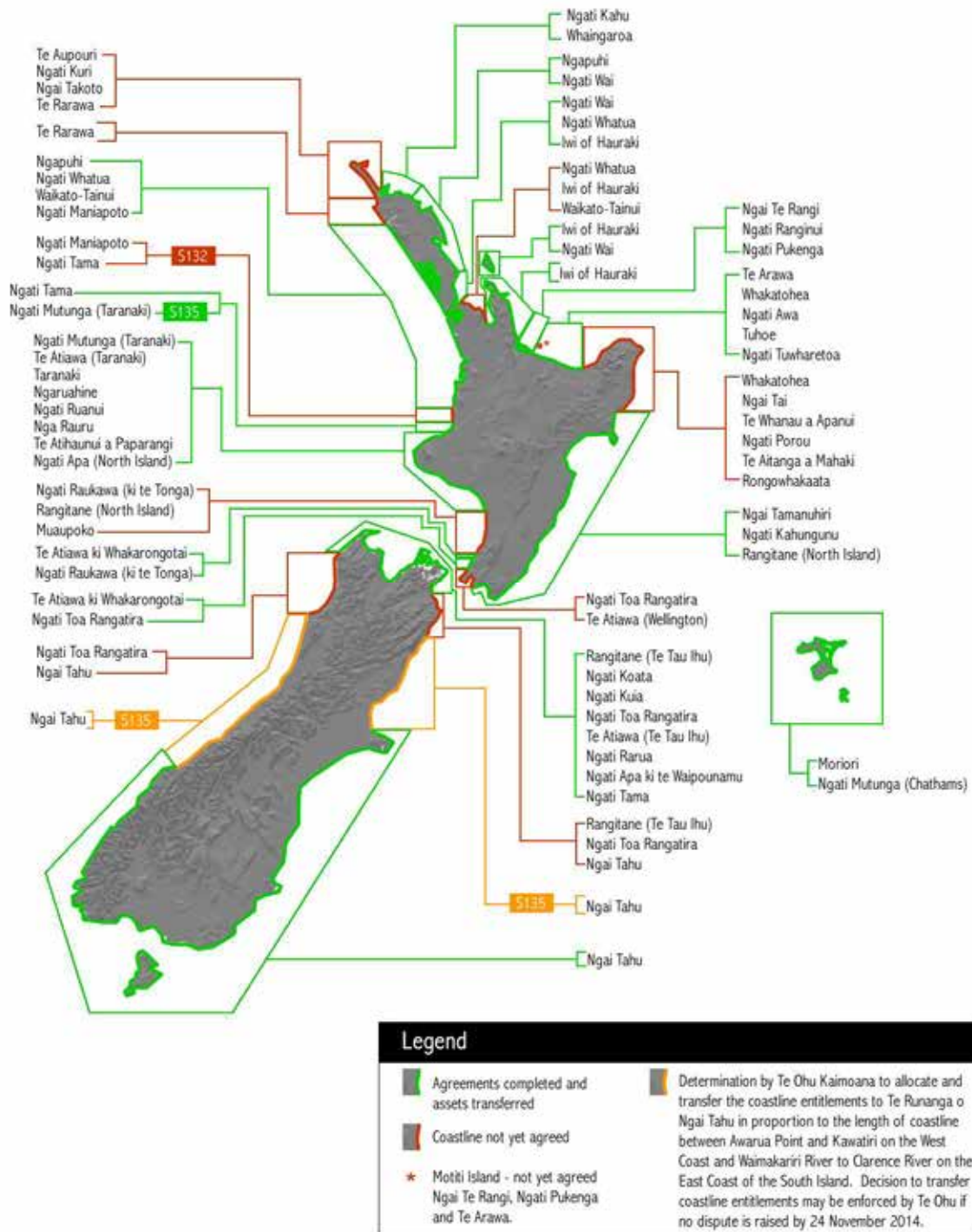
(1) The functions of Te Ohu Kai Moana Trustee Limited, to further the purpose of Te Ohu Kai Moana Trust, are prescribed in Section 35 of the Maori Fisheries Act. Te Ohu Kai Moana Trustee Limited may—

- (a) foster, promote, commission, or fund research into the sustainable management of fisheries:
- (b) in relation to fisheries, fishing, and fisheries-related activities, act to protect and enhance the interests of iwi and Maori in those activities:
- (c) in relation to other activities, so long as the nature of the business activities of Te Ohu Kai Moana Group, taken as a whole, is not significantly changed from the primary focus on fisheries, fishing, or fisheries-related activities,—
 - (i) approve other activities, including, but not limited to, activities related to the seafood industry:
 - (ii) give prior approvals to specified entities of Te Ohu Kai Moana Group to conduct other activities up to thresholds specified by Te Ohu Kai Moana Trustee Limited:
- (d) require mandated iwi organisations to demonstrate their progress in meeting the criteria and requirements set out in section 14, 17, or section 130(3)(b), as the case may be, before granting assistance under section 34(i) or (j):
- (e) in accordance with the provisions of Part 4, acquire or dispose of income shares, settlement quota, and quota other than settlement quota, and sell annual catch entitlement generated by settlement quota or by quota other than settlement quota:
- (f) perform the functions of the voting shareholder of Aotearoa Fisheries Limited:
- (g) apply the funds of the trust by way of payments to—
 - (i) mandated iwi organisations:
 - (ii) Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited as specified in sections 90(5) and 103(6) respectively:
- (h) grant assistance, as permitted by or under this Act, to—
 - (i) mandated iwi organisations:
 - (ii) individual Maori and groups of Maori:
- (i) maintain reserve funds to the extent that it considers prudent:
- (j) perform any other functions permitted by or under this Act or any other enactment.

(2) Te Ohu Kai Moana Trustee Limited must not undertake fishing or hold a fishing permit.

(3) This section and section 34 do not limit the activities (other than fishing or holding a fishing permit) that Te Ohu Kai Moana Trustee Limited may undertake to further the purpose of Te Ohu Kai Moana.

Appendix 4: Progress being made by iwi in reaching coastline agreements.



AOTEAROA FISHERIES LIMITED

INFORMATION FOR 2015 REVIEW

1. Income Statement

	F05 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
Total revenue	93,984	102,705	103,788	113,776	145,359	157,599	161,058	154,061	152,358
Operating EBIT	(2,241)	4,058	9,252	12,754	16,951	19,996	20,130	17,768	19,064
	-2.4%	4.0%	8.9%	11.2%	11.7%	12.7%	12.5%	11.0%	11.8%
Non-operating:									
Asset writedowns	-	-	-	-	-	-	(1,820)	-	(710)
Gain on disposal of quota	7,050	994	-	-	-	-	1,534	-	-
Profit/(loss) on sale of PPE	1,127	890	3,133	92	(346)	4	(8)	114	131
Head office restructuring	-	-	-	(715)	-	-	(275)	-	-
Quota impairment	-	-	-	-	-	(289)	-	-	(345)
	8,177	1,884	3,133	(623)	(346)	(285)	(569)	114	(924)
	8.7%	1.8%	3.0%	-0.5%	-0.2%	-0.2%	-0.4%	0.1%	-0.6%
Share of Sealord profit	10,110	12,927	14,883	12,115	11,376	7,032	10,286	4,625	(22,964)
	10.8%	12.6%	14.3%	10.6%	7.8%	4.5%	6.4%	3.0%	-15.1%
Financing costs	(2,694)	(2,919)	(4,262)	(5,206)	(8,761)	(7,873)	(7,093)	(5,438)	(4,032)
	-2.9%	-2.8%	-4.1%	-4.6%	-6.0%	-5.0%	-4.4%	-3.4%	-2.5%
Income tax benefit/(expense)	-	-	-	-	-	-	-	-	2,816
Profit for the year (NPAT)	13,510	16,521	23,006	19,040	19,220	18,870	22,754	17,069	(6,040)

Notes

- Information is from the audited financial statements in the Annual Report, with the exception of the listing of the material non-operating items. The Profit for the Year (NPAT) reconciles to the Annual Report.
- F05 was a 10 month reporting period.
- Profit contribution from Prepack Limited is included in operating profit. For external reporting this is classified as 'Share of Associates'.

Asset Write-downs

- F13 - Prepared Foods Ruahine Street buildings \$385k, and Moana depots and Pukekohe buildings \$325k.
- F11 - Prepared Foods processing facilities \$202k, Head office relating to Halsey Street \$275k, Pukekohe and Tauranga make good lease provision \$323k, and Oysters Northern farms loans inherited from AFL inception \$1,020k.

Gain on Disposal of Quota

- F05 and F06 - The rock lobster operations were restructured resulting in closing the South Island operations and selling the CRA5 and CRA8 quota holdings.
- F11 - Sale of CRA1, CRA2 and CRA4 to Tuhoe and Ngāti Whare.

Profit/Loss on Sale of PPE

- F05 - Sale of vacant land at Westney Road, Auckland airport.
- F06 - Sale of vacant land in Napier and sale of Blenheim lobster depot.
- F07 – Sale of Napier processing facilities.
- F09 - Disposal of assets at Kaingaroa, Chatham Islands.

Quota Impairment

- F10 and F13 - Relates to the write-down of the value of the Queensland, Australian coral trout quota. This quota was inherited from Prepared Foods pre AFL ownership.

2. Balance Sheet

	F05 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
Current assets	30,195	24,103	25,819	24,806	29,967	22,698	24,576	25,289	29,863
Non-current assets	156,679	170,690	209,897	228,908	282,579	281,810	279,625	280,128	300,996
Investment in Sealord Group	183,322	188,013	191,690	191,633	201,826	206,506	196,777	190,693	170,354
Total assets	370,196	382,806	427,406	445,347	514,372	511,014	500,978	496,110	501,213
Current liabilities	8,214	11,514	16,395	19,600	12,395	21,112	23,327	22,819	14,499
Non-current liabilities	825	816	4,148	1,590	2,948	1,696	2,730	1,355	9
Redeemable pref. shares	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Bank debt - net of cash	40,668	33,466	44,101	47,150	94,881	76,623	61,237	47,809	62,220
Equity	300,489	317,010	342,762	357,007	384,148	391,583	393,684	404,127	404,485
Total equity & liabilities	370,196	382,806	427,406	445,347	514,372	511,014	500,978	496,110	501,213

Notes

- The amounts above are from the audited financial statements.
- The components of the Redeemable Preference Shares from F07 – F12 that were accounted for using the compound split accounting method (as required by the International Financial Reporting Standards) have been grouped as one item into the Redeemable Preference Shares line.
- Cash on hand has been netted against debt.

3. Cash Flows

The following shows the cash derived from operating activities, dividend received from Sealord, the dividends paid to AFL shareholders, and the net cash from investing activities.

	F05 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
Operating activities	(750)	7,584	10,456	12,232	10,254	13,841	14,407	14,428	10,899
Sealord dividend received	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	1,300
Dividends paid to Shareholders	-	-	-	-	-	-	7,548	9,102	6,820
Net cash out (in) from investing activities	561	4,237	29,312	23,235	66,525	3,583	(527)	(101)	17,189

The dividends paid out above total \$23.470 million. This is the after tax cash payment made to AFL shareholders.

In addition to the ordinary dividend, AFL in 2012 made a one-time taxable bonus share issue, which is treated for tax purposes as a dividend. This enabled AFL shareholders to use the imputation credits attached to the dividend in either offsetting against their other taxable income or applying to the IRD for a cash refund.

4. Major Capital Expenditure

The following is a listing of the major capital expenditure projects. The listing does not include regular replacement/custodial capital expenditure.

	F05 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
Property Plant & Equipment									
Navision upgrade	1,000								
Prepared Foods pouch line		5,000							
Moana Awatoto Napier			2,000						
Prepared Foods Makomako Rd								1,200	17,000
Oysters investment in baskets								600	
Quota & Oyster Farms									
Inshore wetfish quota	10,799								
Inshore wetfish quota, ex Anton's			13,232						
Lobster quota CRA2			3,975						
Paua PAU 2 and 4			7,214						
Ocean Ranch quota					50,000				
Muollo parcel				10,380					
Hokotehi Moriori Trust parcel					4,044				
Herbet oyster farms			677						
Sanford oyster farms (net of disposals)								600	
Business Acquisitions									
Thomas Richard & Co (Eels)	600								
Seafood Processors/Properties		4,500							
Kia Ora Seafoods & blast freezer			2,950						
OPC & South Pacific (lobster)			16,800						
Ocean Ranch					5,000				
Prepack Limited					800				
Pacific Catch						1,004			
OceaNZ Blue								8,300	

5. Major Capital Divestments

The following is a listing of the major capital divestments.

	F05 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
Property Plant & Equipment									
Land at Auckland airport	6,078								
Blenheim & Ngawi depots		1,680							
Land at Ascot Road, Mangere									
Ahuiriri Napier plant			4,050						
Quota									
Quota sales	6,601	4,730							
Including South Island lobster CRA5 and CRA8									
Lobster - CRA2 and CRA4							3,053		
Businesses									
Seafood Processors and Properties JV									4,340

6. Quota Valuation

The following table shows the quota value that is included in the category 'Long-term assets' included in the balance sheet in section 2. These amounts represent the cost that the quota was acquired.

None of AFL's quota is settlement quota. The quota that Aotearoa Fisheries Limited had on inception came with Moana Pacific Fisheries Limited. Subsequent quota acquisitions have been open market acquisitions.

The quota includes a small parcel of Queensland Australian coral trout, which was acquired by previous owners of Prepared Foods.

	F05 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
Quota Shares	144,864	144,864	169,340	191,711	242,299	242,344	240,830	240,830	240,485

Annually AFL tests that the market value of the quota is not less than the cost value on the balance sheet. The following table shows the comparison of the quota as of 30 September 2013 compared with the book value as included in the balance sheet with the market value. The market value is the average valuations obtained from three independent valuers.

	Total Cost at 30 September 2013 \$000	Average value of AFL Quota \$000	Headroom \$000
Fish	102,741	158,540	55,799
Lobster	40,369	133,160	92,791
Eels	511	1,348	837
Development	259	961	702
Abalone	95,840	96,179	339
Queensland Coral trout	765	765	-
Total	240,485	390,953	150,468

7. AFL Board Members

The following schedule is a listing of all the Aotearoa Fisheries Limited Board members, both current and historic.

Period Ending	2004 Dec-04	2005 Dec 05	2006 Dec 06	2007 Dec 07	2008 Dec 08	2009 Dec 09	2010 Dec 10	2011 Dec11	2012 Dec 12	2013 Dec 13	2014 Dec 14
<u>CHAIRS</u>											
Robert McLeod (Chair) Nov 2004 - May 2007											
Robin Hapi (Chair) June 2007 - Sep 2011											
Whaimutu Dewes (Chair) Oct 2011											
<u>DIRECTORS</u>											
Craig Ellison Nov 2004 - Nov 2007											
Matanuku Mahuika Nov 2004 - Nov 2011											
Craig Norgate Nov 2004 - Sep 2011											
Keith Sutton Nov 2005 - Nov 2011											
Fred Cookson Nov 2007											
Harry Mikaere Nov 2007 - Nov 2012											
Wayne Peters Nov 2007											
Jamie Tuuta July 2011											
Hinerangi Raumati Nov 2012											
Alan Gourdie Nov 2013											
Tony Hannon Nov 2013											
Liz Ward Nov 2013											

SEALORD GROUP LIMITED INFORMATION FOR 2015 REVIEW

The following information for Sealord Group Limited (SGL) has been prepared for periods commencing after November 2004, being the incorporation date of Aotearoa Fisheries Limited.

AFL has limited access to detailed SGL financial information, and therefore some of the information requested for the review is unable to be directly provided.

The F14 results are in the process of being finalised by SGL.

While AFL has not seen the F14 full year results, the provisional SGL F14 results indicate that SGL will exceed its Profit for the Year (NPAT) by \$4.6m. Sealord has therefore achieved its NPAT from operations and the above plan result of \$4.6million is the result of recording a gain on sale of the restructuring of the NZ Longline business. While the NZ Longline transaction has been anticipated for over a year it was not included in the F14 Plan, and therefore results in a positive variance to Plan.

The financial analysis does not take into account the decreases and increases in the TACC that have occurred over this time period.

Sealord has restated its financial statements three times during the review period, namely for F09, F11 and F12. The financial data is based on the restated financial information. Further details of the restated financial statements are included in the Appendix.

Prior to F11, Sealord financial year-end was 30 June. Sealord changed balance dates effective 30 September 2011, resulting in the F11 results being for a 15 month period.

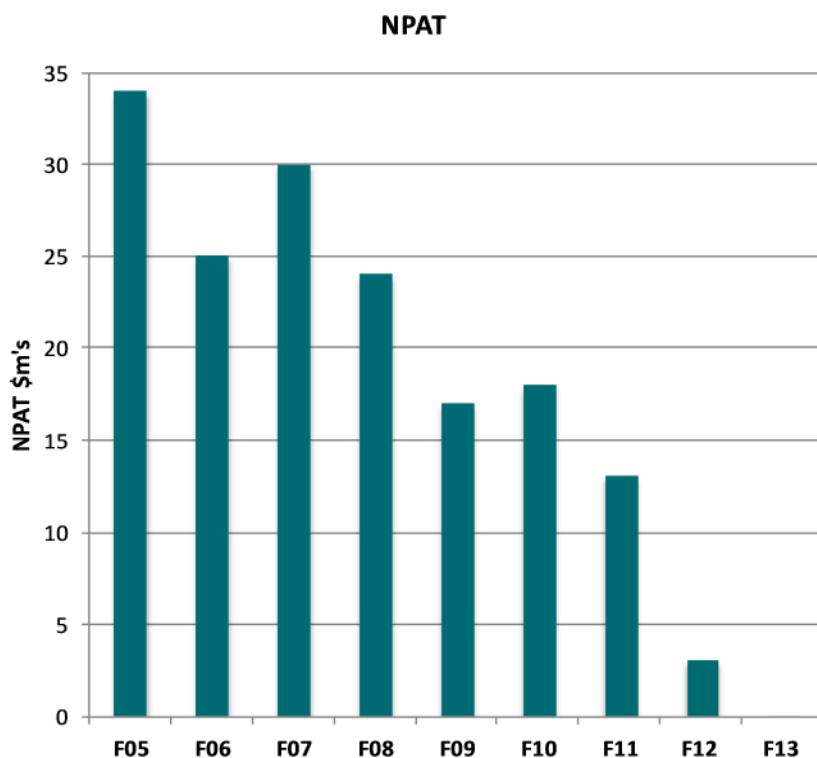
8. Income Statement

	F05	F06	F07	F08	F09	F10	F11 (15 mths)	F12	F13
	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
					Restated		Restated	Restated	
Sales	554,320	644,419	545,704	555,991	584,860	530,887	580,014	487,057	457,302
Operating Profit	57,133	41,187	44,968	31,418	13,632	21,132	21,014	21,738	(8,361)
	8.9%	6.4%	8.2%	5.7%	2.3%	4.0%	3.6%	4.5%	-1.8%
Plus share of Associates & joint venture	1,516	3,724	6,682	10,344	(3,072)	7,473	9,056	6,947	7,791
	0.2%	0.6%	1.2%	1.9%	-0.5%	1.4%	1.7%	1.3%	1.5%
Operating EBIT, including associates & JV's	58,649	44,911	51,650	41,762	10,560	28,605	30,070	28,685	(570)
Less Capital costs:									
Impairment Yuken								(10,000)	(37,079)
Impairment goodwill/quota			(406)					(786)	0
Impairment other assets				(470)	(954)		(25)	(450)	0
Loss on sale of assets	207	(969)	(691)	(2,025)	(2)	(2,374)	(5)	(264)	(26)
	207	(969)	(1,097)	(2,495)	(956)	(2,374)	(30)	(11,500)	(37,105)
Plus Capital income:									
Impairment of Quota reversed	-			961				1,445	
Reversal of goodwill				7					
Gain on quota swap								2,121	
Profit on sale of PPE	337		324	69	2	4,777	169	608	523
Reversal of impairment (sub Yuken)					7,750				
Recovery of long term trade rec's					6,100	815			
Sale of Nordic							3,822		
Government grant							427		
Mussel farms									3,857
ETS sale of emission units							2,717		
Net gain on disposal of shares					6,446				
	337	0	324	1,037	20,298	5,592	7,135	4,174	4,380
EBIT (op profit + Assoc & JV's capital profits - capital losses)	59,193	43,942	50,877	40,304	29,902	31,823	37,175	21,359	(33,295)
Financing costs - net	(7,447)	(7,545)	(9,088)	(11,244)	(10,963)	(9,667)	(14,757)	(12,606)	(13,895)
Income tax expense	(17,337)	(11,006)	(12,023)	(4,831)	(2,328)	(3,757)	(9,018)	(5,257)	2,796
Profit for the year	34,409	25,391	29,766	24,229	16,611	18,399	13,400	3,496	(44,394)

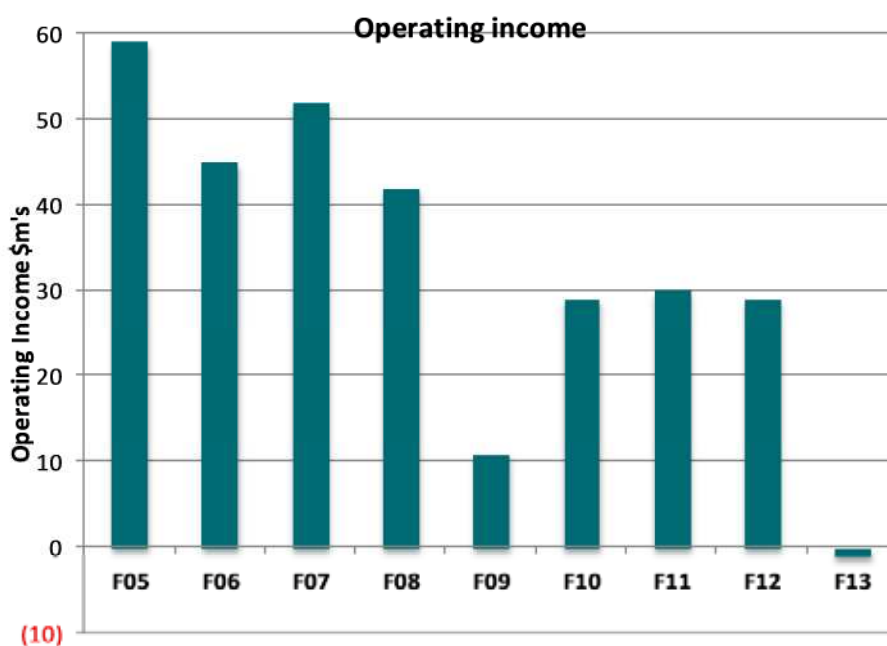
9. Profitability Analysis

2.1 Declining Profit

The graphs below show Sealord's Profit for the Year (NPAT) and Operating Income. The operating income includes the earnings from Associates, but excludes capital gains and losses.



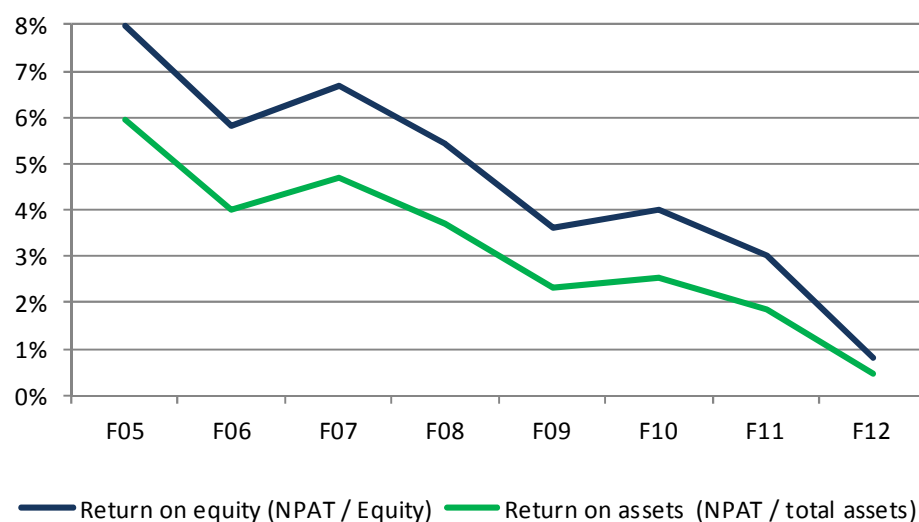
The graph above does not show the F13 NPAT loss of \$44 million.



2.4 Declining Return on Equity and Assets

As Sealord has been growing its asset base by acquisition over the same period, the declining NPAT has had a disproportionate impact on returns to equity and assets as illustrated in the table below.

	F05	F06	F07	F08	F09	F10	F11	F12	F13
					Restated		Restated	Restated	
Return on equity (NPAT / Equity)	8%	6%	6.7%	5.4%	3.6%	4.0%	3.0%	0.8%	-11.4%
Return on assets (NPAT / total assets)	6%	4%	4.7%	3.7%	2.3%	2.5%	1.8%	0.5%	-6.2%



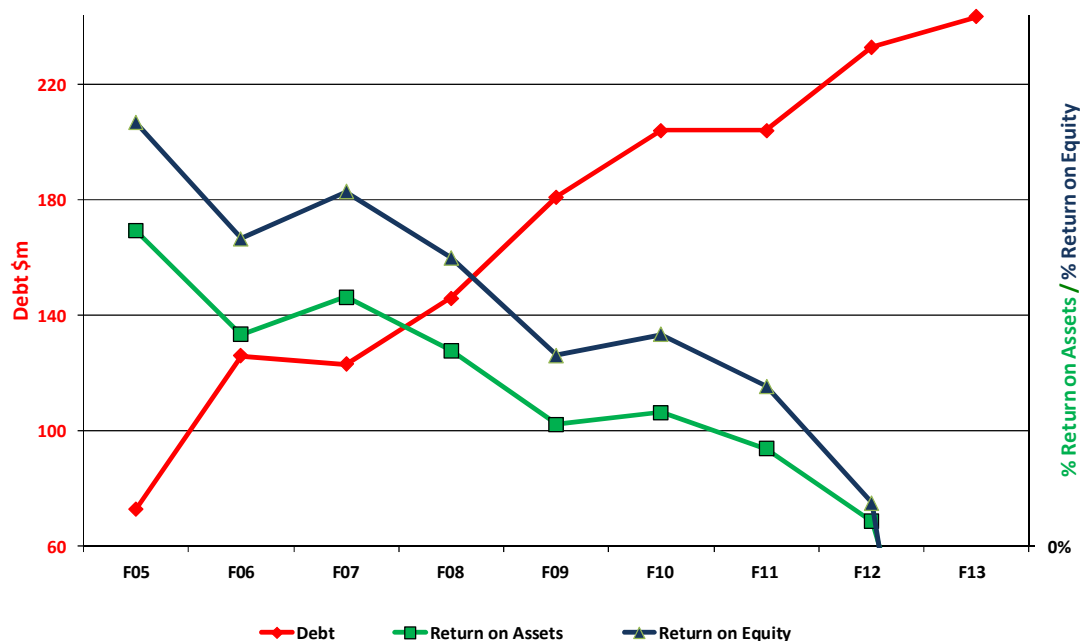
The graph does not show the negative returns for F13.

10. Balance Sheet

	2005 \$000	F06 \$000	F07 \$000	F08 \$000	F09 \$000	F10 \$000	F11 \$000	F12 \$000	F13 \$000
					Restated		Restated	Restated	
Current assets	157,950	185,082	168,017	169,013	193,086	185,972	174,936	203,510	206,785
Non current assets	407,148	450,867	466,054	487,349	528,586	542,676	553,891	540,709	504,153
Total assets	565,098	635,949	634,071	656,362	721,672	728,648	728,827	744,219	710,938
Current liabilities	63,509	71,157	54,688	58,093	65,798	56,292	61,846	70,693	74,100
Non current liabilities	0	441	10,008	7,225	13,395	7,521	17,730	11,155	4,913
Bank debt - net of cash on hand	73,252	126,144	123,816	145,599	166,062	115,810	125,936	161,668	207,169
Shareholder loans	0	0	0	0	15,288	87,617	78,472	71,815	36,201
Total Debt	73,252	126,144	123,816	145,599	181,350	203,427	204,408	233,483	243,370
Equity	428,337	438,207	445,559	445,445	461,129	461,408	444,843	429,234	388,555
Total equity & liabilities	565,098	635,949	634,071	656,362	721,672	728,648	728,827	744,565	710,938

11. Debt

The following graph shows how the level of debt has increased while at the same period of time the percentage return on assets and equity has reduced.



The debt data is from the balance sheet above in section 3, and the return on Assets and Equity is from section 2.

12. Sealord Banking Facilities

Sealord refinanced its banking arrangements on 31 July 2013, where its core debt and banking syndicate was restructured.

ANZ and Bank of Tokyo Mitsubishi (BTMU) were retained and Rabobank and BNZ were replaced. When Sealord had previously restructured its debt in 2011, HSBC was replaced as lead banker in favour of ANZ.

5.1 Current Facility

The following is a summary of the current debt facility.

Debt Facility	Amount	Provider	Maturity
Core debt Tranche A	NZ\$30m	ANZ	July 2018
Core debt Tranche B	NZ\$60m	ANZ/BTMU (50/50)	July 2018
Trade financing	NZ\$ 115m	ANZ	January 2015
Subordinated unsecured	US\$30m	Nissui	November 2015
Subordinated vessel facility	US\$41m	BTMU	Amortising - July 2018

5.2 Quota Security

SGL's quota is owned by Pupuri Taonga Trust and is leased to SGL under a Use of Quota Deed. Under the Deed, SGL has full and comprehensive rights in respect of the quota for perpetuity. The Deed allows SGL to use the quota as security against its bank borrowings.

13. Dividends

The following shows the dividend declared each year, and the 50% amount that AFL has received.

	F05	F06	F07	F08	F09	F10	F11 (15 mths)	F12	F13
	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
Dividend declared in relation to that financial year	16,000	16,000	16,000	16,000	16,000	16,000	16,000	2,600	-
AFL 50% share	8,000	8,000	8,000	8,000	8,000	8,000	8,000	1,300	-

14. Board Members

The following schedule is a listing of the SGL Board members, both current and historic.

Period Ending	2004 Dec-04	2005 Dec-05	2006 Dec-06	2007 Dec-07	2008 Dec-08	2009 Dec-09	2010 Dec-10	2011 Dec-11	2012 Dec-12	2013 Dec-13	2014 Dec-14
<u>CHAIRS (AFL Appointed)</u>											
Shane Jones Dec 2001 - Sep 2005											
Robert McLeod Sep 2005 - May 2007											
Robin Hapi July 1998 - Sep 2011											
Matanuku Mahuika Oct 2011											
<u>AFL APPOINTED DIRECTORS</u>											
Robin Hapi (Note 1) July 1998 - Sep 2011											
Keith Sutton (Note 2) Jun 2002											
Whaimutu Dewes Jan 1993 - Feb 2008											
Craig Norgate Sep 2005 - May 2012											
Jeremy Fleming Feb 2008 - May 2012											
Walter (Wally) Stone Jun 2012 - Mar 2014											
Robert (Bob) Major Jun 2012											
Anthony (Tony) Hannon Mar 2014											
<u>NISSUI APPOINTED DIRECTORS</u>											
Graeme Harrison Jan 2001											
Phillip Burdon Jan 2001 - Jun 2007											
Robert (Murray) Gough Jan 2001 - Dec 2008											
Naoya Kakizoe Jan 2001 - Jan 2014											
Maurice Eng Sep 2005											
Norio Hosomi Jan 2014											
Hisami Sakai (Alternate) Jan 2014											

15. CEO's & CFO's

The following schedule is a listing of the SGL CEO's and CFO's, both current and historic.

Period Ending	2004 Dec-04	2005 Dec 05	2006 Dec 06	2007 Dec 07	2008 Dec 08	2009 Dec 09	2010 Dec 10	2011 Dec11	2012 Dec 12	2013 Dec 13	2014 Dec 14
CEO's											
Doug McKay Oct 2002 - June 2007											
Graham Stuart Jul 2007 - Aug 2014											
Steve Yung Aug-14											
CFO's											
Paul McGuinness 1998 - Dec 2005											
Stephen Wallace Jan 2006 - Feb 2008											
Michael Gleissner Mar 2008 - Oct 2010											
David Sullivan (Acting) Oct 2010 - Jan 2011											
Jason Dale Jan 2011 - Feb 2014											
Gary Neill May 2014											

APPENDIX - Restated Financial Statements

The information used in this analysis is from the SGL audited signed financial statements. Sealord has experienced three financial statements restatements over the last seven years, and therefore where the financial statements have been restated, the data from the restated financial statements has been used.

Sealord restatements have included:

Noted from the F13 Financial Statements, *restating F12*

- Reduction to the F12 profit because Petuna changed balance date.

Noted from the F12 Financial Statements, *restating F11*

- Correction for depreciation error due to understatement of vessel residual values.
- Accounting policy change in relation to valuation of inventory.

Noted from the F11 Financial Statements,

- Correction for error in vessel costs at Yuken, where costs were not included in the profit and loss. This was for an error in F09, and was adjusted through opening retained earnings.

Noted from the F10 Financial Statements, *restating F09*

- Correction for error in relation to charter costs not recognised in the profit and loss.
- Accounting policy change in relation to valuation of biological assets.

Appendix 7: Te Ohu Kaimoana Trust Financial Information

Te Ohu Kai Moana Trust Information for 2015 Review

Income Statement

	2005 \$'000 (10 mths)	2006 \$'000	2007 \$'000	2008 \$'000	2009 \$'000	2010 \$'000	2011 \$'000	2012 \$'000	2013 \$'000
Operating income									
Return on Investment portfolio	5,746	7,468	6,958	9,100	8,296	5,736	5,133	4,659	3,108
Share of associated company profit after tax	2,702	3,304	4,053	2,704	5,291	2,823	2,056	3,414	(1,208)
Revenue from sale of ACE	8,201	7,710	5,157	3,701	3,107	1,724	1,541	1,213	1,243
Other	10	7	27	23	108	28	19	81	223
	16,659	18,489	16,195	15,528	16,802	10,311	8,749	9,367	3,366
Expenses	7,500	8,851	8,864	8,336	7,901	6,171	6,053	5,471	4,991
Net Operating Income	9,159	9,638	7,331	7,192	8,901	4,140	2,696	3,896	(1,625)
Income received for MFA and other reserves									
ACE round disputes held in trust	224	455	471	348	817	46	88	127	312
Increase in holding value of AFL Income shares held in trust for iwi	10,808	8,587	4,291	1,113	2,155	340	20	159	5
s76(2) dividend receivable on income shares held in trust for iwi	-	-	-	-	-	390	151	106	-
Maori Authority Tax Credits received and held in trust for iwi	-	-	-	-	-	-	-	52	529
	11,032	9,042	4,762	1,461	2,972	776	259	444	846
Non-operating									
Refund of Maori Authority Tax Credits	-	-	-	-	-	-	-	366	6,772
Notional interest on Redeemable Preference Shares	-	-	946	1,008	1,074	1,145	1,220	211	-
Pre Appointed Day tax refunds	18,277	1,226	236	-	-	-	-	-	-
Adjustments to retained earnings under NZ IFRS	-	(2,502)	-	-	-	-	-	-	-
Share of associates other comprehensive income	-	-	-	-	-	-	-	(10)	1,280
	18,277	(1,276)	1,182	1,008	1,074	1,145	1,220	567	8,052
Total Comprehensive Income for the year	38,468	17,404	13,275	9,661	12,947	6,061	4,175	4,907	7,273
Distributions									
Distribution received from wind up of TOKM Charitable Trust for GFS	-	-	-	-	1,147	-	-	-	-
Distributions to Iwi and associated trusts	(92,044)	(265,265)	(73,015)	(15,877)	(49,489)	(64,073)	(1,164)	(15,194)	(13,531)
Net movement in Trust equity	(53,576)	(247,861)	(59,740)	(6,216)	(35,395)	(58,012)	3,011	(10,287)	(6,258)

Te Ohu Kai Moana Trust

Information for 2015 Review

Balance Sheet

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Assets	Opening	(10 mths)								
Current assets	18,722	28,422	19,297	6,939	17,062	17,725	2,854	3,394	3,031	7,799
Investment portfolio	93,649	84,830	86,850	98,029	87,584	86,744	71,149	70,552	72,211	73,319
Investment in AFL	57,396	60,098	65,190	69,243	71,947	77,238	78,551	78,787	80,825	80,897
Redeemable preference shares	-	20,000	14,396	15,342	16,350	17,424	18,569	19,789	20,000	20,000
Other	-	700	832	440	315	239	346	284	184	92
Held on behalf of iwi:										
Quota Shares	302,709	257,641	198,230	181,787	142,931	86,705	68,479	66,697	53,722	42,526
AFL income shares held in trust	229,583	199,218	103,622	73,317	29,602	31,461	20,320	6,552	6,292	5,392
Total Assets	702,059	650,909	488,417	445,097	365,791	317,536	260,268	246,055	236,265	230,025
Liabilities										
Current liabilities	-	2,426	2,326	2,648	1,749	1,556	1,257	891	1,223	1,804
Non-current liabilities	-	-	-	340	460	618	756	894	932	496
Maori Fisheries Assets allocated not transferred	-	-	85,469	101,227	28,916	16,091	16,996	-	127	-
Total Liabilities	-	2,426	87,795	104,215	31,125	18,265	19,009	1,785	2,282	2,300
Net Assets	702,059	648,483	400,622	340,882	334,666	299,271	241,259	244,270	233,983	227,725
Equity										
Trust equity and accumulated earnings	90,486	116,767	122,165	130,182	138,118	147,902	153,726	157,536	161,918	168,287
MFA and other classified reserves	611,573	531,716	278,457	210,700	196,548	151,369	87,533	86,734	72,065	59,438
Total Equity	702,059	648,483	400,622	340,882	334,666	299,271	241,259	244,270	233,983	227,725

Te Ohu Kai Moana Trust

Information for 2015 Review

Cash Flows

	2005	2006	2007	2008	2009	2010	2011	2012	2013
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
	(10 mths)								
Operating activities (excluding investment portfolio)	(2,843)	(594)	277	(5,466)	(3,548)	(4,292)	(4,330)	(3,732)	(3,239)
Net withdrawals (deposits) to investment portfolio	(1,186)	5,063	(4,221)	19,542	7,989	21,329	5,730	3,000	2,000
AFL dividend received (including iwi shares held in trust)	-	-	-	-	-	-	1,725	1,971	1,472
Maori authority tax credits received	-	-	-	-	-	-	-	418	7,301
Net cash (out) in from non portfolio investing activities	(199)	(312)	(35)	(80)	(182)	(318)	(74)	(22)	(12)
Non operating receipts	2,930	15,531	372	-	1,147	-	-	-	-
Distributions to iwi and associated trusts	(5,803)	(14,401)	(6,218)	(4,465)	(4,501)	(33,193)	(2,528)	(1,590)	(1,515)
Net increase (decrease) in cash held	(7,101)	5,287	(9,825)	9,531	905	(16,474)	523	45	6,007
Opening cash	18,322	11,221	16,508	6,683	16,214	17,119	645	1,168	1,213
Closing cash	11,221	16,508	6,683	16,214	17,119	645	1,168	1,213	7,220

TE OHU KAIMOANA
(MAORI FISHERIES TRUST)

2015 Review:
Supplementary information for the
Reviewer

Introduction

- 1 This paper provides information requested by the reviewer in discussions with staff of Te Ohu Kaimoana. This information supplements that contained the report we have already provided to the reviewer.

How is Te Ohu Kaimoana's involvement in aquaculture and matters relating to customary non-commercial fishing included within the Terms of Reference for the review?

- 2 The Terms of Reference for the Review clarify that Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) is one of the entities that is to be reviewed. Amongst the topics to be considered is:
 - a. the performance of Te Ohu Kaimoana in achieving its duties and functions (which we note are not limited to its duties and functions under the Maori Fisheries Act 2004 solely – see below)
 - b. the ability of Te Ohu Kaimoana to deliver benefits to their beneficiaries
 - c. the ability of Te Ohu Kaimoana to achieve the purposes of the Act.
- 3 Aquaculture is included within the Terms of Reference because:
 - a. The Maori Commercial Aquaculture Claims Settlement Act 2004 (The Aquaculture Act) states that the trustee is defined as Te Ohu Kai Moana Trustee Ltd (see sections 4 and 37)
 - b. The duties of Te Ohu Kaimoana which must be considered under section 3 of the Terms of Reference are not confined to those set out in the MFA. Section 38 of the Aquaculture Act sets out the duties of the trustee in respect of the aquaculture settlement. These relate to the administration and allocation of aquaculture assets – broadly reflecting Te Ohu Kaimoana's duties in relation to fisheries allocation.
 - c. Fisheries includes aquaculture, and aquaculture involves fisheries¹. Te Ohu Kaimoana's purpose is to "advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries-related resources..." (section 32, MFA).
- 4 As background to why these duties and functions are contained in the Aquaculture Act rather than the MFA, the Government implemented the Aquaculture Settlement through legislation several months after the passage of the MFA and in doing so, broadened Te Ohu Kaimoana's responsibilities with respect to aquaculture. The Government took the view that by settling claims to commercial aquaculture, it was addressing "unfinished business" of the Fisheries Settlement. We have little doubt that if the Aquaculture Settlement had been concluded before the MFA was enacted, our aquaculture duties and functions would have been included in the MFA rather than the Aquaculture Act.

¹ This has the same definition as "fisheries resources" under s 2 (1) of the Fisheries Act: "...any 1 or more stocks or species of fish, aquatic life or seaweed".

- 5 Separately, we include a diagram illustrating the value of aquaculture settlements that have been achieved to date and which was not included in our original report (see Appendix 1).
- 6 Customary non-commercial fishing is a matter that is covered by the Deed of Settlement. While Te Ohu Kaimoana is not responsible for promulgating or administering the regulations relating to customary food gathering – as provided for in the Deed, Te Ohu Kaimoana's purpose under the Maori Fisheries Act is not confined to the commercial aspects of the Deed. Te Ohu Kaimoana cannot achieve its purpose without addressing all aspects of the Deed: the management of customary non-commercial fishing cannot be separated from the management of commercial or recreational fishing. As Maori have an interest in all three, the settlement will not be enduring unless all its aspects are considered together.

What is the issue we refer to in terms of the scope of the Fisheries (Foreign Charter Vessels and other matters) amendment Bill? (see para 123 (c) of our report)

- 7 Before the enactment of the above bill, one of the main processes for assessing foreign charter vessels was the point at which they are required to be registered under the Fisheries Act. There was a set of provisions under the Act that meant registration for foreign vessels was not automatically granted – as is the case for New Zealand vessels. The Director-General had discretion as to whether such vessels should be registered, depending on whether he/she considered they met a number of criteria.
- 8 With the new regime to require foreign vessels to be flagged to New Zealand, foreign vessels would become New Zealand vessels. To ensure that there was still a means of scrutinising those vessels which are still foreign-owned, the government could have done two things. First – continue to make the registration process more discretionary for foreign owned New Zealand flagged vessels or second, treat all vessels in the same way. The Government proposed to take the second approach, by imposing a more discretionary regime on all vessels – including inshore vessels - imposing greater costs and uncertainty across the whole fleet. These wider discretionary provisions were rolled back in the final legislation so that they only apply to foreign-owned vessels. Submissions we made on the Bill explain the situation in more detail. They are attached for your information (see Appendix 2, paras 31 – 60).

Who are the Ihu to Mai partners? What is the nature of Te Ohu Kaimoana's involvement (refer para 131 of our report)?

- 9 Sealord has separate Ihu to Mai partnerships with different iwi or groups of iwi. They are:
 - a. Tainui;
 - b. Ngati Kahungunu;
 - c. Maniapoto/Ngati Raukawa;
 - d. Te Atiawa (Taranaki) including Ngati Kuia and Ngati Apa (Te Tau Ihu), Te Ati Haunui a Paparangi, Ngati Apa, Nga Ruahine, Te Atiawa ki Whakarongotai, Ngati Maru, Ngati Mutunga, Ngati Hauiti (from 2015).
 - e. Top of the South Iwi Collective being:
 - (i) Ngati Tama;
 - (ii) Ngati Koata; and
 - (iii) Te Atiawa (Te Tau Ihu).
- 10 In addition, the Anton's deal enhanced the Ihu to Mai relationship. Iwi who purchased the quota held by Te Ohu agreed as part of the purchase to enter the Ihu to Mai relationship with Sealord, either directly or through AFL. The iwi involved are Ngapuhi, Ngati Toa, Tuhoe, Te Arawa, Tuwharetoa, Maniapoto, Rangitane (North Island), Ngai Te Rangi and Ngati Porou.
- 11 Sealord proposes to establish a pataka system for their Ihu to Mai partners. Te Ohu Kaimoana is assisting Sealord to obtain the approvals from MPI that are necessary to operate the pataka system. We previously sought and gained such approval on behalf of iwi involved in the existing pataka systems in Taranaki.
- 12 Te Ohu Kaimoana has also been asked to assist iwi in the Te Atiawa (Taranaki) collective (see (d) above) to establish their administrative systems (e.g. for transferring ACE and managing payments) and we have agreed to provide guidance and assistance.

How did we follow up the auditors' recommendation re free information flows and guidance? How did we make our assessment? (refer paras 136 – 140 of our report)

- 13 Recommendation 7 of the 2012 Audit Report recommended that Te Ohu:

assess whether its communications processes with iwi are sufficient to ensure the free-flow of the information and guidance they may need (p12, 2012 Audit Reports).

- 14 In our response, we acknowledged that good communication is a critical part of establishing good working relationships with iwi. We confirmed that good communication takes many forms including face to face communication, development of good networks, opportunities

to come together to share information (e.g. through workshops and conferences), effective use of technology, responsiveness to iwi priorities, and good management of contact databases.

- 15 Te Ohu identified four proposed actions as part of our response to the auditors. These included:
- a. Continue to participate and strengthen the regional iwi fisheries forum process in partnership with iwi and MPI
 - b. Bring together a national iwi fisheries forum that is based on representation from iwi regional fisheries forums
 - c. Review our current databases to ensure they capture all necessary contacts and that they are up to date
 - d. Design and implement a survey of iwi to determine their level of satisfaction with our services.
- 16 Our thinking behind this set of actions is based on our experience of working with iwi. We take the view that communication with iwi can always be improved. As a consequence we have continued to communicate with iwi in a variety of ways, including responding to the above actions in the following ways.
- a. We have continued to provide advice to established iwi fisheries forums. However these are not established throughout the country and we also provide advice to groups of iwi who share interests in common fisheries (for example as defined by quota management areas). For example when the management of rocklobster is reviewed in particular quota management areas, we communicate and provide advice to the iwi whose interests fall within those areas.
 - b. We also advise and support particular iwi or groups of iwi on specific projects, such as the development of pataka systems referred to earlier, and the trialling of the IkaNet system.
 - c. As noted in our report, we act as a “helpdesk” for iwi who need information.
 - d. We provide information through iKarere – an email newsletter, identifying key issues and relevant staff who can be contacted for further information.
 - e. As far as is practically possible, we circulate draft submissions for comment.
 - f. We have taken the initiative to bring together a national forum. We considered that by working with such a forum we would be able to help strengthen communication regionally, amongst other things. The presentation provided to the inaugural meeting, which provides our rationale for its establishment is attached for your information (see Appendix 3). As we noted in our report, the future role and focus of the forum is a work in progress (page 29, para 140).
 - g. We are developing a new contact database.
- 17 Not long after the last audit reports were released, we endeavoured to access funds from MPI to contract the design of a survey, however we were unsuccessful. We then considered building a simple survey into our strategic planning process, which we originally planned to complete this year. However due to the review, we decided to postpone the development of a new strategic plan until after the review is complete, to ensure it is focussed on our role in assisting iwi achieve their fisheries aspirations as part of the next stage of the Settlement.

- 18 We will continue to improve our communications. However we also acknowledge that while we provide information to iwi in a number of ways, for many iwi, fisheries is not a top priority. In addition, communication is a “two way street”. If there are particular issues that iwi require information about, or improvements they consider we can make, then they are also free to identify their needs and proposals to us.

Can we provide additional explanation as to why we don't think a user pays approach would enable Te Ohu Kaimoana to carry out its functions (refer para 147 of our report)?

- 19 The income we receive from our income shares and return on investments funds our operations. Our beneficiaries are all Maori, through iwi. As we have noted in our report, most iwi do not have the resources to employ their own fisheries specialists. Any transfer of assets currently held by Te Ohu Kaimoana will not significantly change their underlying asset base to allow them to fund services on a user pays basis (page 30, para 145).
- 20 In paragraph 147 of our report to the reviewer, we stated that “the Deed of Settlement is clear that the Fisheries Settlement is for the benefit of all Maori. Our focus is on the total settlement, not each share. The “user pays” approach would not enable Te Ohu to carry out its function to protect and enhance the settlement” (page 30).
- 21 In their 2012 Audit Reports, the auditors noted they were assured that “the skill base of the staff has been adjusted in recent years such that it will be able to cope with the greater emphasis on technical knowledge and policy analysis”. They also commented that “to carry out these responsibilities within the funding limits Te Ohu will face, will provide a challenge to retain the current capacity through good succession planning” (page 11, para 26, 2012 Audit Reports).
- 22 The auditors' comments emphasise the need to retain and develop capacity. To attract, retain and train skilled staff would be extremely difficult to achieve without certainty and a firm base to work from. The current arrangements provide us with that base.
- 23 The advocacy work we do on major government and industry policies and other national issues benefits all iwi. In the process, we have developed a reputation for providing sound advice. It is difficult to see how a user pays approach would work in respect of these matters. For example how would Te Ohu require all iwi to contribute directly to the costs of running a major policy exercise that benefits them all?
- 24 While we acknowledge that some of our work is focussed on particular groupings of iwi, most of that work helps to establish models and precedents that can be applied in other places. The work we are doing with iwi in FMAs 2 and 8 to develop the surf clam fishery is a good example. While iwi are paying for consultants to provide advice on financial matters, Te Ohu Kaimoana is coordinating and supporting the process. The outcomes of the process are likely to have positive ramifications for iwi who have interests in other quota management areas for surf clams.

- 25 One way to consider the user pays approach would be to structure our funding along the lines of industry organisations – with a levy type approach. Consideration would need to be given as to whether such an approach should be voluntary or compulsory.
- 26 If a compulsory approach was to be taken then appropriate voting thresholds would need to be established to determine whether a compulsory levy would be acceptable to iwi. We note that in the case of industry organisations, thresholds usually involve a percentage of the quota owners as well as percentage of the value of quota shares before a compulsory levy can be struck. As far as voluntary membership is concerned, it should be noted that most iwi are not members of voluntary industry organisations and are therefore not paying their share of the costs faced by those organisations.
- 27 There is certainly no guarantee that all iwi would be in a position to fund Te Ohu Kaimoana's services, despite benefitting from them. Either way, the cost of operating a compulsory or voluntary levy system every year would be high.
- 28 We do not consider that winding up the assets held by Te Ohu Kaimoana would provide iwi with substantial additional funding or any incentive to meet the costs of services provided by Te Ohu Kaimoana. For example even though the Maori Authority Tax Credits made available to iwi in 2012 provided iwi with around \$30 million - more funding than they received in dividends in any one year - we did not observe any noticeable increase in participation by iwi in industry organisations. For most iwi it is not their top priority and it is hard to see how they would be any more likely to contribute to the costs of our services within an industry-type framework.
- 29 Another approach would be to direct charge iwi for services on a consultancy basis. User pays in this context means that a consultant must take a partial view that takes the interests of the client forward, rather than suit a general group. In this case there is potential that the interests of a few would be advanced at the expense of the many. For example, if a consultant were to work for a major fishing company, they would be unlikely to want a proposal that advances the interests of their competitors. This approach would be cumulatively divisive.

How has Te Ohu Kaimoana expressed its concerns to AFL about its relationships with iwi (noting this is probably more historical than the last year or two) (refer para 150 of our report)

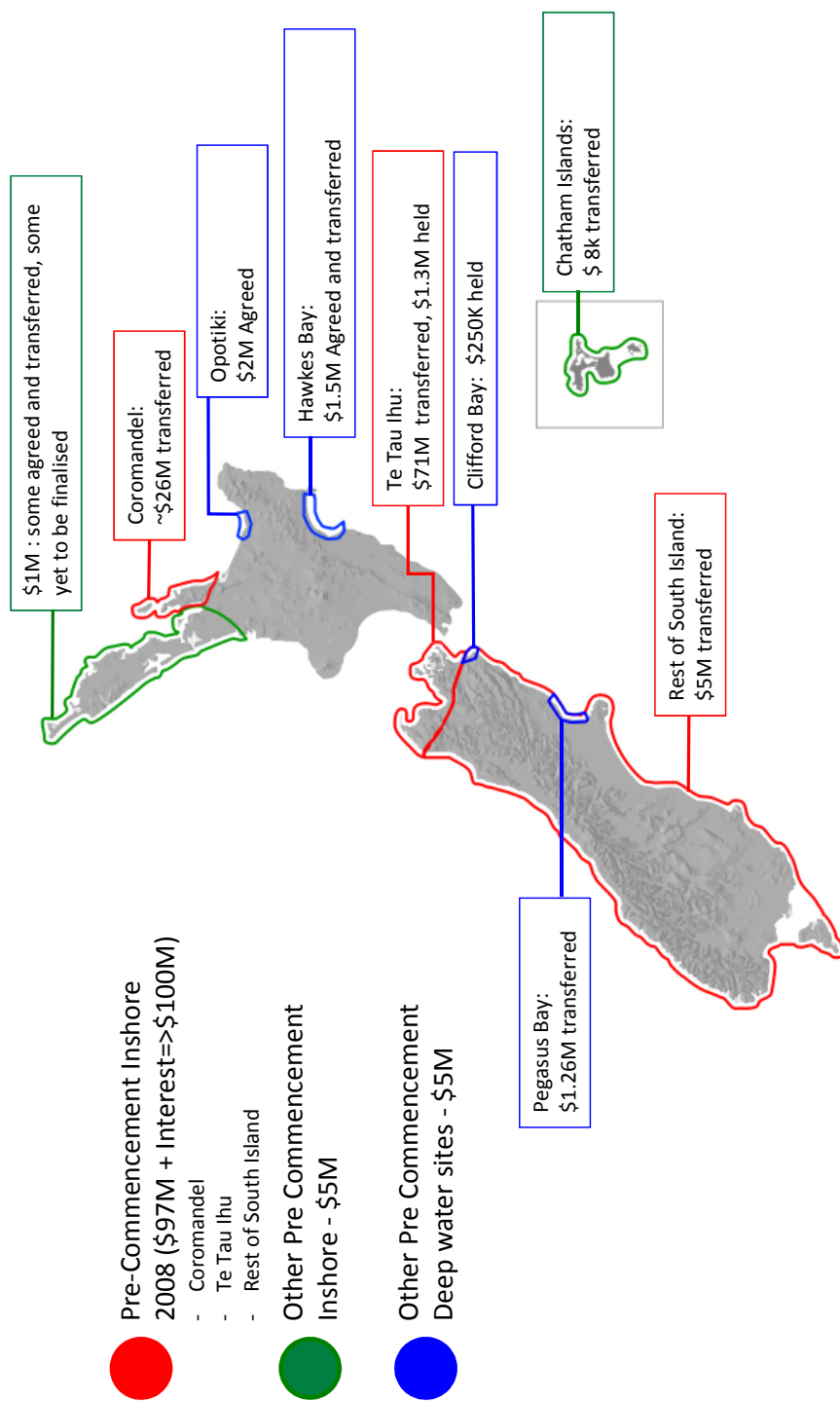
- 30 The Chairman and CEO of AFL attend every board meeting. They discuss various topics with the board, including relationships with iwi. These discussions encouraged AFL to enter into business relationships with iwi that were positive for AFL and iwi over the medium to long-term without compromising AFL's company responsibilities. There are other meetings when specific issues arise at Chairman or CEO level – including as part of Kura board meetings.

Appendices

APPENDIX 7

Independent Review of Maori Commercial Fisheries Structures under the Maori Fisheries Act 2004

Appendix 1: Aquaculture assets transferred to regional groupings of iwi from the Crown



Appendix 2



28 March 2013

Primary Production Select Committee
PARLIAMENT BUILDINGS

Tena koutou katoa

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill

Introduction

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

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

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

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

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Trustee for the Māori Fisheries Trust
Protecting Māori fisheries assets for future generations

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- 3 Please note that in finalizing our submission we were made aware that additional briefing papers had just been publicly released by the Ministry for Primary Industries. Should we find after reviewing these papers that there is a need to amend what we have said in our submission, we will provide the Committee with a revised submission as soon as possible.
- 4 Te Ohu Kaimoana wishes to appear before the select committee. The key contact person is Kirsty Woods, Manager, Fisheries Team, Te Ohu Kaimoana Trustee Ltd (contact details on page 1).

Summary

- 5 Te Ohu Kaimoana considers that the set of principles developed through the Iwi Leaders Group provides a sound basis for assessing the Government's proposals:
 - **zero tolerance for exploitation or rule breaking** – mistreatment of workers, unsustainable fishing practices and activities that damage the environment are all contrary to fundamental iwi values and are unacceptable;
 - **protecting rights of due process and natural justice** – no party accused of wrong-doing should be tried in the media or put out of business through administrative decisions made without independent scrutiny;
 - **promoting best practice in employment** – all workers should be respected, valued and kept safe;
 - **protecting the value of fisheries settlement assets** – the Crown should not adopt a policy that would negatively affect settlement assets unless no effective alternative exists;
 - **ensuring cost-effective implementation** – as a matter of good governance, all measures should be as cost-effective as possible, with costs targeted and proportionate to the benefits of improved compliance;
 - **encouraging investment and workforce development** – if the seafood industry is to play its part in the government's objective of doubling the value of primary sector exports by 2025, it requires policy settings that create certainty to encourage investment in people, infrastructure and research.
- 6 We appreciate that the task of developing a system that lives up to these principles is challenging but do not consider the Bill (along with associated measures such as the draft risk management framework that is open for submissions) will provide a regime that meets that challenge.
- 7 Broadly speaking, the Bill does two things:
 - excludes any fishing vessels not flagged to New Zealand from May 2016
 - expands the discretion and powers of the chief executive in relation to vessel registration and applies them to the whole New Zealand fishing fleet.
- 8 Te Ohu Kai Moana is concerned these options are not the most effective or "least cost" options for achieving the government's objectives. The proposed requirement that all New Zealand fishing vessels be flagged to New Zealand from May 2016 will have adverse effects on the value of quota and ACE currently fished by foreign charter vessels for reasons we outline in our submission. This will have flow on effects on iwi. We recommend an alternative approach be considered that would deem foreign flagged vessels to be New Zealand vessels and subject to full

New Zealand law. The deeming process could be subject to vessels meeting appropriate standards.

- 9 Bringing foreign flagged vessels under full New Zealand law is one matter. Changing that law as it relates to vessel registration and applying it to the entire fishing fleet is another. It is our assessment that subject to application of suitable standards when foreign vessels apply to be “deemed” as New Zealand ships, no further changes to the registration system that applies to all fishing vessels can be justified at this time. We recommend that the changes to the registration process, along with the additional powers provided to the chief executive, be set aside.
- 10 If there is a concern that broader changes are required to the current regime for managing risks and compliance across the fleet, then a suitable policy development process should be initiated in consultation with Te Ohu and iwi technical advisers, Seafood New Zealand and fisheries Sector Representative Entities. Unlike the changes proposed in the Bill, the outcome of that process should complement our existing approach to risk management and enforcement, be fair and transparent, and consistent with the principles of natural justice.
- 11 In the following sections we outline in more detail our concerns with the Bill and alternative approaches that go some way towards addressing those concerns while providing for the necessary changes in relation to the use of foreign charter vessels.

The requirement that all fishing vessels be flagged to New Zealand

Summary of the Bill’s provisions

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

The problem the Bill aims to address

- 14 The Government’s decision to require all fishing vessels to be New Zealand flagged aims to clarify the jurisdictional problems of asserting authority over employment, health and safety in our EEZ. However we do not consider it is necessary to require vessels to be flagged to New Zealand to achieve this.
- 15 We have expressed the view in other submissions that government agencies could have done more to act to deal with problems within the current system. It is noteworthy that the Review Panel on Foreign Charter Vessels commented that “despite jurisdictional and practical problems, it seems ... that New Zealand’s government agencies can do more to ensure compliance with New Zealand rules and standards”. Agencies have been “acting in isolation, with little in the way of information sharing or co-ordinated decision making on FCV issues” (para 452). In addition, the Panel concluded that the mistreatment of crew did not appear to be as wide-spread as reported.
- 16 The government approved the first 6 recommendations of the Review Panel and in doing so established an inter-agency forum to ensure coordination and sharing of information. Agencies have been much more active in addressing issues of concern and Immigration New Zealand, in

particular, has adopted both more stringent employment standards and more rigorous audit processes. The regime requires explicit decisions each year to allow vessels to operate in New Zealand and conditions can and are being attached to achieve the required standards.

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

Consequences for iwi

- 18 Information on the structure of the Fisheries Settlement, and the interests that iwi hold in fisheries harvested by foreign charter vessels is contained in the submission made by Te Ohu to the Review Panel (see Appendix 1). The Fisheries Settlement is a full and final settlement of Maori claims to fisheries. In order to ensure that the Settlement will always be available to Maori, Parliament included provisions in the Maori Fisheries Act to prevent the sale of settlement quota outside the entities involved in the allocation of the commercial settlement assets – iwi (through MIOs and AHCs) and the Te Ohu Kaimoana group (Te Ohu and AFL). This group as a whole **must** retain ownership of settlement quota - including the low-value, high-volume fish stocks that are harvested primarily by foreign charter vessels. Thus if stocks presently fished by foreign charter vessels are unable to be fished because the capacity is not available, iwi will have far less flexibility than other quota holders to dispose of the quota, or even to exit some fisheries and devote their investment to others.
- 19 Returns from quota and ACE are the primary source of income for many iwi organizations and form the basis for the services they provide to their members, including education grants, social and cultural facilities, environmental advocacy and communication with iwi members. Their ability to provide these services is likely to be affected to different degrees by the proposed changes.
- 20 While it is clear that iwi face a number of constraints that mean they are likely to be more affected by the changes to the regime than other quota holders, the impact on iwi quota owners of vessels not being able to reflag is difficult to predict in precise terms. However it is possible to provide a sense of the potential range of those impacts.
- 21 Modeling of average ACE prices for all stocks fished by foreign charters vessels (either in part or as a whole) suggests that the worse-case scenario (which would mean foreign charter vessels cannot work under the new regime and thus the stocks they currently fish are no longer fished) could reduce the value of settlement quota by up to \$120 million, and more importantly reduce annual income by about \$10 million. This comes from both the loss of income for the low value stocks that would not be caught by the NZ fleet as well as the expected reduction in ACE price for the high value species like hoki and orange roughy because there will be fewer boats and therefore less competition for ACE as well as increased costs from the new regime and overheads spread over a far lesser volume of fish caught. This does not factor in losses that might result from additional costs and uncertainty applied to New Zealand owned vessels, including those in inshore fisheries.

- 22 Even in the best situation where flagging to New Zealand is possible for most of the fleet or substitutes are available there will be a reduction in ACE prices due to the additional costs that will apply – it is hard to estimate this but it could be expected that there will be at least a 15% reduction across the board resulting in a combined annual loss of income to all iwi of approximately \$2.4M and combined overall loss of capital value in the settlement of \$27M.
- 23 Since the announcement of the government’s changes, vessels from different jurisdictions appear to be having mixed success in transitioning through to New Zealand flagging with barriers relating to the requirements in their home jurisdictions, or related trade advantages. For instance for regular short term charters, the prospect of having to deregister from their current jurisdiction and flag to New Zealand – and then reverse the process on leaving New Zealand waters – is impractical and costly. The regulatory impact statement that accompanies this Bill shows that Korean vessels (with a catch value of around \$158 million) could be negatively affected given financial arrangements they have with their own banks. Japanese vessels (catch value around \$27 million) may not be permitted to be reflagged to another jurisdiction (see Appendix 3 of the regulatory impact statement). In addition we note as a result of these impacts the statement notes that there could be an increase in tariff costs of \$850,000 to \$4.8 million.
- 24 The regulatory impact statement notes that while there are few vessels available for charter, there are likely to be a number available for purchase. However the ability of quota holders (including iwi) to purchase the vessels and carry out profitable businesses has not been tested.
- 25 There remain unanswered questions about the full implications of requiring all fishing vessels to be flagged to New Zealand. Alternative options should be explored.

Solutions

- 26 Te Ohu Kaimoana strongly supports the need for employees to be treated fairly and for working conditions to be safe. In addition, the Fisheries Settlement was agreed to by Maori on the basis that New Zealand’s fisheries management system aims to ensure sustainability, so we fully support measures to achieve that objective. We also accept that there is a cost to ensuring adequate measures are in place, not only to achieve sustainability, but to demonstrate it.
- 27 At the same time, the Crown, given its obligations under the Deed of Settlement (referred to in section 32 of the Maori Fisheries Act) should not adopt a policy to address these matters in such a way that settlement assets are unduly adversely affected - unless no effective “less cost” alternative exists.
- 28 While reflagging gives New Zealand clear jurisdiction to deal not only with fisheries but also employment, vessel safety and criminal activity, it is not clear that this is the only option that would provide the necessary jurisdiction without removing the benefits that can be generated by vessels that retain the flag of their own country. We do not consider that this issue has been well enough canvassed in the advice that has gone to Ministers.
- 29 We recommend that the Select Committee urge the Government to give serious consideration to an alternative and more flexible approach. This would involve a legislative provision that deems all vessels on the fishing vessel register to be New Zealand vessels for the purposes of all relevant New Zealand legislation and regulations. Deeming could be subject to the vessels and operators satisfying appropriate conditions. This would achieve the government’s objectives in a manner equivalent to re-flagging without requiring vessels to be deregistered from their current state

flags. The government would still be able to exclude vessels that do not meet appropriate standards but would still enable the good operators to bring benefits to New Zealand.

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

The registration process

Summary of the Bill's provisions

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

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

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

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

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

- 33 The chief executive is given discretion under section 106 A (2) and (3) to take into account information from a variety of sources including government agencies and “any person” (subsections 2 and 3) in considering whether the tests in the previous section have been triggered. However it is unclear how this information will be dealt with and whether those subject to a proposed suspension will have access to it. We note that it is proposed in the risk management framework that has been released by MPI for consultation that access to information will include only that information an operator would be entitled to under the Official Information Act. This means there is no guarantee that operators will fully understand the grounds upon which they could be suspended.
- 34 Sections 106 A (4) – (7) set out the process the chief executive must follow if the tests set out above are triggered. If he or she considers that there is a likelihood that an operator poses a risk, or that conditions of registration have been breached, they must carry out a notification process setting identifying actions that must be taken by an operator, and grounds for considering that the actions must be taken and the period within which they must be undertaken or cease (subsection 4). Subsection 5 sets out the next steps to be taken should the actions directed earlier

have not been carried out. This includes a notice period where the chief executive intends to suspend registration and a reasonable opportunity for the operator to make submissions to the chief executive, which the chief executive must “consider”. The chief executive may impose conditions and requirements in respect of the implementation of a suspension (subsection 6) and if they suspend a vessel’s registration, follow a notification process setting out the grounds, timeframe and any conditions.

- 35 New section 107 (6) broadens the grounds on which the chief executive may cancel a vessel’s registration, including not complying with requirements imposed as part of the suspension of registration, and if the vessel’s owner, operator, foreign charter party or notified user is convicted in New Zealand or another country of an offence relating to fishing or transportation in the fisheries jurisdiction of New Zealand or that other country.
- 36 The Bill sets out further changes to the process for granting consent to the registration of all New Zealand fishing vessels that will take effect from May 2016. The process makes it clear that the chief executive may grant consent to registration of a vessel or vessels operated by any person, and that this consent can be subject to any conditions that the chief executive thinks fit to impose (and such conditions may include, but are not limited to, conditions that relate to fisheries management, employment, or vessel safety (new section 103A (1) (a and b)). Matters that the chief executive must take into account, listed in new section 103A(2) include:
 - any risk associated with fisheries management, employment, or vessel safety that the chief executive considers would be likely to result if the vessel were to be registered (subsection (a))
 - the previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel’s owner, operator, foreign charter party, notified user, master or crew (subsection (b))
 - any other matters that the chief executive considers relevant (subsection (c)).
- 37 Part two of the Bill provides for observers to be given the power to collect information on matters relating to employment and vessel safety. We are aware that operators have some justified concerns that the role of observers – particularly in respect of employment and safety – could undermine the authority of skippers and therefore the safety of vessels at sea.

The problem the Bill aims to address

- 38 The problem that was intended to be addressed following the review was the performance of foreign charter vessels and the risks they pose to New Zealand’s reputation amongst other things. These risks arose from allegations about poor performance and abuse of foreign crew and a desire on the part of the government to ensure it can take action to investigate and if appropriate, enforce New Zealand standards onboard the vessels concerned. The wording in the Bill however suggests that the design of the process is now intended to move to the fisheries, employment and safety risks that may be posed by all fishing operations – despite the fact that there has been no open process to assess the need for this to apply to all vessels.
- 39 Te Ohu Kaimoana fully accepts that the risks that are generally inherent in fishing operations should be well managed. However there are already numerous powers available to relevant agencies to deal with fisheries, employment and safety problems. For instance it has been suggested that the proposed scope of the suspension and cancellation powers is driven by a desire that government have tools that enable it to act quickly in response to information suggesting

non-compliance of some type might have occurred. It is true that the processes involved in proving offending or non-compliance, and allowing the Courts to impose appropriate sanctions, can take time, but that is precisely because they provide protections of the rights of those accused. In any event, each of the agencies involved already have powers that allow them to act quickly and decisively:

- **Fisheries:** Section 204 of the Fisheries Act 1996 empowers any Fisheries Officer, if he or she believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any permit, registration, etc issued under the Act, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port. Having given such a directive, the Officer may also give to the master or any person on board the vessel any reasonable directions in respect of any activity, etc (e.g. to cease fishing) while the vessel is proceeding to port.
- **Safety:** Section 55 of the Maritime Transport Act 1994 empowers the Director of Maritime New Zealand (MNZ) to detain any ship or prohibit or impose conditions on the use or operation of any ship at any time, if the Director believes “on clear grounds” that operation or use of that ship endangers or is likely to endanger any person or property, or is hazardous to the health or safety of any person. It is worth noting that the Act expressly provides for immediate appeal to the District Court of any such detention, prohibition or imposition (s.55(7)) and, moreover, that Maritime New Zealand is liable to pay to the owner of a ship compensation for any loss resulting from the Director unduly detaining or delaying that ship and, where action under s.55 is taken “on the information of a complainant and the information is subsequently found to be frivolous or vexatious”, that complainant is liable to Maritime New Zealand for all costs Maritime New Zealand incurs or is liable.
- **Immigration/employment:** Para WJ3.1 of Immigration New Zealand’s Operational Manual provides that “where an audit identifies significant non-compliance with conditions of an Approval in Principle (AIP), that AIP will be immediately suspended. Para WJ5.40.1.b makes it clear that audits or investigations can occur as a matter of urgency, presumably in response to concerns being raised by or on behalf of crew.

Consequences for industry and iwi

- 40 The changes in the Bill are not well focused, contain too much discretion, push the boundaries of the principle of natural justice and create uncertainty for everyone. We consider that in light of the existing powers available to relevant agencies, these changes are largely unnecessary.
- 41 The registration process provides the “hook” used to control the use of vessels based on an assessment of the risk they pose not only to fisheries but also to those matters controlled by other government agencies responsible for employment and vessel safety. Because all vessels will be flagged to New Zealand from May 2016, these provisions will apply comprehensively to registration decisions that apply to the entire fishing fleet. Moreover the scope and application of these provisions goes well beyond cost effective and transparent regulation and sets out a regime that provides the chief executive with discretion to decline, suspend or (ultimately) cancel a vessel’s registration without evidence of wrong doing and based merely on suspicion that some wrongdoing might occur.
- 42 Under the current regime, registration for New Zealand vessels is a straightforward process that is virtually automatic, provided all relevant information relating to vessels and crew is provided. Applications from all operators are made through FishServe, with those from operators of foreign

owned vessels then being referred to MPI. FishServe has been delegated authority to grant all applications in respect of New Zealand-owned vessels. This is consistent with the distinction made in the registration provisions between New Zealand vessels and foreign owned vessels under the current Act.

- 43 Now that the registration provisions in the Bill will be the same for all vessels, it is less clear how – or even whether – there will continue to be a more straight forward application process for most vessels that pose a low risk – with higher risk vessels being subject to greater scrutiny. This will create high levels of uncertainty. Without clearer direction in the law on the matters that will be of concern in relation to different classes of vessels or the fisheries they work within, and a clear “filtering” mechanism that requires the chief executive to focus on the real problems, this new process has the potential to become grounded in bureaucracy. MPI has released a draft risk assessment framework for consultation however this is still work in progress.
- 44 There is no provision for any independent scrutiny of these grant/suspend/cancellation decisions including scrutiny of information provided to the chief executive that may or may not constitute evidence of any wrongdoing/breach of conditions. This, in combination with the broad discretions provided to the chief executive is in conflict with principles of natural justice, creating uncertainty for all vessel owners and operators. We consider that this sends a message that investment in fishing is too risky.
- 45 The approach runs into conflict with sections 25 and 27 of the Bill of Rights Act 1990, which uphold principles of natural justice, the right to a fair and public hearing by an impartial court and the right to be presumed innocent until proven guilty. It is also inconsistent with provisions in other legislation such as the Resource Management Act that deal with non-compliance through abatement notices and changes to conditions of consent. In both cases consent holders have a right of appeal to an independent body.
- 46 While the reflagging provisions directly affect the foreign charter fleet, the changes to the registration process affect all commercial fishing vessels. This will have a flow-on effects on the interests iwi hold in every commercial stock.
- 47 The Crown has an obligation to further the agreements contained in the Fisheries Deed of Settlement. Alternative options for managing risks, breaches of conditions and offences need to be explored before we can conclude that the approach set out in the Bill is the best option. The proposals beg the following questions:
 - what are the problems and risks that need to be managed?
 - where across the fishing fleet are these likely to be found and why?
 - how far can these problems be dealt with under the current fisheries legislation?
 - why does vessel registration – particularly post May 2016 – need to be concerned with employment and vessel safety if all vessels are subject to full New Zealand law (whether through reflagging or an alternative deeming option)?
 - why can’t agencies responsible for those matters invoke their own standards and sanction relevant operators accordingly?

The basis of an alternative approach

- 48 As already noted, we accept that risks inherent in fishing operations need to be managed and breaches of conditions and offences must be dealt with effectively. However the system needs to ensure that bureaucratic effort is well targeted, cost effective and fair. In addition it should not

take away from, or duplicate the system of compliance and penalties that already exists, but should clearly support that system. Operators need to have confidence that if they perform to all required standards, they can carry on with their business with little interference. On the other hand operators also need to understand that poor performance and non-compliance will ultimately lead to sanctions if offences are proven through due process. The triggers for sanctions against poor performance or non-compliance need to be clear.

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

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

Identifying risks to be managed

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

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

52 We are aware that other submissions made by the industry make the case for best practice approaches to risk management that apply in a wide range of Crown and local authority activities, based on joint government/stakeholder identification of risks and setting of performance standards, devolution of accountability to operators and the need for an audit and compliance role. We agree that this approach is appropriate and should be followed before deciding that changes to the vessel registration process are required to manage particular risks.

Employment and safety

- 53 We do not consider it appropriate for the chief executive to take into account matters relating to employment and vessel safety in decisions on vessel registration. We have already referred to legislative provisions that give relevant agencies the power to act promptly when required.
- 54 We have also referred to concerns expressed by operators that with their new powers, observers – particularly in respect of employment and safety – could undermine the authority of skippers and therefore the safety of vessels at sea. At most, we consider that if employment matters are to be considered, they should be focused on vessels with foreign crew only – as this is the only area of risk considered by the Review Panel and – as far as we are aware – by Cabinet. Even then, with demonstration of good performance over time – the process faced by such vessels should become routine and mechanical.

Incentives and sanctions

- 55 In our view, the compliance approach currently used by MPI provides a good balance between the incentives needed to encourage compliance and the need to penalise operators for on-going or wilful breaches of agreed conditions and standards. This involves four steps: “Volunteer – Assist – Direct – Enforce”. This approach provides an opportunity for operators and crew to rectify any problems voluntarily and for MPI to test the likelihood that an offence is a real prospect – and provide assistance to avert that outcome. However ultimately, where the particular matters are not addressed, the operators can be formally required to take action, with prosecution being the ultimate sanction.
- 56 Any use of additional powers such as suspension or cancellation of registration should be designed to complement this approach, and be based on clear evidence of a breach of the conditions of registration and not an opinion that something might happen. The ability for the chief executive to sanction vessel operators on the basis of an assessment of potential risk has no place in a risk management or compliance regime, and it interferes with the balance between incentives and sanctions referred to above.

Transparency and natural justice

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

Conclusions

- 58 Te Ohu Kaimoana supports the overall objectives of the government in developing a response to the issues raised by the Review Panel on foreign charter vessels but we consider that there are alternative ways of achieving these objectives. We appreciate that the issues the government is endeavouring to address are complex and that New Zealand's reputation is something we should all be working to protect.
- 59 It is our assessment that subject to application of suitable standards when foreign vessels apply to be "deemed" as New Zealand ships, no further changes to the registration system that applies to all fishing vessels can be justified at this time. Once these vessels are classed as New Zealand vessels – then they will be subject to full New Zealand law. We see no reason why the law that applies now to all New Zealand vessels needs to be changed in the way that is proposed by this Bill. We recommend that the changes to the registration process, along with the additional powers provided to the chief executive, be set aside.
- 60 If there is a concern that broader changes are required to the current regime for managing risks and compliance across the fleet, then a suitable policy development process should be initiated in consultation with Te Ohu and iwi technical advisers, Seafood New Zealand and fisheries Sector Representative Entities.

Appendix 3

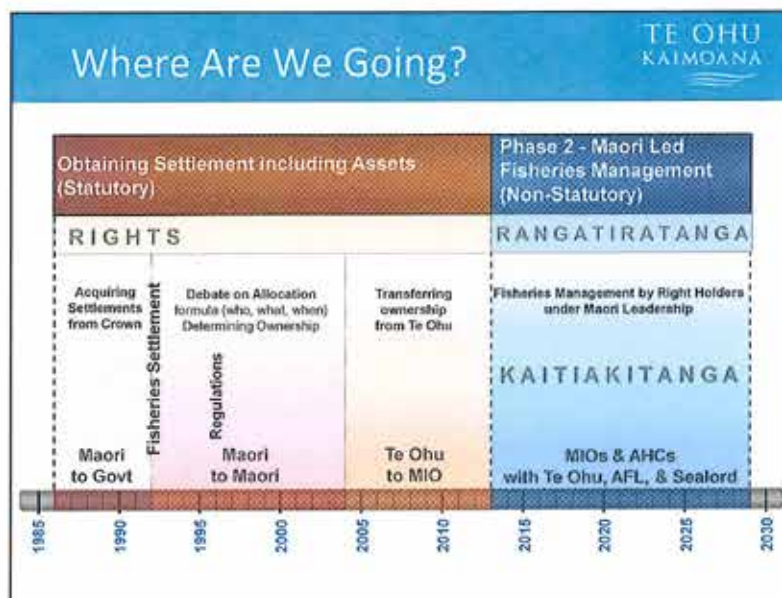
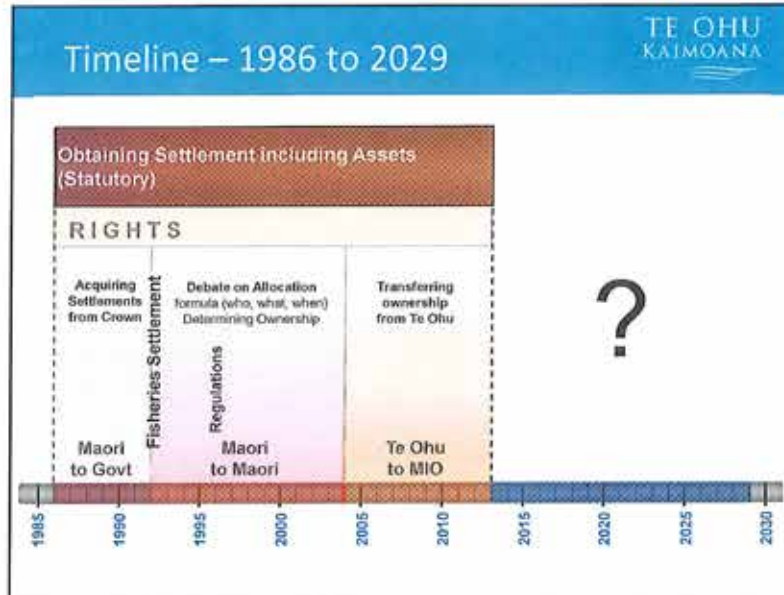
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Working Effectively at a National Level: Proposal to establish a Technical Fisheries Management Forum (TFMF)

Agenda

TE OHU
KAIMOANA

- Welcome
 - Protecting and enhancing the Settlement: what are the challenges and opportunities?
 - Technical Fisheries Management Forum – developing the concept
-
- Current issues:
 - Kina and UBA
 - National Rock Lobster Management Group and broader participation with industry
 - Eel fisheries



Context: What's Happening?

TE OHU
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- Allocation substantively completed
- Difficult economic conditions
- Major policy issues:
 - Foreign Charter Vessels
 - Regional Marine Planning – potential to set precedents
 - Shared Fisheries (e.g. snapper 1)
 - Marine Reserves and Marine Protected Areas – new policy being developed
- Fisheries Management – decisions that affect all iwi (e.g. kina and UBA)

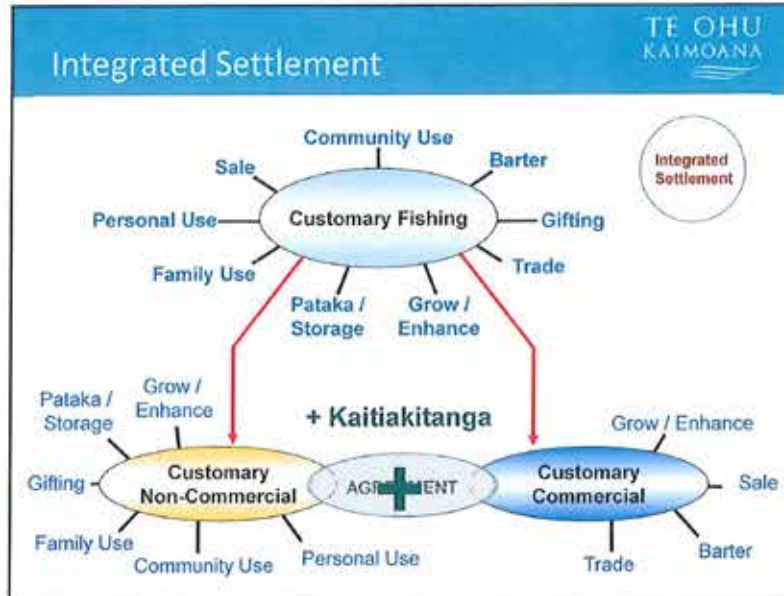
Context: Organising Ourselves

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- Iwi have formed collective Fisheries Forums in some regions
- New industry structures: opportunities for iwi to play a greater role
- Te Ohu has a role in advancing Maori interests across the board

BUT

- Generally, communication between iwi, iwi and Te Ohu, MPI, industry and other stakeholders is ineffective and inefficient
- There are few trained and/or dedicated "fisheries managers" across iwi organisations



Purpose of the TFMF

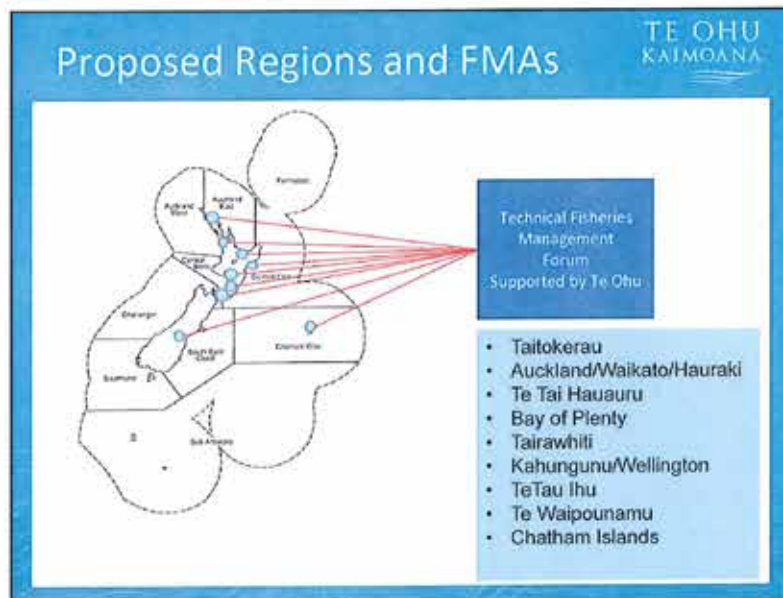
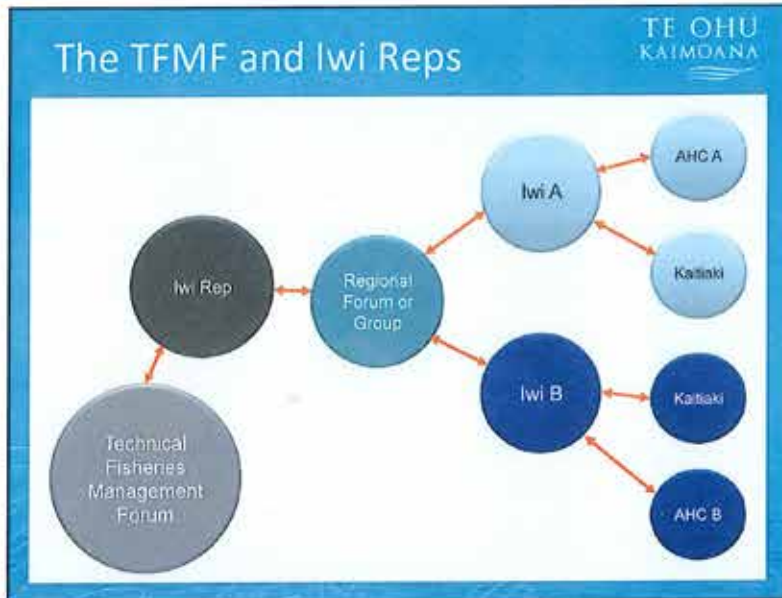
TE OHU
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Build an effective process for Te Ohu and iwi to work together to analyse and respond to national fisheries management and policy issues on a collective basis, and advance agreed solutions where appropriate

The Concept

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- Focus on matters of national fisheries management that are of significance to iwi/ahc/Kaitiaki
- Representatives on TFMF based on regions:
 - using iwi fisheries forums where they are supported by MIOs and AHCs
 - agreed representative from regions where there are no forums
- Clear and effective communication is key
 - TFMF to regional forums/group reps
 - Regional forum/group reps to their iwi/ahc/kaitiaki
 - Feedback back through that chain
- TFMF resourced and supported by Te Ohu Kaimoana



Iwi Rep: Skills and Knowledge

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Across the Forum and desirably with each person:

- Traditional knowledge of fisheries management
- Knowledge and understanding of seafood industry
- Commercial experience in the industry
- Technical understanding of fisheries
- Leadership skills
- Ability to analyse and discern key issues
- Ability to convey information between regional and national forums

Aligning Systems and Processes

TE OHU
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- Technical Fisheries Management Forum supports iwi (MIO, AHCs & kaitiaki) through regional forums or groups
- Key contact points identified
- Develop information sharing protocols with regional forums, and where appropriate individual iwi

Ground Rules

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- Commit to participation
- Commit to follow-up on agreements and tasks
- Commit to engage constructively
- Show a willingness to negotiate and work to build consensus in order to achieve *forum* objectives
- Show respect for the views of others
- Work in-progress is kept confidential
 - unless agreement

"Us" and "Them"

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Iwi interests

- Whanau
- Hapu
- Marae
- Kaitiaki
- Mandated Iwi Organisations
- Asset Holding Companies
- Iwi resource management units
- Regional iwi forums
- Iwi chairs forum
- Te Ohu Kaimoana Group

External parties

- MPI
- MFAT
- DOC
- Regional Councils
- Environmental groups
- Regional and national multi stakeholder groups (CSOs & SREs)
- Recreational sector groups

Te Ohu Kaimoana Support for TFMF

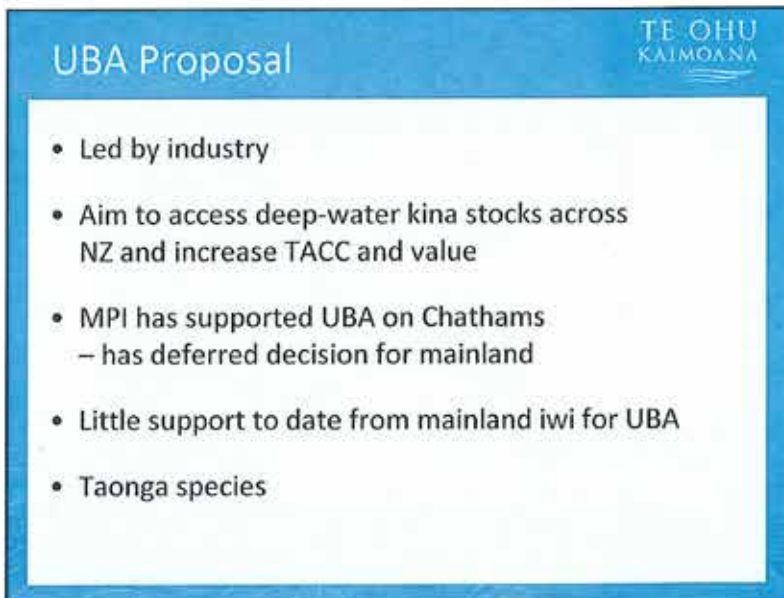
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- Travel costs covered
- Analysis and administrative support provided by Te Ohu Kaimoana
- Te Ohu Kaimoana is able to make available staff to support fisheries management initiatives

Questions

TE OHU
KAIMOANA

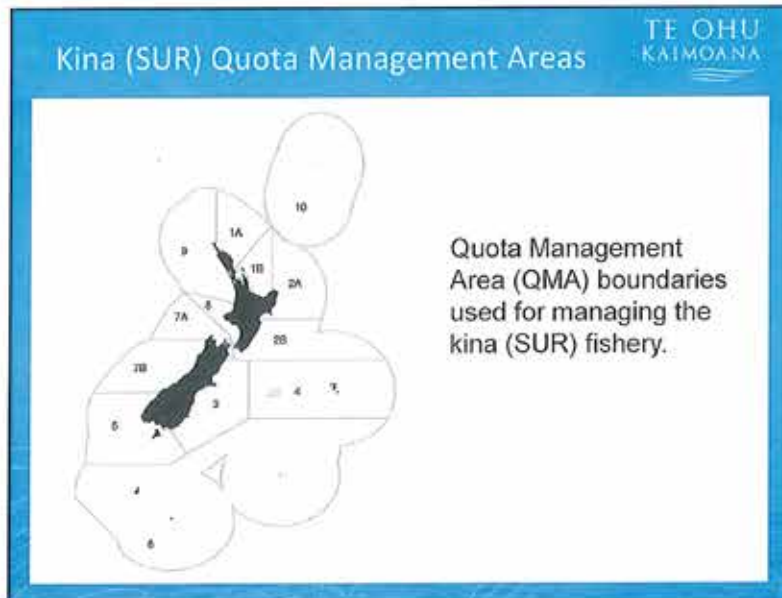
- Do you agree we need to working together across the country? (yes)
- Is this forum an effective way to take this work forward? (yes) Are there other ways?
- Are the regions right or how do we get them right?
- If there is no forum in a region how do we best encourage/ set one up?
- Do you agree with the scope of interests?
- Other.....??



UBA Proposal

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- Led by industry
- Aim to access deep-water kina stocks across NZ and increase TACC and value
- MPI has supported UBA on Chathams – has deferred decision for mainland
- Little support to date from mainland iwi for UBA
- Taonga species



Industry aim to Access Deep Water Kina Across NZ

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- Only methods permitted for commercially harvesting kina are free diving and dredging
- UBA will allow divers to access all kina stocks
- Some industry players want processing at sea, remote areas likely to be fished

Main Driver - Increased Value

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- SUR2 quota owners
- Government's 2030 strategy
- MPI has added SCC and HOR as part of a broader dive fishery
- Paua Industry do not support UBA on the mainland

Te Ohu Submissions

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- Support in principle to using UBA
- Recommend:
 - Expanding the range of commercial stocks that can be taken using UBA
 - Developing management plans for the fishery
 - Excluding important mahinga kai
 - Exclude commercial paua divers from being able to dive commercially using UBA
 - MPI should ultimately rerun the process

Decisions to Date

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Chathams quota owners putting in place a strategy to manage the risks associated with UBA

- Fine scale management
- Electronic monitoring and data collection – real time
- Industry CSO, mainly iwi/imi managing the fishery
- Other stocks will likely follow

Opportunities

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- Identify important mahinga kai areas and exempt them from being able to be commercially fished using UBA
- Implement management mechanisms to manage sustainability of overall fishery
- How can iwi actively participate in the kina and UBA fisheries?

Statistics					
TE OHU KAIMOANA					
QMA	No quota owners	Maori quota owners	% Maori ownership	TACC (t)	Caught %
SUR 1A	8	6	25	40	95
SUR 1B	16	11	20	140	96
SUR 2A	15	4	34	80	7
SUR 2B	9	3	20	30	0
SUR 3	13	5	27	21	20
SUR 4	24	10	47	225	59
SUR 5	21	3	62	455	88
SUR 7A	21	10	31	135	98
SUR 7B	3	1	20	10	60
SUR 9				10	82
SUR 10	2	1	20	0	0
TOTALS	132	54		1146t	75

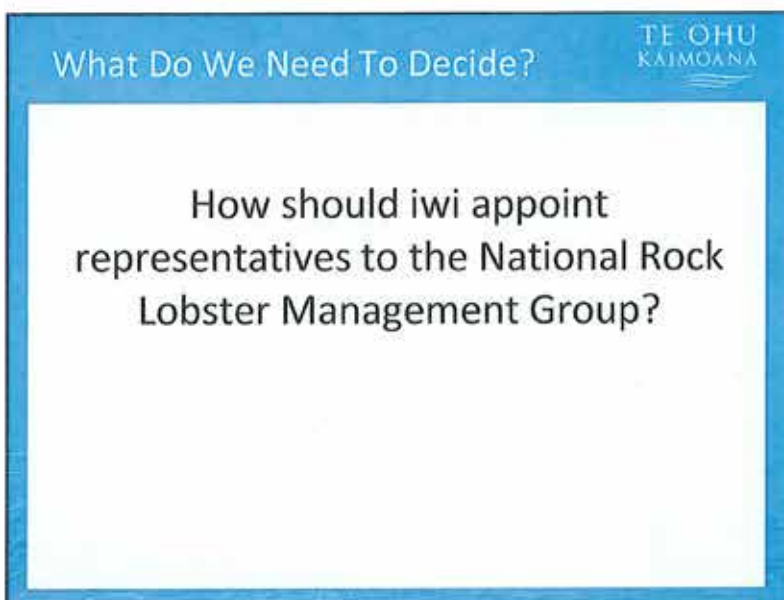
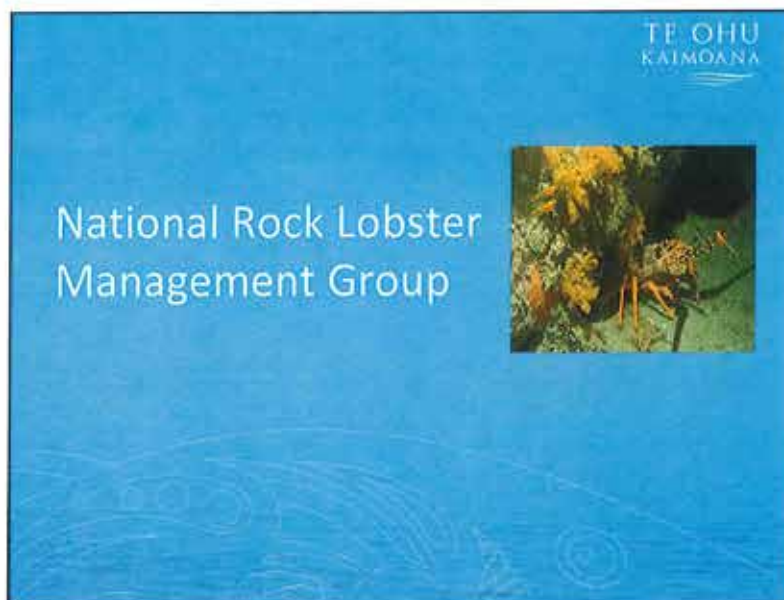
Questions

TE OHU
KAIMOANA

How does the group wish to deal with iwi consultation on the introduction of UBA?

If the Minister approves UBA on mainland how can important mahinga kai areas be protected?

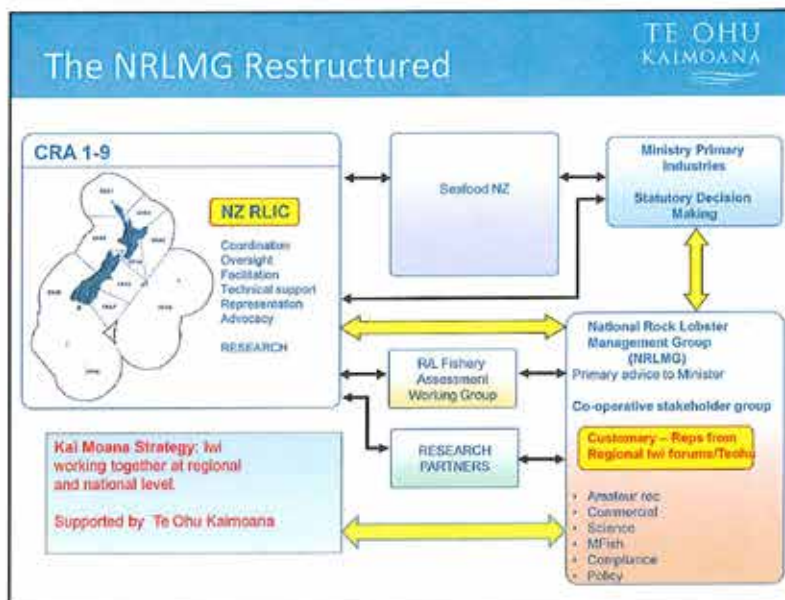
If iwi support UBA, how can we ensure they receive benefits from this decision?



National Rock Lobster Management Group

TE OHU KAIMOANA

- Primary advice to the Minister
- Current membership
- Recent Ministers review
 - Iwi appoint 2 representatives to fill iwi seat
 - MFish will provide resources
 - Collaborative mode of development
 - Captures anything to do with rock lobster
 - Integrated iwi representation – commercial/non-commercial

How Should This Be Approached?

TE OHU
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- Should there be a North and South island representative or just 2 representatives?
- What skills should they have?
- Should Te Ohu seek nominations from iwi and the technical fisheries management group decide representation?
- What on-going role should Te Ohu play?

FINZ

TE OHU
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- Inshore finfish are critical to your interests – it is what your beneficiaries fish for and eat!! – irrespective of the sector
- It is the next FCV type unless all invest – if not it will be left to one third (the Settlement) to do heavy lifting
- But we will be up to our necks in 'alligators'
 - MPAs, recreational fishing only areas, low TACCs, environmental footprint, marine mammals, birds, sharks, enforced bureaucratic electronic monitoring, constrained catches and gear etc etc

FINZ

TE OHU
KAIMOANA

- How avoid that? Set up national body that all can be part of so all invest
- How make sure it has right focus? Create structure that allows iwi to be on the board
- What's happened – less than a quarter of iwi have joined and to date there has been no clubbing to get rep on board
- The investment needed from each iwi is very small compared with the amount at stake and what has been returned through credits

Eels

TE OHU
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Background

- PCE report on the longfin eel
- Conclusion that longfin eel are on a "slow path to extinction"
- Recommended:
 - Moratorium on commercial harvest
 - Independent review of scientific data

Independent Review on Longfin Eel

TE OHU
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- Terms of Reference released
- Independent experts
- Process will run in November
- Wai Maori is working to collect data that iwi are willing to share and present to the panel.

Working Effectively at a National Level:
Proposal to establish a Technical
Fisheries Management Forum (TFMF)

TE OHU
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Meeting Notes

Meeting: National Fisheries Forum Hui
Date: 24 September 2013
Time: 10.00am – 3.00pm
Venue: Wellington, Te Ohu Kaimoana Offices

Attendees:

Attendee	Forum/Region/Organisation	Attendee	Forum/Region/Organisation
Ben Potaka	Te Taihauauru	Nicholas Manukau	Waikato
Stan Pardoe	Tairawhiti/National Rock Lobster Management Group	Adele Whyte	Ngati Kahungunu/
Jennie Smeaton	Wellington/Te Tau Ihu	Kevin Robinson	Tai Tokerau/Te Hiku Forum
Dennis Solomon	Chathams	Mike Stevens	Tai Tokerau
Shirley King	Chathams	Morrie Love	Wellington
Hamish Quested	AFL	Richard Bradley	Te Tau Ihu

Te Ohu Kaimoana Staff:

Alan Riwaka	Basil Tapuke
Beth Tupara-Katene	Dianne Brown
Doug Jones	John Willmer
Kirsty Woods	Laws Lawson
Peter Douglas	Shayla Kora

Invitees unable to attend

	Forum/Region/Organisation
Mark Ngata	Tairawhiti/Iwi Collective Partnership
Brian Dickson	Bay of Plenty
Bronwyn Hunt	Te Hiku Forum
Josie Anderson	Hauraki
Joe Mason	Bay of Plenty/Mai I nga kuri a Whareki ki Tihirau
David Higgins	Te Waka a Maui me ona Toka

Purpose of the meeting

Kirsty Woods introduced the main issues for discussion:

- The current fisheries environment, and challenges in protecting and enhancing the Fisheries Settlement
- The idea of establishing a Technical Fisheries Management Forum at a national level
- Current issues of interest to iwi, including:
 - The use of UBA in commercial kina fisheries
 - Participation of iwi in the National Rock Lobster Management Group and within industry organisations
 - Eel fisheries.

Kirsty summarized the main points as follows:

Current environment and challenges:

- Allocation is substantially complete.
- Economic conditions have been difficult.
- Major policy issues that currently have the potential to undermine the settlement include:
 - Foreign Charter Vessels
 - Regional Marine Planning – potential to set precedents (could be positive or negative)
 - Shared fisheries (SNA1 is a good example of the wider policy issues)
 - Marine Reserves and Marine Protected Areas
- Fisheries Management – decisions that affect all iwi (e.g. kina and UBA)
- It is important that we organise ourselves;
 - Iwi have formed collective Fisheries Forums in some regions
 - New industry structures: opportunities for iwi to play a greater role
 - Te Ohu has a role in advancing Maori interests across the board.
 - Communication between iwi, Te Ohu, MPI, Industry and other stakeholders is inefficient and ineffective
 - There are few trained or dedicated fisheries managers across iwi organisations.

Proposal to establish a Technical Fisheries Management Forum (TFMF) at a national level:

The purpose of establishing a Technical Fisheries Management Forum is to build an effective process for Te Ohu and Iwi to work together to analyse and respond to national fisheries management and policy issues on a collective basis, and advance agreed solutions where appropriate.

The Forum would:

- focus on matters of national fisheries management that are of significance to Mandated Iwi Organisations, Asset Holding Companies and kaitiaki;
- Participants will be drawn from regions along the following lines:
 - Using Iwi fisheries forums where they are supported by MIOs and AHCs, or participants who are supported by iwi in regions with no forums
 - Taitokerau

- Auckland/Waikato/Hauraki
 - Bay of Plenty
 - Tairāwhiti
 - Kahungunu/Wellington
 - Te Tau Ihu
 - Te Waipounamu
 - Chatham Islands
- Clear and effective communication is key
 - TFMF resourced and supported by Te Ohu Kaimoana through travel costs, analysis and administrative support, and staff support for fisheries management initiatives.

Forum participants: Skills and Knowledge

Participants in the forum would, collectively, have the following skills:

- Traditional knowledge of fisheries management
- Knowledge and understanding of seafood industry
- Commercial experience in the industry
- Technical understanding of fisheries
- Leadership skills
- Ability to analyse and discern key issues
- Ability to convey information between regional and national forum.

Summary of discussion

- Participants at the meeting agreed that the idea of coming together nationally is a good one and is well overdue.
- There are regional forums (although they don't necessarily cover all iwi) that can help form the foundation.
- However the fact that there is not comprehensive coverage is a problem. If MPI doesn't know who to talk to, they go only to the forums which can lead to key interests being left out. It is important to get communication structures right – e.g. when MPI was talking about SNA1 – there was no comprehensive communication with all affected iwi or Asset Holding Companies.
- The forum needs skills and expertise as opposed to representation so that good quality work is produced. At the same time, good networks into all major iwi groupings is also desirable
- Perhaps a two layered approach might work – with smaller technical groups and a wider forum for testing ideas.
- A virtual forum/network could be set up and maybe meet once or twice a year.

- While MPI has put forums together, not all participants have the technical background.
- The Iwi Chairs' Forum require good clear information to assist them influence the Government
- There have been different experiences around the country in communicating with MPI. In Te Tau Ihu – iwi have shaped their regional forum to work with MPI and clarify who talks on different matters whether they are commercial or non-commercial. The focus is on fisheries management across the board.
- In Te Taihauauru iwi are addressing a number of issues including freshwater and eels, dolphins, seabed mining and appointment of honorary fisheries officers. The forum has needed Te Ohu when it comes to writing submissions. That forum would most likely support a national forum.
- Te Tairāwhiti experienced problems with MPI – Te Ohu and the ICP make submissions on their behalf
- Those forums in which only “customary” representatives were invited caused problems.
- The FCV issues showed how all iwi can be affected by a policy and the need for a national perspective.
- Participants agreed that the idea of a technical forum with broad networks into the regions is a good idea and should be further tested. Most wanted to canvas the idea with iwi in their regions. Ben Potaka noted that Te Taihauauru Forum is due to meet soon and that he will recommend the Forum support the idea.

Action: *participants to test the forum concept with iwi in their forums or regions. Te Ohu is prepared to assist if needed.*

UBA Proposal:

Alan Riwaka outlined a set of proposals put out for consultation by MPI. These proposals had been promoted by the industry in some places in order to gain access to kina stocks in deeper waters so as to increase the TACC and value. MPI has supported the introduction of UBA on the Chathams but deferred a decision on the mainland. There has been little support for the proposal from mainland iwi.

The main drive for the proposal appears to come from quota owners in SUR2. There are some good reasons why UBA should be considered, including an increased ability for finer scale management and better management of harvesting. However iwi expressed concerns about the potential effects on their mahinga kai, and the unknown consequences of harvesting from deeper waters.

Te Ohu made a submission which supported use of UBA in principle subject to:

- Developing management plans for the fishery.
- Excluding important mahinga kai areas.

However Te Ohu considered the consultation process with iwi was inadequate and recommended that MPI re-run the process.

Alan noted that Chathams quota owners were putting in place a strategy to manage the risks associated with UBA, working towards fine scale management using electronic monitoring and data collection in real time.

Summary of discussion

The following points were raised in discussion;

- The method isn't really the issue, it is how much can be taken. UBA would allow for a more planned approach to harvesting
- On the other hand, for many inshore species such as kina and paua, there is a risk of localized depletion
- Participants recognised that use of UBA could have some benefits for iwi through better value and information. However the implications for the customary sector need to be identified.
- Risks to important mahinga kai areas could be mitigated through agreements about spatial access and other matters, for instance:
 - identify areas where UBA cannot be used (protecting important customary beds) and ensure the regulations preventing UBA remain in place over these areas.
 - use diverse catch methods - free diving in some places, UBA in certain areas, banning of harmful methods such as dredging
 - set biological reference points for managing stocks inside and outside commercial and non-commercial areas.
 - define the scale of management – use a paddock approach.
 - use of fine scale data collection by fishers (similar to paua).
 - agreements about disposal of waste from processing at sea.
- Putting in place commercial arrangements could assist iwi to optimise value from the fishery (including providing greater access to customary fish). Options would need to be assessed:
 - due diligence (economic viability). Someone would need to do the work
 - combine developmental stocks to establish viable business operations
 - what's in it for the iwi? Develop operating models to support commercial business

- using iwi/hapu fishers – do iwi/hapu members want to go fishing? Are they prepared to invest in boats and processing facilities?
- not using iwi/hapu fishers
- collectivising developmental stocks across the country in order to leverage optimum returns
- follow the Coromandel scallop model – vertical integration.

Alan stated he understood that MPI wished to run the process again shortly. He suggested preparing a short paper to assist iwi to feed into the process. It could include options on how the use of UBA might be implemented in appropriate areas while ensuring customary non-commercial interests are protected.

Actions: *develop a short paper on the use of UBA and how it might be implemented.*

National Rock Lobster Management Group (NRLMG)

Alan outlined the role of the NRLMG as the primary adviser to the Minister on the management of rock lobster. He explained that there are two positions on the group for iwi. Te Ohu fills one position and Stan Pardoe the other.

The positions reflect the commercial and non-commercial interests of iwi in rock-lobster. There are some questions about how appointments should be made, including:

- Should there be a North and South Island representative or just 2 representatives?
- What skills should they have?
- Should Te Ohu seek nominations from Iwi and the technical fisheries management group decide representation?
- What on-going role should Te Ohu play?

Summary of discussion

Participants did not reach a conclusion or agreement on these questions but noted that:

- The idea of Te Ohu providing technical input into the NRLMG seemed sensible and Te Ohu should sit alongside an iwi person
- A third person should be trained up
- A succession plan needs to be developed.

Fisheries Inshore New Zealand (FINZ)

Laws Lawson gave the meeting a briefing on this new industry organisation. He stressed that inshore finfish fisheries are critical to iwi interests and that there are many issues and threats that need to be addressed including new proposals for marine protected areas, recreational fishing areas,

increasingly tight controls on environmental effects. The new organisation will play an important role in addressing these issues and finding solutions. The new structure has been created in such a way that iwi can put a member on the board. However so far less than a quarter of iwi quota holders have joined, and there has been no effort to pull together to appoint someone to the board. The investment needed from each Iwi is very small compared with the amount at stake.

Eels

Doug Jones provided a briefing on the report by the Parliamentary Commissioner for the Environment (PCE) on the long-finned eel. The PCE had concluded that the long-finned eel is on a slow path to extinction. While there is some debate about the validity of her conclusions there is support for her recommendation for an independent panel to review all available data on this eel. Doug explained that Wai Maori is working to collect data from iwi who are willing to share and present to the panel. The review process will run during November.

Conclusion of the meeting and next steps

Richard Bradley was nominated to Chair the Forum. Richard agreed to do so on an interim basis until the process is firmed up and established.

Action: *Staff would work with Richard to develop priorities for the Forum.*

Te Ohu Kai Moana Trust
Information for 2015 Review

Balance Sheet

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Assets										
Current assets	28,422	19,297	6,939	17,062	17,725	2,854	3,394	3,031	7,799	10,633
Investment portfolio	84,830	86,850	98,029	87,584	86,744	71,149	70,552	72,211	73,319	73,771
Investment in AFL	60,098	65,190	69,243	71,947	77,238	78,551	78,787	80,825	80,897	82,543
Redeemable preference shares	20,000	14,396	15,342	16,350	17,424	18,569	19,789	20,000	20,000	20,000
Other (includes quota held by Charisma)	700	832	440	355	383	530	468	368	276	212
Held on behalf of iwi:										
Quota Shares	257,641	198,230	181,787	142,891	86,561	68,295	66,513	53,538	42,342	42,132
AFL income shares held in trust	199,218	103,622	73,317	29,602	31,461	20,320	6,552	6,292	5,392	5,502
Total Assets	650,909	488,417	445,097	365,791	317,536	260,268	246,055	236,265	230,025	234,793
Liabilities										
Current liabilities	2,426	2,326	2,648	1,749	1,556	1,257	891	1,223	1,804	2,230
Non-current liabilities	-	-	340	460	618	756	894	932	496	-
Maori Fisheries Assets allocated not transferred	-	85,469	101,227	28,916	16,091	16,996	-	127	-	-
Total Liabilities	2,426	87,795	104,215	31,125	18,265	19,009	1,785	2,282	2,300	2,230
Net Assets	648,483	400,622	340,882	334,666	299,271	241,259	244,270	233,983	227,725	232,563
Equity										
Trust equity and accumulated earnings	116,767	122,165	130,182	138,118	147,902	153,726	157,536	161,918	168,287	172,886
MFA and other classified reserves	531,716	278,457	210,700	196,548	151,369	87,533	86,734	72,065	59,438	59,677
Total Equity	648,483	400,622	340,882	334,666	299,271	241,259	244,270	233,983	227,725	232,563

Cash Includes:

FoT call account	2368
Divs and MATCs held in Trust	908
Cash to iwi from MFA	1735
Total	5011

Investment Portfolio Includes

Wai Maori Capital	6000
GFS Funds	1032
Total	7032

Other Includes

Charisma Quota	184
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Te Ohu

Investment Portfolio	66739
AFL Shares	82543
RPS	20000
Other	3,604
Total	172886

Iwi

MFA Quota shares and cash	56277
GFS	1032
ACE Disputes	2368
Total	59677

