



TE OHU KAIMOANA

POST ELECTION BRIEFING

An opportunity to bring the treaty partnership to life

December 2020





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KARAKIA

WHAKATAKA TE HAU KI TE URU

WHAKATAKA TE HAU KI TE TONGA

KIA MĀKINAKINA KI UTA

KIA MĀTARATARA KI TAI

KIA HĪ AKE ANA TE ATĀKURA

HE TIO

HE HUKA

HE HAUHU

TĪHEI MAURI ORA



OUR BOARD



Rangimarie Hunia
Chair
Ngāti Whātua



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Deputy Chair
*Ngāi Tahu,
Ngāti Kuri*



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Director
Ngāti Porou



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*Waikato,
Ngāpuhi*



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Whanganui,
Ngā Rauru,
Ngāti Tūwharetoa*



Bella Takiari-Brame
Director
*Waikato-Tainui,
Ngāti Maniapoto*



Alan Riwaka
Director
Te Āti Awa

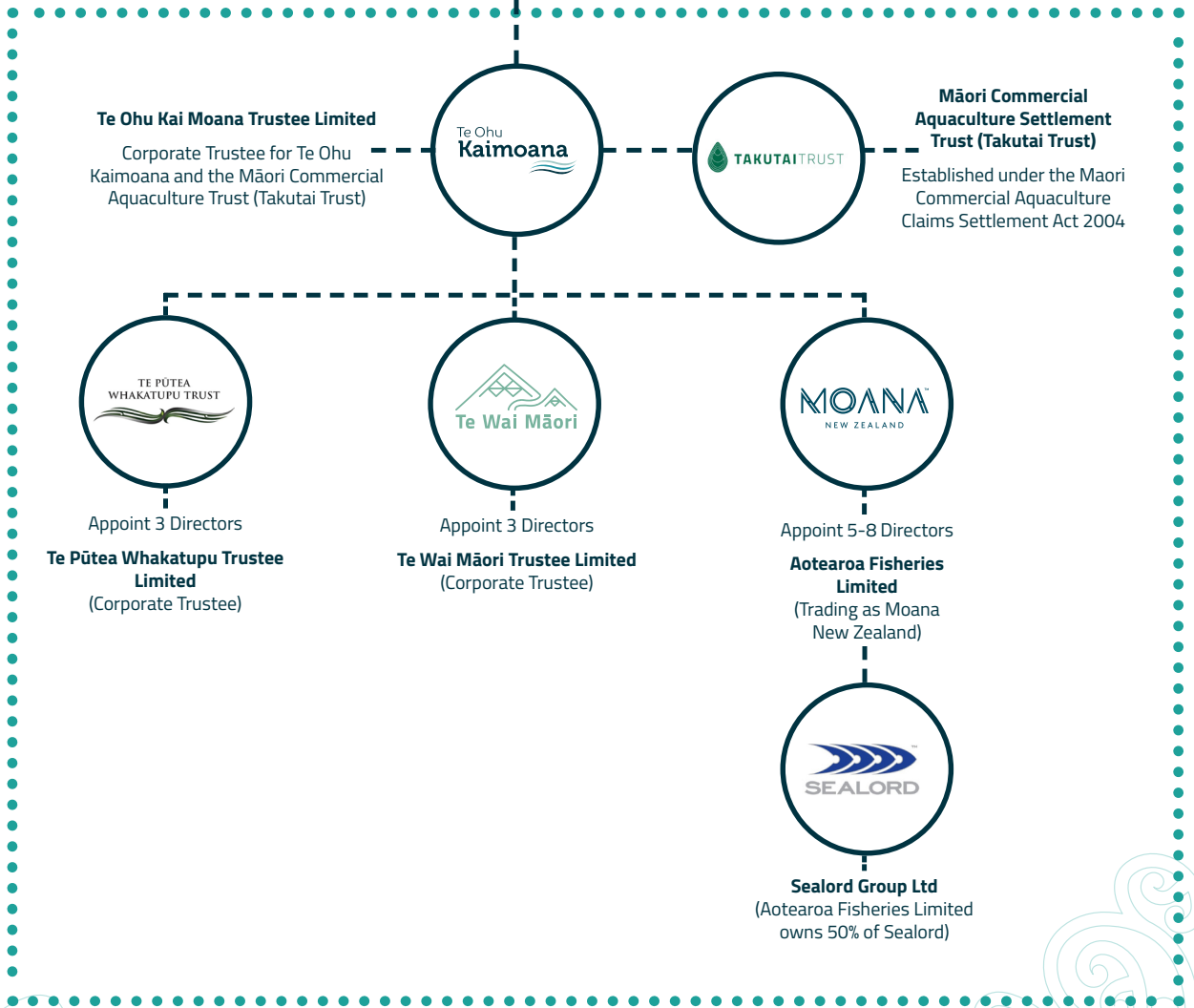
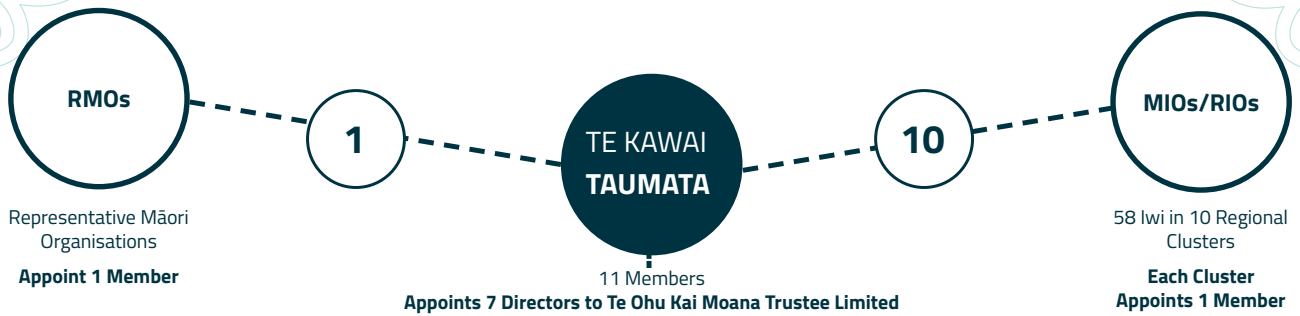


Kim Skelton
Alternative Director
*Te Ātiawa,
Taranaki,
Ngāti Raukawa ki te
Tonga*



Maru Samuels
Alternative Director
*Ngāi Te Rangi,
Te Rarawa,
Ngāti Takoto*

GOVERNANCE STRUCTURE



TE OHU KAI MOANA GROUP LIMITED

TE OHU KAI MOANA GROUP

Te Ohu Kai Moana Group consists of the following entities, with Te Ohu Kaimoana acting as the parent organisation.

Te Ohu Kaimoana is the successor to the Treaty of Waitangi Fisheries Commission and was established in 2004 under the Maori Fisheries Act along with its subsidiaries Te Wai Māori Trust, Te Pūtea Whakatupu Trust and Aotearoa Fisheries Limited (trading name Moana New Zealand).

Moana New Zealand, a 100% Māori owned fishing company owns 50% of Sealord Group Limited, whose Māori ownership was agreed to in the 'Sealord Deal' or 1992 Māori Fisheries Settlement.

TE OHU KAIMOANA



www.teohu.maori.nz

Te Ohu Kaimoana was established to advance the interests of Māori in fishing and fisheries-related activities and to return valuable fisheries assets and funds from the Settlement to iwi organisations.

The Trust is managed by a corporate trustee, Te Ohu Kai Moana Trustee Limited which is central to administering, protecting and enhancing the Fisheries Settlement to ensure that funds are delivered to iwi and ultimately all Māori. The Trust also acts as the corporate trustee for the Māori Commercial Aquaculture Settlement Trust (Takutai Trust), established under the Maori Commercial Aquaculture Claims Settlement Act 2004

Te Ohu Kaimoana has been structured to ensure the fisheries settlement endures for future generations of Māori and maintains robust accountability to its constituent iwi shareholders, who have collective responsibilities to all Māori.

Te Ohu Kaimoana provides services in policy advisory services, fisheries management issues, customary fisheries, aquaculture, allocation and communications to their 58 Mandated Iwi Organisation stakeholders.

TE WAI MĀORI TRUST



www.waimaori.maori.nz

Te Wai Māori was established to advance Māori interests in freshwater fisheries.

Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species. Freshwater fisheries include species, habitat, surrounding land, water column, water quality and quantity.

The Trust aim to advance Māori interests in freshwater fisheries by:

- Increasing iwi and hapū capacity and capability in freshwater fisheries and their ability to control their freshwater fisheries.
- Fostering indigenous fisheries expertise, knowledge and understanding, increasing the quality and range of information to iwi and hapū on freshwater fisheries and their interests thereof.
- Ensuring that the indigenous fisheries are well and can be enhanced.

Te Wai Māori provides policy advisory services, makes funding available for iwi and hapū for development, research and education, undertakes and/or commissions key research on freshwater fisheries issues, provides up to date communications to their 58 Mandated Iwi Organisation stakeholders.

TE PŪTEA WHAKATUPU TRUST



www.tpwt.maori.nz

Te Pūtea Whakatupu Trust defines its purpose as “upholding and creating opportunities for educational pursuits that enable the sustenance of Māori identity”. It holds and manages funds 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.

This year the Trust is developing a workforce and training strategy for the Māori fisheries sector, Te Ngake o Te Kupenga. Working alongside our iwi and Māori Fisheries industry experts, we are mapping the national fisheries workforce and aligning training, education, research and development opportunities. In partnership we will develop a strategy in the upcoming financial year to help inform future industry related workforce development needs.

The Trust has placed a strong focus on building strategic partnerships with service providers, Representative Māori Organisations (RMOs), Iwi, sector experts and other philanthropic/social investment entities. These will be crucial as the Trust increases its role as an advocate for, and amplifier of, social impact.

MOANA NEW ZEALAND



www.moana.co.nz

Moana New Zealand is an important part of the inter-generational Māori Fisheries Settlement with the Crown. They are the only commercial business in Aotearoa fully owned by all 58 Mandated Iwi Organisations as recognised under the Maori Fisheries Act 2004.

The decisions, actions and investments made by Moana New Zealand have a long-term perspective that are respectful to fisheries and the ecosystems that Māori are intrinsically linked to. Moana New Zealand is proud that they have invested nearly \$70 million into the future of their business and the sector as a whole over the past eight years.

Moana New Zealand employs 317 staff and contributes to the employment of hundreds more, including fisheresses, harvesters, transporters, distributors and marketers.

SEALORD GROUP LTD



www.sealord.com

As the current generation of a long and remarkable line of pioneering New Zealanders, today Sealord accepts the challenge and responsibility of guardianship of our wealthy natural ocean resource, so that it remains abundant and available for those who follow us.

With fishing operations in New Zealand and Australia, Sealord is one of the largest seafood companies in the Southern Hemisphere. Encompassing both sustainable deep sea fishing and finfish aquaculture operations, Sealord employs more than 1,000 people in New Zealand and 230 people overseas.

Sealord's people are passionate about fishing, innovation, delicious seafood and the wellbeing of each other and the environment through Sealord's value-based culture. New Zealand's best-known seafood brand, Sealord is the largest quota holder in the country, harvesting sustainable seafood from deepwater fisheries.



INTRODUCTION & OVERVIEW

This briefing has been prepared for the Minister of Oceans and Fisheries. It provides information on:

- a. The purpose and role of Te Ohu Kaimoana.
- b. Māori principles that guide our advice.
- c. Key priorities for Iwi and Te Ohu Kaimoana.
- d. The status of Māori fishing and aquaculture.
- e. Challenges and opportunities facing Iwi in achieving their aspirations through their fisheries resources.
- f. How we can work together.

Aspects of this briefing will also be relevant to other Ministers including the Minister of Māori Development, the Minister for the Environment, the Minister of Conservation, the Minister for Local Government, the Minister of Foreign Affairs and the Minister for Crown Maori Relations: Te Arawhiti and relevant Parliamentary Under-Secretaries. We will also make this briefing available to them.

PURPOSE AND ROLE OF TE OHU KAIMOANA

Te Ohu Kaimoana is an independent Māori Trust established under the Maori Fisheries Act 2004. Our purpose is to work with Iwi and the Crown to advance the interests of Iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to-

- a) Benefit the members of Iwi and Māori generally; and
- b) Further the agreements made in the Deed of Settlement; and
- c) Assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
- d) Contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.



By entering into the 1992 Deed of Settlement the Crown recognised that fisheries are important to Māori and that the Crown's Treaty duty is to develop policies to help recognise Māori use and management practices, to enable Māori to exercise rangatiratanga over traditional fisheries (which include commercial and non-commercial elements).

Te Ohu Kaimoana is also the Trustee for the Takutai Trust whose role is to assist Iwi and the Crown to reach regional aquaculture settlements under the Maori Commercial Aquaculture Claims Settlement Act 2004.

Te Ohu Kaimoana assists and empowers 58 mandated Iwi organisations (MIOs) to manage and protect their non-commercial and commercial fisheries rights, guaranteed in the Deed of Settlement and the Maori Commercial Aquaculture Settlement.

MIOs have approved a Māori Fisheries Strategy for Te Ohu Kaimoana which has as its goal "that MIOs collectively lead the development of Aotearoa's marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent".

1992 FISHERIES DEED OF SETTLEMENT

- A full and final settlement of Māori claims to fishing rights guaranteed under the Treaty of Waitangi
- Signed by the Crown and Māori in September 1992
- Attested that Māori supported the Quota Management System as a lawful and appropriate regime to manage commercial fisheries in New Zealand
- Delivered quota, fishing companies and cash to Māori through Iwi
- Required promulgation of regulations enabling iwi, hapū and whānau to take responsibility for customary non-commercial fishing.



MĀORI PRINCIPLES AND VALUES THAT DRIVE OUR APPROACH

Te hā o Tangaroa kia ora ai tāua (The breath of Tangaroa sustains us) is an expression of the unique and lasting connection Māori have with the marine environment. It contains the principles we use to analyse and develop modern fisheries policy, and other policies that may affect the rights and responsibilities of Iwi under the Deed of Settlement (see Figure 1). This concept highlights the importance of humanity's interdependent relationship with Tangaroa to ensure our mutual health and wellbeing. The mauri of Tangaroa needs to be maintained and nourished in order to provide for our future generations.

The relationship Māori have with Tangaroa is intrinsic, and the ability to benefit from that relationship was and continues to be underpinned by whakapapa. Tangaroa is the son of Papatūānuku, the earth mother, and Ranginui, the sky father. When Papatūānuku and Ranginui were separated, Tangaroa went to live in the world that was created and has existed as a tipuna to Māori ever since.

Te hā o Tangaroa kia ora ai tāua does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility. It speaks to striking an appropriate balance between people and those we share the environment with. Iwi and their hapū and whanau carry out their kaitiaki responsibilities to ensure this outcome is achieved, but can only do so if their rangatiratanga (authority) is recognised.

The Fisheries Act's purpose is to "to provide for the utilisation of fisheries resources while ensuring sustainability." The purpose and principles of the Act echo Te Hā o Tangaroa kia ora ai tāua. Protection of the reciprocal relationship between Māori and Tangaroa is an inherent part of the Deed of Settlement – it's an important and relevant part of modern fisheries management for Aotearoa.

MATAPONO - VALUES (FIGURE 1)

Tangaroa whititua, Tangaroa whitiaro, Tangaroa kopu, Tangaroa nau mai kia piri, nau mai kia tata

RECIPROCITY

Tangaroa kai atu, Tangaroa kai mai

First fish to Tangaroa and Tangaroa provides back.

An expression which relates to the reciprocal relationship between Māori and Tangaroa. Receiving is giving. Tangaroa is the god whom we give the first fish to and speaks to the long-term sustainability of Tangaroa.

POTENTIAL

He hiringa a nuku, hiringa a rangi, he hiringa tai ki te whaiao ki te ao marama

This speaks to the current and future potential of the domain of Tangaroa area for all Māori and Aotearoa as a nation. The potential and energy that exists and how this can be realised in a positive way.

TE HĀ O
TANGAROA
KIA ORA
AI TĀUA

RELATIONSHIPS

***Rukutia te mouri o Tangaroa,
Tangaroa tu ki uta,
Tangaroa tu ki tai***

Maintaining the life force of Tangaroa both inshore and out at sea. Recognises the interconnected nature of maintaining the mauri of Tangaroa and the role we play.

SUSTAINABILITY

Ka mate kai horo, ka ora kai whakatonu

The glutton perishes while those that conserve survive.

This whakataukī speaks of maintaining appropriate balance and sustainability as one with Tangaroa to survive for today and into the future. This principle is built into New Zealand's Quota Management System.



STATUS OF MĀORI FISHING AND AQUACULTURE

Māori involvement in fishing today is shaped by the Deed of Settlement. Prior to the Deed of Settlement, customary and commercial fishing were indistinguishable. While the Deed enshrined Māori fishing rights within the current fisheries management system, it created an artificial separation between customary non-commercial and commercial fishing.

There are 58 Mandated Iwi Organisations (MIOs) covering all Māori who own the commercial Fisheries Settlement Assets. These include Individual Transferrable Quota and shares in Aotearoa Fisheries Limited (trading as Moana New Zealand), which, in turn, owns 50% of Sealord Group Limited.

480 tangata kaitiaki and tangata tiaki authorise customary non-commercial fishing. Tangata kaitiaki and tangata tiaki are appointed by the Minister of Fisheries but in many cases the process as it stands does not involve any reference to MIOs. This creates a disconnect between Iwi and their hapū. The process needs to be carried out in a way that strengthens that relationship.

Māori own approximately 27% of all quota by volume and value. Total value of New Zealand quota is approximately \$4 billion and the total value of Māori-owned quota is around \$1 billion. Higher estimates of the Māori position in the industry count Sealord quota as 100% Māori owned (Sealord, through a holding company, controls 25% of New Zealand quota by volume). Māori ownership is strongest in North Island eels (50%), pāua (40%) and rock lobster (30%).

Yields on quota are around 6% per annum and the Māori fishing assets return approximately \$60 million per year. Of this return, about half is retained for re-investment and half supports MIOs and the distribution programmes they are developing and operating – ultimately for the benefit of their people.

Iwi also have significant interests in the aquaculture sector through the assets delivered under the Maori Commercial Aquaculture Claims Settlement Act 2004 and by other means. Settlement assets stemming from regional aquaculture agreements under the Act are transferred to Iwi through Te Ohu Kaimoana.

The current value of aquaculture settlements to Iwi Aquaculture Organisations (who must be MIOs) exceeds \$200 million. These settlement assets include 500+ hectares of mussel space in Tasman and the Hauraki Gulf and 60 hectares of fish farming space also in the Hauraki Gulf. Because the development of aquaculture will take place over several years, its value will not be realised for some time. As more new space becomes available, Iwi are entitled to 20% of agreed space and Te Ohu Kaimoana works to ensure this is realised.



KEY PRIORITIES FOR IWI AND TE OHU KAIMOANA

The Deed of Settlement was intended to benefit all Māori. The Maori Fisheries Act 2004 confirms these benefits flow to all Māori through Iwi. Our key priorities reflect our role to protect the Deed of Settlement and ultimately to assist Iwi to deliver the benefits it provides. These include:

- a. Supporting Iwi to exercise rangatiratanga over their fisheries resources.
- b. Ensuring continued access to kaimoana for Iwi.
- c. Strengthening a constructive partnership with the Crown by building strong relationships with relevant Ministers and senior officials.
- d. Improving marine protection in a manner that's consistent with Māori fishing rights and responsibilities.
- e. Improving fisheries management performance, including through supporting collective action.
- f. Improving economic performance by encouraging collaboration amongst Iwi quota holders and Māori fishing businesses, and supporting an amended Maori Fisheries Act 2004.
- g. Helping Iwi and the Crown deliver regional aquaculture settlements which requires an amendment to the Maori Commercial Aquaculture Claims Settlement Act 2004.

HOW CAN WE WORK TOGETHER?

We invite the new Government to work with Te Ohu Kaimoana as agent of its Tiriti partners to progress our key priorities:

1. Strengthen the Tiriti partnership arrangements with Mandated Iwi Organisations, with the support of Te Ohu Kaimoana

This will ensure:

- The implications of decisions for the Deed of Settlement are clarified and addressed with agreement of Iwi, both in domestic decision-making and for positions taken by Government in international fora.
- The public gains a better understanding of the significance of the Tiriti and the Deed of Settlement for fisheries and marine management.

2. Improve marine protection consistent with the Deed of Settlement

We are not clear at this stage what the new Oceans and Fisheries portfolio will encompass. However, in our view there is scope to improve the marine management regime to create a more integrated approach to managing the effects of activities on the marine environment, including fisheries resources.



Any review of the existing management regime should ensure:

- All marine statutes recognise the Crown's obligations under the Deed of Settlement in a consistent way.
- The Fisheries Act is the appropriate statute to control fishing.
- The Resource Management Act (or its replacement) controls the effects of land-based activities on fishing and aquatic biodiversity.
- Any overlap between different statutes should be addressed so that it is clear what legislation controls a particular activity.

3. Strengthen the fisheries management system.

Improvements would be made by:

- Actively supporting Iwi and other fisheries stakeholders to take greater responsibility for managing fishing.
- Reviewing the cost recovery regime so that it meets the expectations for efficient and effective service delivery.
- Developing a principled Tiriti-based process for addressing the allocation of the Total Allowable Catch between the commercial, non-commercial (customary and recreational) sectors.
- Resolving outstanding 28N Rights which are a barrier to sustainability decision-making.
- Removing disincentives to report all catch and balance catch with ACE to the fullest extent possible.

4. Support legislative amendments requested by Iwi

Priority needs to be given to progressing proposed amendments to the Maori Commercial Aquaculture Settlement Act 2004 and the Maori Fisheries Act 2004. 13. We explain our reasons for seeking resolution of these matters in the remainder of this briefing.

STRENGTHENING TE TIRITI PARTNERSHIP WITH IWI, WITH THE SUPPORT OF TE OHU KAIMOANA

We have developed constructive working relationships on several fronts, including resolution of regional aquaculture settlements, working with officials on policy initiatives such as marine protection and participating in New Zealand delegations in negotiations on regional and global agreements.

These relationships need to be further strengthened to create a Tiriti partnership framework that promotes the Māori relationship with Tangaroa. This would involve an increased weight in decision-making and in turn, improve the well-being of Tangaroa - and as a consequence, the community as a whole.

Processes and structures to strengthen Tiriti partnership arrangements need to be explored jointly. These include working arrangements between Ministers and officials across all relevant portfolios including Oceans and Fisheries, Conservation, Foreign Affairs, Trade and Export.



IMPROVING MARINE MANAGEMENT AND PROTECTION CONSISTENT WITH THE DEED OF SETTLEMENT

Te Ohu Kaimoana believes it is time for a paradigm shift to deliver effective fisheries management which reflect te Tiriti o Waitangi and Treaty settlements, including the Fisheries Deed of Settlement.

RECOGNISE THAT THE FISHERIES ACT PROVIDES THE APPROPRIATE FRAMEWORK TO CONTROL FISHING

Te Tiriti o Waitangi and the Deed of Settlement guarantee Māori the exercise of their authority over their taonga, consistent with their traditions. The call for Marine Protected Areas (MPAs) is one dimensional and does not reflect what is required in Aotearoa. Current approaches to MPA's fail to identify the management problems to be addressed and evaluate the best option for resolving them. This call is influenced through international fora promoting management approaches that conflict with Māori management approaches and Aotearoa's fisheries management system.

Iwi have challenged proposals to place marine areas under "protection" under the Resource Management Act (RMA) or other conservation legislation. In these cases, there has generally been no robust risk assessment or rationale for seeking protection outside the Fisheries Act, including whether current management is already sufficient to manage those risks.

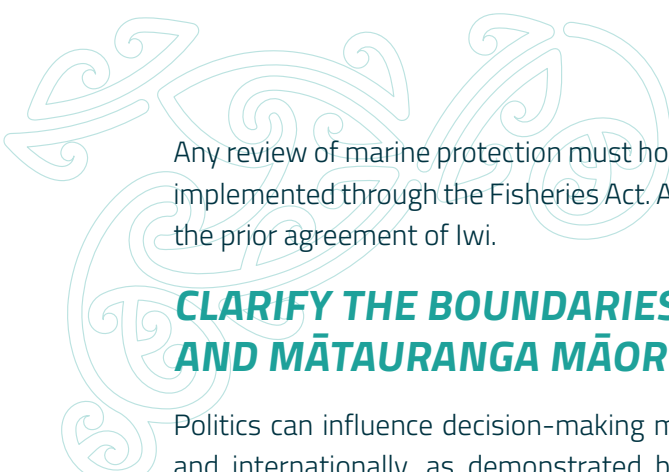
These challenges arise from a broader institutional problem around the way our current statutes (such as the RMA and Fisheries Act) are implemented and the lack of integration between them. The rights and responsibilities of Iwi towards Tangaroa, recognised under the Deed of Settlement, are only given weight under the Fisheries Act. No-one seems to have responsibility for ensuring that all the pieces work well together or ensure the Crown's Treaty obligations are met in a consistent way. But most importantly, decision-makers under the RMA are not required to act consistently with the Deed of Settlement.

The purpose and principles of the Fisheries Act incorporate the agreements made under the Deed of Settlement. Key aspects include a focus on sustainable use, and the environmental principles that require maintenance and protection of associated and dependent species, aquatic biodiversity and habitats of particular significance for fisheries management.

Iwi are concerned that controls on fishing are therefore being implemented through different laws and policies for different purposes. This approach effectively seeks to re-allocate areas of the marine environment to non-fishing uses by controlling fishing in a way that goes beyond the sustainability requirements of the Fisheries Act, undermining Māori fishing rights and responsibilities.

Examples include:

- a. the Kermadec Sanctuary proposal which became a political issue rather than an appropriate response to threats to marine biodiversity
- b. Marine Protected Areas proposals under the Marine Protected Areas policy and the RMA.



Any review of marine protection must honour the Deed of Settlement by ensuring fisheries controls are implemented through the Fisheries Act. At a minimum, controls proposed under other legislation require the prior agreement of Iwi.

CLARIFY THE BOUNDARIES BETWEEN POLITICS, GOOD SCIENCE AND MĀTAURANGA MĀORI

Politics can influence decision-making more strongly than good science. Politics plays out nationally and internationally, as demonstrated by Sea Shepherd's petitions to United States agencies the Department of Homeland Security, the Department of the Treasury and the Department of Commerce and later the United States Court of International Trade to ban fish products originating from fisheries in the Māui dolphin's range where gillnets or trawls are employed. These assertions focus on fishing as the problem, whereas the most recent risk assessment process designed to review management of threats to the dolphins identified the disease toxoplasmosis as the biggest threat.

Iwi have asked Te Ohu Kaimoana to evaluate the effectiveness of the management of Hector's/Māui dolphin that has been put in place over the last 20 years. The evidence suggests that the choice of regulatory approach which has focussed solely on fishing has failed to protect the dolphins.

Attention in New Zealand and now internationally has continued to focus on fishing as the problem with further fishing restrictions implemented that we don't consider will further reduce the overall threat to the dolphins. Action is needed to address toxoplasmosis.

Decisions such as these, including the information used to justify them, need to be tested within the Treaty partnership framework in order to clearly identify what the real problems are and appropriate solutions, consistent with the Deed of Settlement.

STRENGTHENING THE FISHERIES MANAGEMENT SYSTEM

ENABLE IWI/MĀORI TO EXERCISE RANGATIRATANGA OVER FISHERIES RESOURCES

In the Deed of Settlement, the Crown recognised that "traditional fisheries are of importance to Māori and that the Crown's Treaty duty is to develop policies to help recognise use and management practices and provide for protection for and scope for exercise of rangatiratanga in respect of traditional fisheries". Maori traditional fisheries contained non-commercial and commercial elements, which were settled through the QMS and promulgation of regulations to support the exercise of rangatiranga over non-commercial fisheries.



Pātaka kai

The mana of the relationship Iwi/hapū/whanau have with Tangaroa is enhanced by their ability to provide kai (including kaimoana) to their people. Māori food sovereignty has been a topic of debate in discussions about Covid-19 impacts. Ensuring continued access to kaimoana is a core concern for Iwi/Māori. The establishment of pātaka kai nation-wide was floated during Alert Level Four, as Iwi and their hapū and whānau were unable to carry out customary non-commercial harvests.

Pātaka kai are an option for addressing food security challenges, as the pātaka system enables commercial fishing vessels and processing companies to harvest fish under a customary permit and store the fish for direct supply to Iwi. This system greatly increases the ability for Iwi to distribute kaimoana to whānau/hapū when needed.

We continue to seek out other opportunities for Iwi to provide kai to their hapū and whānau through customary arrangements (commercial and non-commercial).

Use of Fisheries Plans

The dramatic expansion of stocks managed under the QMS has not been matched by the capacity of the Ministry for Primary Industries/Fisheries New Zealand (MPI/FNZ) to support management beyond the broad scale of QMAs and the setting of TACCs. The integrity of the TACs has been found wanting due to an inability to manage the non-commercial take when the allowance is set.

There are provisions within the Fisheries Act to address the situation using fisheries plans, led by the parties who are able to be held responsible for their actions. These provisions have barely been used to date, but when used have provided positive fisheries management outcomes.

Fisheries Plans provide the framework for a more customised and cooperative approach to sustainable management of our fisheries. They enable finer scale management of fisheries resources. But importantly, they must be developed by the parties who can be held accountable for the commitments they make.

Where led by Iwi, fisheries plans provide an appropriate framework for Iwi to exercise rangatiratanga in managing their relationship with Tangaroa. For instance, they would provide:

- a. an opportunity for Iwi to work more closely with their hapū to identify local fisheries management problems and solutions that affect customary non-commercial and commercial fishing
- b. specify the objectives for management and associated services required to manage the fishery, which Iwi and other quota owners could purchase directly, rather than through cost recovered services provided by the Crown.

In our experience, there is a great deal of reluctance within government to promote Iwi and stakeholder led fisheries plans and the direct purchase of fisheries services. There are several possible reasons. First is the influence of third parties who lobby for greater government control. There is no justification that we can see for agreeing to this approach. What it also signals is a lack of trust in the ability of accountable parties to take on these responsibilities themselves, concern about conflicts of interest and a reluctance to reduce government budgets based on cost recovery for fisheries services delivered by government.

We would like to open up a discussion about a new approach to service specification and delivery. An option would involve establishment of a technical body which is charged with the role of reviewing and setting TACs/TACCs and purchase of fisheries services.



RESOLVE ALLOCATION BETWEEN FISHERIES SECTORS

When setting the Total Allowable Catch (TAC) and Total Allowable Commercial Catch (TACC) the Minister of Fisheries is currently able to alter allocation between the commercial, recreational and customary-non-commercial sectors for sustainability reasons. However, reallocation provides a disincentive for sectors to take responsibility for their share of a fishery or to collaborate with each other on fisheries management, as any initiative taken by any particular fisheries sector to rebuild a fishery could go unrewarded. For example, this would be the case where the commercial sector forgoes catch to enable a rebuild and pays for the science and research, only to have a substantial portion of any increase allocated to the recreational sector.

When agreeing to the Deed of Settlement, Maori expected the value and integrity of the Settlement to be retained. Any action the Crown takes to undermine the value of settlement quota or fails to recognise customary non-commercial needs is a matter of bad faith.

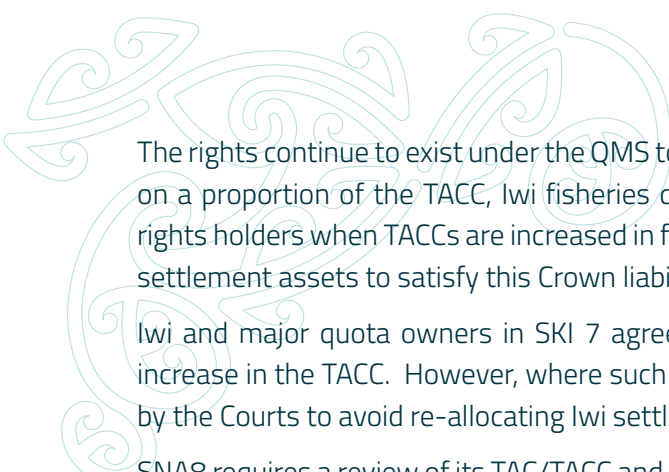
In our view, the appropriate way of reflecting the recreational share of the fishery is to set an allowance that reflects the catch taken in 1992, when the Deed was signed. We note that the courts have ruled that the Minister has discretion to set the allowance when initially allocating a TAC up to the level of estimated catch. However, we do not accept any increases in this allowance after this time. From a fisheries management perspective, such decisions encourage a "race for fish". This kind of behaviour should be what responsible fisheries management aims to avoid.

The process for changes in allocation between the sectors needs to be reviewed in this light, with the intent of achieving fixed shares between sectors. Mechanisms to enable trades between the sectors where they are willing also need to be developed. This approach would provide an incentive to each sector to take responsibility for their share of the fishery and be rewarded appropriately. In its absence, the commercial sector is not incentivised to invest in innovation. It also means that shelving of ACE is preferred to a TACC reduction so as to avoid the prospect of unfavourable allocation.

Hand in hand with resolution of allocation is the need to implement better processes for monitoring catch, particularly in the recreational sector. This would help increase our overall understanding of the quantity of fish being taken and the kinds of strategies that may be needed to manage catch. This would greatly benefit local communities who rely on and regularly partake in recreational fishing activities, bearing in mind the potential impacts tourism and Amateur Charter Vessels may have on those communities. We consider implementation of such processes should start with the 10% of recreational fishers who catch 90% of the recreational catch.

RESOLVE 28N RIGHTS

When the QMS was first established quota holders had rights to fish set tonnages of quota rather than a proportion of the Total Allowable Commercial Catch (TACC). If a stock assessment indicated more catch was available, the Government sold more quota. If a decrease was required, the Government bought quota back from quota holders. Quota was also subject to resource rentals. In the early days of the QMS, it was recognised that catches in several fish stocks needed to be reduced substantially. Quota owners were offered compensation through a tendered buyback. Those who did not accept this option obtained rights under 28N of the Fisheries Act 1986 to return their quota to its original limit if the fishery recovered. Under that regime when TACCs were increased again, 28N rights holders had preferential access to any increases.



The rights continue to exist under the QMS today, but the regime has been modified. As quota is now based on a proportion of the TACC, Iwi fisheries quota interests will be taken from Iwi and reallocated to 28N rights holders when TACCs are increased in future. Māori negotiators never agreed the Crown could use Iwi settlement assets to satisfy this Crown liability when they signed the Deed of Settlement.

Iwi and major quota owners in SKI 7 agreed to resolve 28 N rights amongst themselves, following an increase in the TACC. However, where such agreements have not been made, we have sought injunctions by the Courts to avoid re-allocating Iwi settlement rights in other “28N fisheries”.

SNA8 requires a review of its TAC/TACC and the additional catch available could provide alternative sources of income for fishers affected by Māui dolphin closures. Allocation of an increase to the TACC would need to be done in such a way that does not dilute the Iwi share of the proportional increase in the TACC. We would like to discuss with you how a Tiriti compliant approach would work.

IMPROVE INCENTIVES TO REPORT ALL CATCH

There is a balance to be struck between incentives to harvest with ACE (within the TACC) and accurate reporting of catch. The deemed value for a particular stock can be set at or scaled up to a level that removes any profit after harvesting costs are deducted. These conditions create an incentive for fishers to cover their catch with ACE. If they are unable to do so, then there is no disincentive to report the catch and land it. This approach is consistent with the Fisheries Act and the Māori Fisheries Settlement and has the real potential to increase the quality of information available to support decision-making if it is administered that way.

Discouraging catch in excess of ACE holdings is achieved by ensuring the deemed value is set above the ACE price. The requirement to ensure that the deemed value system does not encourage the discarding of fish at sea is achieved by ensuring the deemed value rate does not exceed the market value of the stock. This implies that deemed values should always be set with the range set by the market value of fish and the value of ACE for that stock.

Accurate reporting is vital if we are to understand whether TACCs have been set appropriately. If TACCs are set incorrectly, varying levels of deemed value payments can show there is a need to review the TACC. TACCs themselves are not always set right and need to be regularly reviewed, based on the best available information. This was the basis for deemed values being introduced.

There are many potential reasons for catches being greater than the TACC, which generate different responses. For example:

- a. the TACC may be too low – optimum response is to increase the TACC, not increase deemed values
- b. there may be deliberate over catch by one or two parties – respond by setting an overfishing threshold
- c. the deemed value is too low – respond by increasing the deemed value.

The Minister of Fisheries established a working group to provide advice on the appropriate use of deemed values. They agreed deemed values are primarily a utilisation tool and should not be set higher than the market value of fish. A Commercial Catch Balancing Forum has since been established by FNZ to consider information on the operation of the catch balancing regime and identify ways to improve its performance, including considering the scenarios we outlined above. Te Ohu Kaimoana participates in the Forum which is due to hold its second meeting in December 2020.



SUPPORT BETTER INTEGRATION BETWEEN MANAGEMENT OF CUSTOMARY (NON-COMMERCIAL AND COMMERCIAL) FISHING

Māori customary fishing rights include commercial and non-commercial aspects. However, the way they have been reflected in law and regulations following the Deed of Settlement has led to a disconnect between Iwi and hapū in some instances.

Te Ohu Kaimoana has a mandate from Iwi to promote and protect Māori interests in all aspects of the Fisheries Settlement and fishing whether those interests are commercial, customary, fresh water or aquaculture. To that end, we are working with MIOs to review and report on how the Customary Fisheries Framework is operating across the country, and what enhancements could provide for better expression of customary non-commercial rights consistent with the Deed of Settlement.

The Te Ohu Kaimoana Board is appointed by MIOs through an electoral college structure and has a range of statutory responsibilities under the Settlement including responsibility for the appointment of the Board of Aotearoa Fisheries Limited. Iwi members vote for MIO directors, based on constitutions that meet the provisions of the Maori Fisheries Act 2004.

In contrast, tangata kaitiaki and tangata tiaki are appointed by the Minister of Fisheries.

MIOs, nearly all of whom have received their commercial settlement assets, are developing their assets for the benefit of their people. However, MIOs are not necessarily responsible for managing customary fishing for an Iwi. This typically rests with hapū and marae as provided for under various fishing regulations. Given the structure of the Settlement we consider this would best be achieved with the support of Iwi.

As currently administered, the customary regulations can have the effect of undermining the efforts of MIOs and the tribal structures they are working to build. For example, the process for the Minister to appoint kaitiaki in the North Island is carried out with no reference to relevant MIOs, despite them being part of the same tribal structures and having interests in the same fisheries. This has caused tensions within Iwi. Wittingly or not, Crown agencies including MPI/FNZ maintain and strengthen these divisions when they fail to work through MIOs.

We would welcome the opportunity to meet with you to discuss the progress with the review and identify options for resolving current problems.

SUPPORTING LEGISLATIVE AMENDMENTS REQUESTED BY IWI

IMPLEMENT THE MĀORI FISHERIES REVIEW



The Maori Fisheries Act required a review of the governance arrangements 11 years after enactment of the Maori Fisheries Act 2004. The review was completed in 2015.

As a result of the review, Iwi voted to make changes to the Act to enable them to take direct control of Te Ohu Kaimoana and Aotearoa Fisheries Ltd, consistent with the principle of rangatiratanga. These changes will require amendments to the Act.

For political reasons, it was not possible for the last Government to progress these amendments. It is now up to the new government to do so.



PROGRESS REGIONAL AQUACULTURE SETTLEMENTS

Te Ohu Kaimoana is the trustee for the Takutai Trust, whose role is to assist Iwi and the Crown reach regional aquaculture settlements. The Trust receives aquaculture assets that are part of settlements from the Crown for allocation to the relevant Iwi Aquaculture Organisations (IAOs). Allocation must be on the basis of an agreement between all relevant IAOs. However, in several cases, it has not been possible for agreements to be reached because a small number of Iwi are not yet ready to reach a formal agreement. This means significant funds have not been able to be allocated to those IAOs who are ready and able to use those assets.

A minor legislative amendment to the Maori Aquaculture Claims Settlement Act has been drafted to overcome this problem without prejudicing Iwi who are not yet able to reach agreements. Enactment of this amendment is a priority for Iwi.

Te Ohu
Kaimoana

