



TREATY OF WAITANGI
FISHERIES COMMISSION
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He Kawai Amokura

A model for allocation of the Fisheries Settlement Assets

Report to the Minister of Fisheries

A REPORT BY THE TREATY OF WAITANGI FISHERIES COMMISSION

HE KAWAI AMOKURA

Report to the Minister of Fisheries
by the Treaty of Waitangi Fisheries Commission
pursuant to section 6(e)(iv) of the Maori Fisheries Act 1989

A REPORT BY THE TREATY OF WAITANGI FISHERIES COMMISSION

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Letter of Transmittal

The Honourable Peter Hodgson
Minister of Fisheries
Parliament Buildings
Wellington



Tena koe e Te Minita

Tapatapa uru ana te kakau o te hoe
ko te rere i te tai tamawahine
ka tuku, ka tuku, korihirihi ana ee
ko te toro i te tai tamatane
ka eke, ka eke, uwheuwhe ana ee
he tai tua-papa, no tua iho
Hoea te moana waiwai
Putā ki runga, putā ki raro
Ki te whei ao,
ki te ao marama,
tihei mauriora!

Mahiarangi, haere koutou
Wheturangi, haere koutou
Nga tau whakahoro, haere koutou
Te ia e maunu ai te tangata
Ahakoa a roroa ma, a wehiwehi ma
Ka whakaaongi atu ki Rarohenga
Ki Hono-i-wairua, ki te puapua o
Hine-kuku-tangata,
haere koutou, haere koutou,
haere oti atu ee...

E te Minita, tenei ka tukua te hoe ki a koe.
E oti pehea ranei i a koe? Kua tau ke i a matou
Me penei te taurā hei whakapikau
i o matou tini kupu, i o matou rau mahara
me nga wawata o te iti me te rahi.

Kua takoto ke te kaupapa i te iwi
Ma matou tahi te huarahi e waerea kia mama
Kia tauawhitia ai a Amokura e Tama-nui- te-Ra

Kia arahina ai e nga hihi o nga whetu marama
o Rangi-tuhaha, o Whitinga-ra, o Manawa-tahi
Mahau pea e tapiri mai, kia ata rangaranga
te matangi, kia kaua te apu o te ture e hauhau
e rorohuri, ka mutu iho, ka taataangia tonu
te iwi i roto i nga Kooti o te motu.

Kei te kapu a to ringa te tikanga e taea ai te
herehere i nga Awhiouru o te ture, me hoki
ano ki te wahi i wharikingia ai nga whakaaro
e Te Karauna mo nga paanga ika, i hangaa
hoki ai te ture, ara ki te Whare Miere.
Ki te takoto i a koe ki reira, ka takoto ki te aroaro
o te motu. Ma te motu e whakahangai, mau e
paihere i raro i te tika me te pono. Ka tau.
Na reira, kia kaha, kia uu.

We, the Commissioners of the Treaty of Waitangi Fisheries Commission, present to you the final allocation model – *He Kawai Amokura* – in accordance with our statutory obligations under section 6(e)(iv) of the Maori Fisheries Act 1989. *He Kawai Amokura* is a report that bears a significant name for te Iwi Maori. It is connotative of our long and eventful journey to secure our rangatiratanga and recover our rights to participate in one of New Zealand's most influential and vigorous industries. The course has been circuitous. However, it is apparent that a safe landing place is at hand for the Amokura.

This allocation model is directed towards ensuring that the fruits of the Settlement are ultimately for the benefit of all Maori. The model that we have developed balances a broad range of competing interests and is designed to assist Maori, today and for future generations, to prosper in the business and activity of fishing.

The Courts have repeatedly acknowledged that in this area the Commission is the specialist body that Parliament established to make the difficult and sensitive decisions that are inherent in the task of allocation. We have been given the unique task of exercising our discretion and powers to devise a solution that, in our wisdom and expertise, is best suited to Iwi and to Maori as a whole.

In our task of finding the right balance for allocation we have been guided by a range of considerations that are set out in this Report. However, when considering *He Kawai Amokura*, we ask that you keep two important matters in mind – compromise and durability.

We have sought to achieve the right compromise having regard to our statutory obligations and what we believe to be fair. We have also sought to maximise the agreement of Iwi and Maori to an allocation model. We have received the support of 93.1% of Iwi representing 96.7% of Iwi-affiliated Maori to proceed to report to you. The Commission has also received indications of support to this course from urban Maori organisations that have been actively engaged with the Commission during its consultation and agreement process.

Maori rights and interests in fisheries were guaranteed by Article 2 of the Treaty of Waitangi. This is an allocation of a full and final settlement of all Maori claims in respect of commercial fisheries. Allocation therefore has a significant impact on the durability of the Settlement between Maori and the Crown. We take the view that durability is dependent on, among other things, the allocation being accessible to successive generations. Allocation must also ensure that Iwi and Maori continue to maximise their opportunities for commercial success in the business of fishing.

We have not formed our views in a vacuum. We have been guided by the Deed of Settlement, by the legislation governing the pre-settlement assets (PRESA) and the post-settlement assets (POSA) (primarily quota and cash) and the post-settlement assets (primarily quota and shares in fishing companies), by the resolutions of the 1992 hui-a-tau of the Maori Fisheries Commission, by relevant Court decisions and importantly by a decade of extensive consultation and discussion with Iwi, Maori representative groups and individual Maori.

Balancing all of these things has been a difficult challenge. To meet this challenge we made the decision to address both pre-settlement assets (PRESA) and post-settlement assets (POSA) at the same time in a single allocation model. Dealing with both PRESA and POSA together gave us more scope to find the right balance, the right compromise and the most durable post-allocation structures. This approach means that the final model comprises several components, which are set out in this Report. These components, both individually and collectively, are the product of our consideration and the balancing of a number of inter-dependent factors.

Commissioners have had to find an appropriate balance between sometimes competing interests and views. This does not mean that we have had a closed mind to any points of view. To the contrary, we have considered all views, but in the end we needed to find a balance between a wide range of sometimes divergent opinions.

He Kawai Amokura

He Kawai Amokura and its components are described in full detail in the body of this Report and the proposed Maori Fisheries Development Bill is attached as Appendix 1.

In broad terms, *He Kawai Amokura* will directly allocate about half of the total settlement assets to Iwi (quota and cash). The other half of the assets (shares in the fishing companies) will be centrally managed on behalf of Iwi under a new organisation, Te Ohu Kai Moana. Continued economic benefits to Iwi are ensured through, among other things, the ongoing annual allocation to Iwi of dividends on the basis of their Income Share holdings in Aotearoa Fisheries Limited (AFL), which is to hold and manage the POSA companies on behalf of Te Ohu Kai Moana.

The allocation of the quota, cash and Income Shares will empower Iwi to develop their own assets as they see fit. To support Iwi development, transitional funding will be used to assist Iwi to develop the corporate governance structures required to prudently hold the assets that are to be allocated. The holding of the Voting Shares in AFL by Te Ohu Kai Moana on behalf of all Iwi enables Maori to stand together to develop their commercial interests and also provides AFL and the other companies with a unified and stable shareholder. Through the Income Shares in AFL and the company's dividend policy, Iwi should gain a larger and more certain revenue stream into the future.

There are still some Iwi who do not endorse all parts of the allocation model that we have proposed. For example, some believe that a 50% Iwi Population: 50% Iwi Coastline formula for allocating Deepwater Quota is more appropriate. On the other hand, however, several Iwi sought the allocation of Deepwater Quota solely on the basis of population. We have determined not to alter the 75% Iwi population: 25% Iwi Coastline formula for Deepwater Quota as it was clear from our consultation that to change this allocation formula further towards either population or coastline would result in the Commission losing more support than it would gain. Similar considerations have guided many of the final balances reflected in this Report.

We recognise that some Maori have ongoing reservations, but are appreciative that almost all Iwi, including the Iwi Forum group, have decided that it is appropriate for the Commission to report to the Minister of Fisheries despite such outstanding concerns.

The Commission is further heartened that, having issued the Full Particulars Report in early April, no Iwi has indicated a change in their support for this Report by commencing litigation. In the Commission's view, this provides confirmation of the continued support that exists among Iwi to not only move forward with allocation in terms of formally reporting to you, but also to have allocation progressed in the political and parliamentary arena, rather than the Courts.

Durability

In broad terms, the balance in *He Kawai Amokura* between the immediate allocation to Iwi of some assets and the central management and annual allocation of benefits from others on behalf of Iwi has been driven by our desire to increase the durability of the Settlement. We have taken the view that any model must have regard for nga uri whakatupu, future generations, and their ability to access both economic opportunities and benefits from this Settlement. To this end we have fettered the ability of current generations to alienate quota out of te Ao Maori. This means looking forward and ensuring that future generations have substantial commercial fishing assets to enjoy and develop. The transition funding that we have set aside will increase the opportunity for Iwi fishing businesses to be commercially successful. Similarly, the restriction on the sale of quota and Income Shares will prevent the alienation of Maori assets to non-Maori to the potential detriment of future generations. This situation, however, can be reviewed after a 12-year period.

Placing the Voting Shares of AFL in Te Ohu Kai Moana has enabled us to design a structure that provides AFL and the other fishing companies presently within the Commission group with a clearly focused, disciplined and stable shareholder that must pursue what is in the best interests of all Iwi and all Maori, not any single group. This should in turn increase the prospect of success in fishing for all Iwi and Maori. The concept of a strong Maori presence in the fishing industry building on the achievements of the Commission is widely supported. Benefits to Iwi through the dividends paid on Income Shares will provide an ongoing income stream into the future and if, following the intended review process, it is determined to end the central management structure then Iwi will receive the balance of the Settlement assets.

The proposed year 12 review will also provide the opportunity, following what we consider to be a reasonable settling in and development period, for Iwi to consider the continued viability – in terms of structure, governance and performance – of the post-allocation entities that will be established under *He Kawai Amokura*.

Compromise

An environment where those with an interest believe that what they have lost far outweighs the redress provided will always foster an element of dissatisfaction. This is necessarily true in the case of allocation where the benefits provided by the Crown under the Fisheries Settlement already represent a significant compromise on the part of Maori. In such circumstances, to give to one necessarily reduces the available redress for another. It has been necessary for us to weigh these competing priorities in the interests of all Maori in order to find a resolution. The level of agreement that has now been achieved has been hard won.

A key input to designing a fair allocation model is to take account of the views of individual Maori and Iwi on appropriate tikanga. Some Iwi argued that tikanga Maori required maximisation of benefits to most Maori through a population-based allocation. Other Iwi argued that tikanga Maori required recognition of the rangatiratanga of Iwi over the coastline of their rohe and that allocation should be based solely on Iwi coastline and not population. The Commission has had regard to these varying views on the application of tikanga Maori and other considerations to the issue of allocation. *He Kawai Amokura* reflects the desire of Commissioners to find the right compromise and balance between these divergent views. This balance in the allocation model can be noted in the fact that:

- (a) all Inshore Quota is allocated to Iwi using a coastline formula, whereas 75% of Deepwater Quota is allocated by Iwi population with 25% allocated on the basis of coastline, and
- (b) approximately half the assets (by value) are being allocated to Iwi and half are being managed centrally on behalf of Iwi with Income Shares and annual dividends distributed to Iwi.

This approach has enabled us to maximise the level of agreement. The very high level of support that has been achieved for the Commission to proceed to report to you indicates to us that we have found the right level of compromise between the various, and often divergent, views.

It must therefore be kept constantly in mind by you and any others considering this Report that *He Kawai Amokura* represents a finely balanced set of compromises between a range of often competing and divergent factors and views. It is very much a polycentric model (to adopt a term used by the High Court in a case considering the Commission's annual lease round methodology) where the consideration of individual components cannot properly be divorced from a consideration of the whole. As such, the alteration of a single component of the allocation model has the potential to adversely affect other components and thereby undermine the integrity of the entire model.

You should therefore consider very carefully the expert view reached by the Commission – the recognised specialist body in this area – before contemplating any modification of the allocation model in this Report.

The future

A decade after the final Settlement, the Settlement Assets have grown almost threefold under the Commission's stewardship. This demonstrates what is possible when the Settlement Assets are appropriately managed. Many Iwi have built successful fishing businesses based on the quota lease rounds that the Commission has managed over the last 10 years, and many young Maori are now participating in the diverse career opportunities available in the fishing industry through the support received from training and assistance grants provided by the Commission.

The New Zealand fishing industry is an exciting, growing export industry that is based on the principle of sustainability. Maori have an unrivalled opportunity to participate in and enjoy the benefits from the business and activity of fishing.

The provision of this Report is the penultimate stage of the path to allocation. The final stage, which is fundamental to *He Kawai Amokura*, is the enactment of legislation in the form of the Maori Fisheries Development Bill proposed in this Report. It has taken significantly longer than any of the architects of the Settlement could reasonably have expected to reach this final stage. It is therefore imperative that the momentum, which has been gained through the concerted work of the Commission and willingness of the vast majority of Iwi to commit to the road ahead, is not lost now that the Commission has reported to you.

It is therefore the Commissioners' conclusive view that, following your consideration of this Report, the proposed Maori Fisheries Development Bill should be promptly introduced into Parliament.

As the Waitangi Tribunal stated in 1992 in the context of fisheries allocation, and the Privy Council reiterated in 2001, "*Treaty matters are more for statesmen than lawyers*". We consider that statesmanship has been displayed by the Commission and Iwi in reaching the position enshrined in this Report. This role now rests with both you, as Minister, and Parliament.

We therefore commend to you the allocation model and Maori Fisheries Development Bill in this Report and what they offer to Iwi and ultimately all Maori.

DATED at Wellington this 9th day of May 2003



Shane Jones Chairman



Craig Ellison Deputy Chairman



Naida Glavish Commissioner



June Jackson Commissioner



June Mariu Commissioner



Ken Mason Commissioner



Maui Solomon Commissioner



Archie Taiaroa Commissioner



Toro Waaka Commissioner



Koro Wetere Commissioner

whakataka te hau ki te uru
whakataka te hau ki te tonga
kia makinakina ki uta
kia mataratara ki tai
kia hi ake ana te atakura
he tio he huka he hauhu
tihei mauriora



Introduction

PART A

BACKGROUND

1. The Treaty of Waitangi Fisheries Commission is a Maori statutory body empowered, among other things, to develop in consultation with Maori proposals for the allocation of the various assets and benefits that are derived from the 1989 interim and 1992 final settlement of Maori claims in respect of commercial fisheries.
2. Maori customary fishing rights were secured and guaranteed by the Treaty of Waitangi in 1840. Maori had claimed for many years that the Crown breached Treaty fishing rights through a series of actions that finally led to the introduction of the Quota Management System (QMS) in 1986.
3. Claims to the Waitangi Tribunal and in the Courts prompted the Crown to negotiate with Maori on Treaty fishing rights. These negotiations led to a two-stage settlement of claims over Maori commercial fisheries.
4. The first stage was an interim arrangement given effect by the Maori Fisheries Act 1989 (the Maori Fisheries Act). This created a Maori Fisheries Commission to receive cash and quota assets and to hold and manage them on behalf of Maori. The Maori Fisheries Commission was to promote Maori involvement in the business and activity of fishing.
5. Over four years, the interim settlement transferred to the Commission approximately 10% of the quota of the total allowable commercial catch for each species then being managed under the QMS. In some cases, quota itself was not immediately available, so cash was transferred in lieu of quota.
6. Commercial fishing claims were finally settled with the signing of the Deed of Settlement (the Deed) in September 1992. This was given effect by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act).
7. In the Settlement, the Crown:
 - (a) gave Maori funds to buy a 50% ownership stake in Sealord Products Limited, a major quota holder and fishing business;
 - (b) undertook to provide Maori with 20% of the quota for all new species brought within the QMS;
 - (c) gave Maori positions on statutory fisheries management bodies;
 - (d) restructured the Maori Fisheries Commission to enhance its accountability to Maori, and
 - (e) agreed to make regulations to allow self-management of Maori fishing for subsistence and cultural purposes (called customary fishing).
8. In return, Maori agreed:
 - (a) that the Settlement settled all Maori commercial fishing rights and interests;
 - (b) to accept regulations for customary fishing;
 - (c) to stop litigation (including any Tribunal claims) relating to Maori commercial fisheries;
 - (d) to support legislation to give effect to the Settlement, and
 - (e) to endorse the QMS.
9. Upon the enactment of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Maori Fisheries Commission was restructured into the Treaty of Waitangi Fisheries Commission, known informally as Te Ohu Kai Moana. In June 1993, a board of Commissioners was appointed to represent Maori. New Commissioners were most recently appointed in August 2000.

ASSETS THAT MAKE UP THE SETTLEMENT

10. The Settlement is made up of two sets of assets – namely, the pre-settlement assets (PRESA) and the post-settlement assets (POSA). Together, PRESA and POSA represent a substantial set of Maori economic assets.
11. PRESA are those assets secured in the 1989 interim settlement that was effected by the enactment of the Maori Fisheries Act on 20 December 1989, which also established the Maori Fisheries Commission. PRESA are those assets held by the Commission as at 6 January 1993 (or final settlements relating to those assets) and consist of quota, shares in Moana Pacific Fisheries Limited, and cash.

12. PRESA initially comprised approximately 10% of the quota for each of the species then in the QMS and \$10 million paid to the Commission by the Crown.¹ As a result of commercial development and investment by the Commission, PRESA currently comprise:
- 1,751,982,275 quota shares;
 - all the shares in Te Ohu Kai Moana Limited, which owns 83.74% of Moana Pacific Fisheries Limited;
 - an 18.6% share in Te Kupenga Limited, which owns 16.26% of Moana Pacific Fisheries Limited, and
 - approximately \$36.088 million in cash (prior to the proposed transfer of Moana Pacific Fisheries Limited).
13. It is extremely difficult to provide any accurate market value of PRESA due to constant fluctuations in the value of quota and the intrinsic variability in the value of the Moana Pacific Fisheries Limited shares. However, the Commission estimates the market value of PRESA to be approximately \$350 million.
14. POSA are those assets that resulted from the Deed of Settlement signed on 23 September 1992 that finally settled Maori commercial fisheries claims. The Settlement formed the cornerstone of the Treaty of Waitangi (Fisheries Claims) Settlement Act (Settlement Act) that was enacted on 14 December 1992. The Settlement Act clarified, by way of amendment to the Maori Fisheries Act 1989, the Commission's role in relation to the development of a scheme of allocation for PRESA and the distribution of the benefits of POSA. POSA consists of quota, shares in a number of fisheries companies and cash.
15. POSA currently comprises:
- a 50% shareholding in Sealord Group Limited held via a shareholding in Kura Limited, a company jointly owned with Nippon Suisan Kaisha, Limited;
 - interests in various companies including a 50% shareholding in Prepared Foods Limited, and a 100% shareholding in Prepared Foods Processing Limited, Chatham Processing Limited, Pacific Marine Farms Limited and Pupuri Taonga Trust;
 - 20% of the quota for species that have been introduced to the QMS since 1992 (currently 3,320,000,000 quota shares), and
 - approximately \$39 million cash (prior to the proposed transfer of Moana Pacific Fisheries Limited).

It is important to note that POSA also includes entitlement to 20% of the quota for any further species introduced into the QMS. The Commission estimates that the market value of POSA (excluding provision for the 20% of any further QMS species) is approximately \$350 million.

THE COMMISSION'S PROCESS

16. Since 1992, one of the principal statutory tasks of the Commission has been to work towards allocation. For PRESA, the Commission is required to act upon the resolutions passed at the 1992 hui-a-tau of the Maori Fisheries Commission and develop the optimum method for allocating PRESA to Iwi.² For POSA, the Commission is required to develop a procedure to identify the beneficiaries and their interests under the Settlement, and a procedure for distributing benefits to them.³ In both cases, the Commission is required to report its proposals to the Minister of Fisheries.⁴

¹ In some cases, the Commission received quota from the Crown that was less than 10% of the quota for the species. The Commission received cash in lieu and has attempted to increase its quota holdings to the 10% target in all PRESA species. This has not been possible in all cases and therefore the Commission's allocation model includes provision, where the PRESA quota held by the Commission is less than 10% of a fishstock, for a top-up of cash to be provided to affected Iwi in lieu of quota (see section 59 and Schedule 1 of the Draft Maori Fisheries Development Bill in Appendix 1 of this Report).

² Section 6(e)(i) of the Maori Fisheries Act 1989.

³ Section 6(e)(ii) of the Maori Fisheries Act 1989.

⁴ Section 6(e)(iv) of the Maori Fisheries Act 1989.

17. Issues relevant to the allocation of PRESA have been the subject of extensive discussion and consultation by the Commission over the last 10 years. Since 1994 the process towards allocation has been delayed by a series of claims before the Waitangi Tribunal and in the Courts. Some of these legal claims have yet to be finally resolved, although the litigation is presently inactive and all present proceedings would need to be substantially amended before they could proceed.⁵ However, the Courts have made several decisions in the context of these proceedings that have clarified a number of important allocation issues.
18. By November 1998, the Commission had developed what it then considered to be the optimum method for PRESA allocation (the 1998 PRESA allocation model). Although the Commission considered it had secured sufficient agreement to report to the Minister on the 1998 PRESA allocation model, a High Court order in March 1999 prevented it from reporting.⁶
19. Following the appointment of the current Commissioners in August 2000, the Commission revisited and considered further the 1998 PRESA allocation model and its underlying principles. The Commission looked at:
- (a) the extensive work and consultation that has taken place since 1992;
 - (b) all the discussion documents and reports on PRESA allocation produced by the Commission;
 - (c) issues raised in legal challenges to decisions of the Commission on PRESA allocation and other matters;
 - (d) decisions of the Waitangi Tribunal, High Court, Court of Appeal and Privy Council relevant to allocation, and
 - (e) the views expressed by Iwi, Maori organisations and other interested Maori for and against the allocation proposals.
20. The Commission desired to progress allocation and resolve the issues and conflicts that have arisen in relation to it. To facilitate this, the Commission took several further initiatives, including:
- (a) dispute resolution hui with the groups involved in litigation over PRESA allocation;
 - (b) the development of proposals for dealing with PRESA and POSA together (including the publication by the Commission of *He Anga Mua* and *Ahu Whakamua* in December 2001 and August 2002 respectively), and
 - (c) consultation with interested Maori and Iwi to develop options for allocating PRESA and distributing the benefits of POSA.
21. The Commission saw real benefit in considering both PRESA and POSA together in light of the delays that the Commission had experienced in relation to PRESA allocation. The Commission felt that this would also allow Iwi and other interested Maori to consider the effect and benefits of the Settlement, and the allocation model, as a whole.
22. The proposals now represented in the allocation model in this Report have not been advanced in isolation. They reflect ideas and approaches that have resulted from a long process of development and which have been honed by discussion around the country.⁷ Over the last 10 years a number of discussion documents have been produced by the Commission. Extensive consultation has taken place and various working groups established including Taumata Paepae. In 1998/99 the Commission developed and sought agreement to what it thought at that time to be the preferred method of allocation

⁵ There are presently seven proceedings relating to allocation in the High Court: CP 395/93 (Te Waka Hi Ika), M 1514/94 (Area One Consortium), CP 22/95 (Treaty Tribes), CP 122/95 (Urban Maori Authorities), M 734/95 (Ngati Porou), CP 171/97 (Ryder) and CP 122SW/99 (Traditional Tribes). Three of these proceedings (Area One Consortium, Ngati Porou and Treaty Tribes) have been largely inactive, insofar as action against the Commission is concerned, for several years. The other four proceedings are all presently directed at the Commission's 1998 model for PRESA allocation, which has been superseded by the Commission's ongoing decision-making since August 2000. In the Commission's view the existing proceedings are therefore all stale.

⁶ This Court order was lifted in 2002 subject to an undertaking to provide the parties to the litigation with 20 working days' notice of the full particulars of any scheme for allocation to be included in a report to the Minister. This notice was provided with the Commission's issue of the Full Particulars Report to the litigant parties in early April 2003.

⁷ Appendix 2 to this Report comprises a chronological overview of the Commission's key steps since 1989 on the path towards allocation.

of PRESA. Litigation in relation to allocation has also seen Maori journey twice to the Privy Council and generally receive important guidance from the Courts⁸.

23. The current Commissioners, since their appointment in August 2000, have revisited the Commission's past work and considered a range of options for both PRESA and POSA. Dispute resolution hui have been held. The Commission's intensive work in late 2000 and through 2001 resulted in the release in December 2001 of *He Anga Mua*, which set out a range of possible allocation models for both PRESA and POSA. Consultation hui were subsequently held and submissions received on the options and principles contained in *He Anga Mua*.
24. After considering the submissions received in response to *He Anga Mua* from Iwi, Maori organisations and other interested parties and individuals, the Commission proceeded to develop a single preferred model for PRESA and POSA allocation. This proposal was released as *Ahu Whakamua* in August 2002 and the Commission sought the agreement of Iwi and Maori to the proposals contained in *Ahu Whakamua*.
25. There also remained unresolved issues regarding litigation. The Commission was hopeful that the combined proposal for PRESA and POSA in *Ahu Whakamua* would alleviate concerns and facilitate further agreement. The Commission believes the level of agreement it has now secured endorses this approach.
26. After releasing *Ahu Whakamua*, the Commission considered carefully the responses received from Iwi and Maori. The Commission also had discussions with

certain Iwi to hear and better understand their views and comments on *Ahu Whakamua*. The responses received to both *He Anga Mua* and *Ahu Whakamua*, the various hui and other discussions that have been held have assisted the Commission in reaching the allocation model (*He Kawai Amokura*) that is proposed in this Report. Full particulars of *He Kawai Amokura* were issued to the litigant parties, as well as Iwi and other interested persons, in early April 2003 in the form of the Commission's Full Particulars Report.

27. As noted, the allocation model in this Report conjointly and inter-dependently deals with both PRESA and POSA. It is most important when considering the allocation model to look at its inter-connected nature. While the component parts of the model can be looked at individually, the polycentric nature of the model means that in the end the model can only be rationally judged as a whole. If component parts of the allocation model are altered there will necessarily be multiple repercussions on the balance and integrity of the overall model.
28. The Commission already has the power to implement any proposal for PRESA allocation subject to reporting to the Minister and responding to any comments that the Minister may have. However, a new Maori Fisheries Act will be needed to implement the distribution of POSA benefits.
29. The Draft Maori Fisheries Development Bill contained in Appendix 1 to this Report provides the necessary statutory authority to implement that part of the allocation model relating to POSA. To the extent that several of the conditions applying to POSA are the same as those applying to PRESA, the draft legislation confirms certain mechanisms that will already be in operation for PRESA. To avoid doubt it ensures these clauses apply to both PRESA and POSA. *He Kawai Amokura* therefore envisages the passage of legislation in the form of the Draft Maori Fisheries Development Bill before either POSA and PRESA allocation may be effected.

⁸ The series of Court decisions relating directly to allocation issues include:

- *Hauraki Maori Trust Board & Ors v Waitangi Tribunal & Ors*, unreported, Ellis J, CP 171/95 and CP154/95, 5 July 1995, (High Court)
- *Te Runanga o Muriwhenua & Ors v Te Runanganui o Te Upoko o Te Ika & Ors* [1996] 3 NZLR 10 (Court of Appeal)
- *Treaty Tribes Coalition & Ors v Urban Maori Authorities* [1997] 1 NZLR 513 (Privy Council)
- *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (High Court and Court of Appeal)
- *Ryder & Ors v Treaty of Waitangi Fisheries Commission*, unreported, Anderson and Paterson JJ, CP171/97, 6 April 2000 (High Court)
- *Te Arawa Maori Trust Board v Attorney-General*, unreported, Anderson and Paterson JJ, CP 448CO/99, 5 December 2000 (High Court)
- *Manukau Urban Maori Authority v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 (Privy Council)

30. The Commission believes it is best for all Maori if issues about both PRESA and POSA allocation can be resolved without ongoing lengthy and costly court proceedings. The Commission is conscious of the sentiment often expressed during the process towards allocation, and most recently recorded by the Privy Council, that *"Treaty matters are more for statesmen than lawyers"*.⁹
31. It was against this background that the Commission applied to the High Court in June 2002 to lift the restraining order that had prevented it from reporting to the Minister with a proposal for PRESA allocation. That restraining order was directed at the proposals that the Commission developed in 1998/1999 that dealt solely with PRESA. Those proposals have been superseded by the Commission's subsequent processes and proposals, including this Report.
32. The High Court decided on 30 July 2002 to lift the restraining order subject to the Commission undertaking to give the litigant parties at least 20 working days' notice of the full particulars of any scheme for the allocation of PRESA that the Commission proposed to include in its report to the Minister of Fisheries.
33. As noted, the Commission issued its Full Particulars Report in early April 2003 in terms of its undertaking to the High Court. 20 working days' notice having been given, the Commission now presents this Report to the Minister with the express hope that the Minister, and in turn Parliament, will be the forum in which any residual issues are considered, rather than the Courts.

⁹ *Manukau Urban Maori Authority Et Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 at paragraph 23, citing the Waitangi Tribunal in the Fisheries Settlement Report 1992 (Wai 307) at p21.



Executive Summary

PART B

ALLOCATION TO IWI ULTIMATELY FOR THE BENEFIT OF ALL MAORI

1. The primary beneficiaries of the Settlement are Iwi who, in terms of both PRESA and POSA, are to receive allocation ultimately for the benefit of all Maori. The Commission considers that this is the legal position having regard to the express provisions and underlying intention of the Maori Fisheries Act 1989, the Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and to relevant decisions of the High Court, Court of Appeal and Privy Council.¹

OVERVIEW OF THE ALLOCATION MODEL

2. The final decisions reached by the Commission and set out in this Report and the Draft Maori Fisheries Development Bill in Appendix 1 reflect the culmination and collective thinking of more than 12 years' work, including extensive consultation and discussion with Iwi, Maori and other interested parties. Following the appointment of the current Commissioners, the Commission released for consultation in December 2001 a range of allocation options in the form of *He Anga Mua*. From *He Anga Mua* and the submissions subsequently received, the Commission selected its preferred combination of these options, which it released as *Ahu Whakamua* for the purpose of agreement in August 2002.
3. Our development of the allocation model did not cease once the *Ahu Whakamua* proposal was released. We remained receptive to views put to us by Iwi, Maori organisations, individual Maori and other interested persons on how best to allocate the assets and benefits of the Settlement. Between October 2002 and March 2003 we systematically finalised the allocation model by reviewing the *Ahu Whakamua* proposal and refining or enhancing that proposal where necessary.
4. Having regard to the responses received to *Ahu Whakamua*, including the nature and extent of agreement, the Commission made certain refinements and modifications to aspects of the *Ahu Whakamua* proposal. The refinements were incorporated into the Full Particulars Report that was issued in early April and also this Report.
5. In the Commission's view, the refinements that were made enhance the allocation model both in terms of underlying intent of the Settlement and the extent of agreement.
6. The refinements that have been made remain consistent with the broad principles enshrined in *Ahu Whakamua* and do not affect the way that allocation would have been delivered to Iwi under *Ahu Whakamua*. The recipients of the Settlement remain Iwi and through Iwi ultimately all Maori. The refinements have, however, clarified in certain instances the detail of how and when Iwi will receive allocation under *He Kawai Amokura*.
7. Last month the Commission issued to the parties involved in the allocation litigation (which challenged the Commission's previous 1998 PRESA allocation model), and also to Iwi and other interested persons, the full particulars of the scheme of allocation that is now contained in this Report. The Full Particulars Report, in accordance with an undertaking given by the Commission to the High Court in 2002, provided the parties with 20 working days' notice of the Commission's intention to present this Report.
8. Notwithstanding the release of the Full Particulars Report, the Commission has remained willing to consider issues raised with it in relation to the proposed allocation model. Partially through this process, a number of minor incongruities have been identified and these have been clarified or corrected as necessary in this Report.
9. The principal elements of *He Kawai Amokura*, which are set out in detail in Part E of this Report, are illustrated in Figure 1. In summary, they comprise:
 - All Inshore Quota (PRESA and POSA) will be allocated to Iwi using a coastline formula only.
 - All Deepwater Quota (PRESA and POSA) will be allocated to Iwi using a 75% Iwi Population: 25% Iwi Coastline formula (except for the Chathams as noted below).

¹ See Part C of this Report for a discussion of the relevant legal and other considerations to which the Commission had regard in the development and finalisation of *He Kawai Amokura*.

PRESA			
ASSETS	WHAT	WHO TO	FORMULA
 Inshore Quota	Allocate Quota	Iwi	Coastline
 Deepwater Quota	Allocate Quota	Iwi	25% Coastline 75% Population
 Shares	Transfer for POSA cash and add to PRESA cash	Aotearoa Fisheries Limited	Fair Market Value
 Cash	Allocate some Hold some for Te Putea Whakatapu Trust, Te Wai Maori Trust and TOKM for reserve and transition	Iwi TOKM and Trusts	Iwi Population Amounts as set out in Bill
POSA			
ASSETS	WHAT	WHO TO	FORMULA
 Inshore Quota	Allocate Quota	Iwi	Coastline
 Deepwater Quota	Allocate Quota	Iwi	25% Coastline 75% Population
 Shares	Part of Aotearoa Fisheries Limited Allocate Income Shares	80% to Iwi 20% to TOKM	Iwi Population
 Cash	Purchase PRESA shares, remainder in Aotearoa Fisheries Limited Allocate Income Shares	Iwi TOKM	Iwi Population
Common Features PRESA/POSA			
 < \$1M Minimum Settlement	Allocation of \$1 Million assets through quota, cash and income shares	Seven Iwi	Top up allocation from PRESA cash
 Chatham Islands	Special fishery zone; all inshore and deepwater fisheries in this zone	Chatham Island Iwi Iwi	Inshore by Coastline 50% Deepwater by Coastline 50% Deepwater by Population
 Freshwater Quota	Species into QMS	Iwi	Agreement between Iwi or by Population resident in QMA
 Te Wai Maori Trust	Trust to fund freshwater fisheries research, restoration and development	Iwi and Maori Iwi on Wind-up	by application Iwi Population
 Te Putea Whakatapu Trust	Trust to develop Maori human capital	Iwi and Maori Iwi on Wind-up	by application Iwi Population
Te Ohu Kai Moana	Successor to Commission Centrally holds and manages POSA on behalf of Iwi	Iwi on Wind-up	Iwi Population
Te Kawai Taumata	Electoral College that appoints TOKM Commissioners	Iwi and Representative Maori Organisations (RMO's)	10 Regional Groups of Iwi + 1 group of RMOs
Review	Review of Post Allocation Structure	TOKM Iwi	Independent Review
Right of First Refusal	Mechanism to retain Treaty assets within Maori	Te Ohu Kai Moana and Iwi	Iwi quota and Income shares may only be sold to Te Ohu Kai Moana and Iwi
Conditions applying to Iwi before they can receive either PRESA or POSA			
Constitutions	Must meet required standards	Iwi	As set out in Schedule 7 of the Maori Fisheries Development Bill
Iwi Registers	Minimum number of members	Iwi	As set out in schedule 4 of Bill
Structures	Separation of governance from management	Iwi	As set out in Schedule 7 of the Maori Fisheries Development Bill
Coastline Agreements	Agreements between neighbouring Iwi	Iwi	Agreements between neighbouring Iwi

- Prior to allocation the shares in Moana Pacific Fisheries Limited (a PRESA asset) will be exchanged for cash from POSA as set out in this Report and on allocation that cash will be distributed on the same basis as the PRESA cash.
 - PRESA cash will be allocated to Iwi using a population formula subject to: the establishment of Te Putea Whakatupu Trust to assist Maori including those who do not know their Iwi or choose not to associate with their Iwi organisations (\$20 million); the supplementing of certain Iwi allocations in order that all Iwi achieve a minimum allocation value of \$1 million (\$2.72 million); the initial establishment of Te Wai Maori Trust to assist freshwater fisheries initiatives (\$10 million); the establishment of an initial capital reserve for Te Ohu Kai Moana (\$5 million); and funding to enable Te Ohu Kai Moana to perform all of its various functions (\$18 million). After provision for these matters, the remaining PRESA cash will be allocated directly to Iwi on the basis of Iwi population (expected to be approximately \$20.7 million).
 - The unique status of the Chatham Islands will be recognised through the allocation of quota on the basis of a separate Chatham Zone in which Inshore Quota will be allocated to the Chathams Iwi and Deepwater Quota will be allocated 50% to the Chathams Iwi and 50% on a population basis to all Iwi.
 - A trust called Te Putea Whakatupu Trust will be established to deliver assistance with capital of \$20 million. All Maori will have the right to apply to Te Putea Whakatupu Trust for assistance in order to develop human resources so that Maori can participate at all levels of the fishing industry.
 - A trust called Te Wai Maori Trust will be established for freshwater fisheries development purposes with initial capital of \$10 million, increasing over time to \$20 million.
 - An Electoral College, *Te Kawai Taumata*, established through regional groupings of Iwi and certain representative Maori organisations, will have responsibility for selecting and appointing a team of Commissioners to a new organisation called Te Ohu Kai Moana.
 - Shares in all of the POSA fisheries companies (Sealord, Moana Pacific, Prepared Foods, etc) will be held by a new company, Aotearoa Fisheries Limited (AFL).
 - Te Ohu Kai Moana Commissioners will appoint the directors of AFL.
 - AFL will issue Income Shares, 80% of which will go to Iwi using a population formula and 20% of which will be held by Te Ohu Kai Moana.
 - Te Ohu Kai Moana will hold all Voting Shares in AFL.
 - AFL will only be able to pay distributions to income shareholders and will be required to ensure 40% of its net profit after tax is paid as a dividend on its Income Shares with the remainder being invested back into growing the business.
 - Iwi will be able to sell Allocated Quota and their Income Shares through a specified process to other Iwi and Te Ohu Kai Moana, but not outside those parties.
 - Iwi within the same Quota Management Area and Te Ohu Kai Moana will have the right of first refusal on the sale of Allocated Quota by an Iwi.
 - A review of the structures, performance and governance of the post-allocation bodies (including Te Ohu Kai Moana, AFL, Te Kawai Taumata, Te Putea Whakatupu Trust and Te Wai Maori Trust) will be held 12 years after allocation commences.
 - Iwi will be the ultimate beneficiaries on the wind-up of each of Te Ohu Kai Moana, Te Putea Whakatupu Trust and Te Wai Maori Trust.
 - The key components of the model, particularly relating to POSA and the establishment of the post-allocation entities, will be implemented through a new statute, the Maori Fisheries Development Act 2003.
10. As stated, the Settlement is to be allocated to Iwi ultimately for the benefit of all Maori. Figure 2 illustrates how allocation to Iwi, as the direct beneficiaries under *He Kawai Amokura*, will occur through five mechanisms:
- (a) First, once an Iwi has a Mandated Iwi Organisation that has obtained a coastline agreement with all affected Iwi and met the Iwi

register requirements, there will be an immediate transfer of ownership of the following assets:

- PRESA and POSA quota;
 - a portion of the PRESA cash, and
 - Income Shares in AFL.
- (b) Second, there will be allocation of benefits continuously over time from AFL, Te Putea Whakatupu Trust and Te Wai Maori Trust through:
- the allocation of dividends to owners of Income Shares in AFL on an annual basis, which is expected to begin on 1 October 2007 subject to AFL achieving a debt to asset ratio of 25% and the initial capitalisation of the Te Putea Whakatupu and Te Wai Maori Trusts;
 - the ability of Iwi and Iwi members to apply for grants from Te Putea Whakatupu Trust, subject to approval from the Trustees, and
 - the ability of Iwi and Iwi members to apply for grants from Te Wai Maori Trust, subject to approval from Trustees.
- (c) Third, there will be progressive allocation of quota to Iwi as the Crown introduces new species into the Quota Management System (QMS) and provides 20% of the quota for those new species to Te Ohu Kai Moana.
- (d) Fourth, the review process that is to occur after 12 years under the Draft Maori Fisheries Development Bill will examine and make recommendations on the governance structure of Te Ohu Kai Moana, AFL, Te Putea Whakatupu Trust and Te Wai Maori Trust. In the event that a recommendation following a review supporting the transfer of voting shares in AFL from Te Ohu Kai Moana to Iwi is endorsed by Iwi, that transfer will occur in proportion to the Income Shares held by Iwi.
- (e) Fifth, Iwi are the final beneficiaries of Te Ohu Kai Moana, AFL, Te Putea Whakatupu Trust and Te Wai Maori Trust and on the wind-up of any or all of those entities any surplus assets held by those entities will be distributed to Iwi on the following basis:
- Te Ohu Kai Moana Iwi by population.
 - AFL Iwi by Income Shares.²
 - Te Putea Whakatupu Trust Iwi by population.
 - Te Wai Maori Trust Iwi by population.
11. As noted in Figure 2, allocation will be a progressive process. *He Kawai Amokura* envisages a five-year transition while the new POSA bodies – Te Ohu Kai Moana, Aotearoa Fisheries Limited, Te Putea Whakatupu Trust and Te Wai Maori Trust – are established. At the same time, Iwi will be pursuing recognition as Mandated Iwi Organisations, reaching agreements with other Iwi, improving their registers of members and receiving and managing Settlement Assets. While a significant transfer of assets and benefits will have occurred within the five-year transition period, the final transfer of capital to Te Wai Maori Trust may take until 2018 to be completed. Figure 3 shows the broad distribution of the Settlement Assets that is anticipated to have occurred by that time. Appendix 3 of this Report sets out indicative figures showing what Iwi may obtain under *He Kawai Amokura*. These figures are the same as those that were set out in Appendix 1 of *Ahu Whakamua* and therefore, while they provide a broad indication of Iwi relativities, they are subject to the same important provisos in terms of likely changes by the time of actual allocation.
12. A further important element of *He Kawai Amokura*, consistent with the Commission's proposal in *Ahu Whakamua*, is dispute resolution. The implementation of the allocation model and the ongoing relationship between both Iwi organisations and Te Ohu Kai Moana and Iwi organisations and their members require effective dispute resolution mechanisms. To this end it is proposed that:
- (a) Iwi constitutions will need to contain express provision for alternative dispute resolution (eg mediation);
 - (b) The Maori Land Court will have an expanded jurisdiction to address through mediation and/or adjudication a number of specified disputes relating to allocation, and

² If AFL is wound up independently of Te Ohu Kai Moana, 20% of its assets will transfer to Te Ohu Kai Moana in accordance with its 20% shareholding in AFL, but that 20% will in turn go to Iwi (on the basis of population) upon any subsequent wind-up of Te Ohu Kai Moana.

FIGURE 2

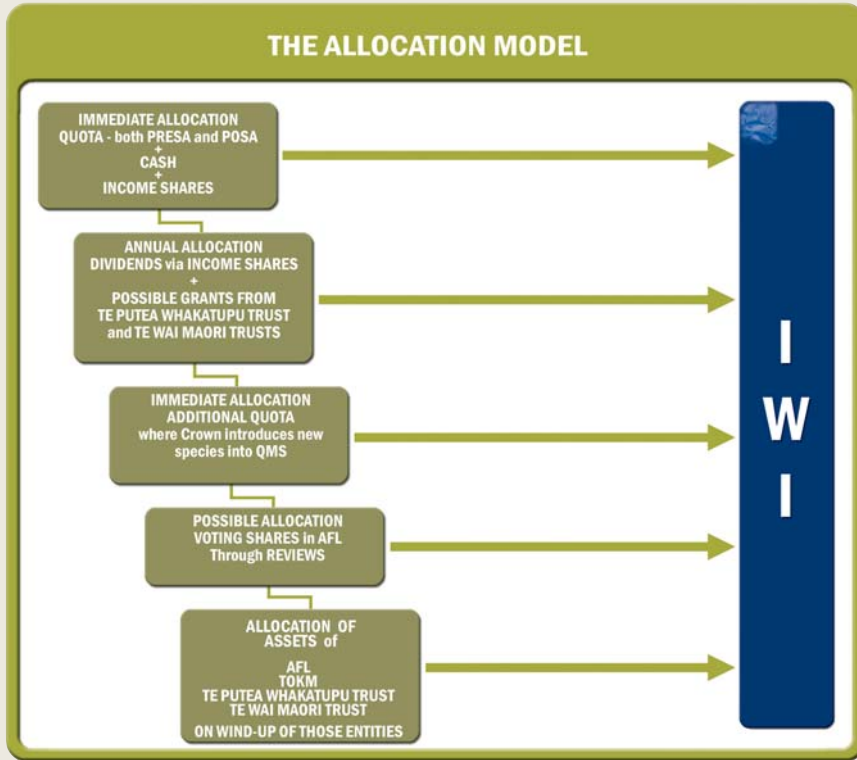
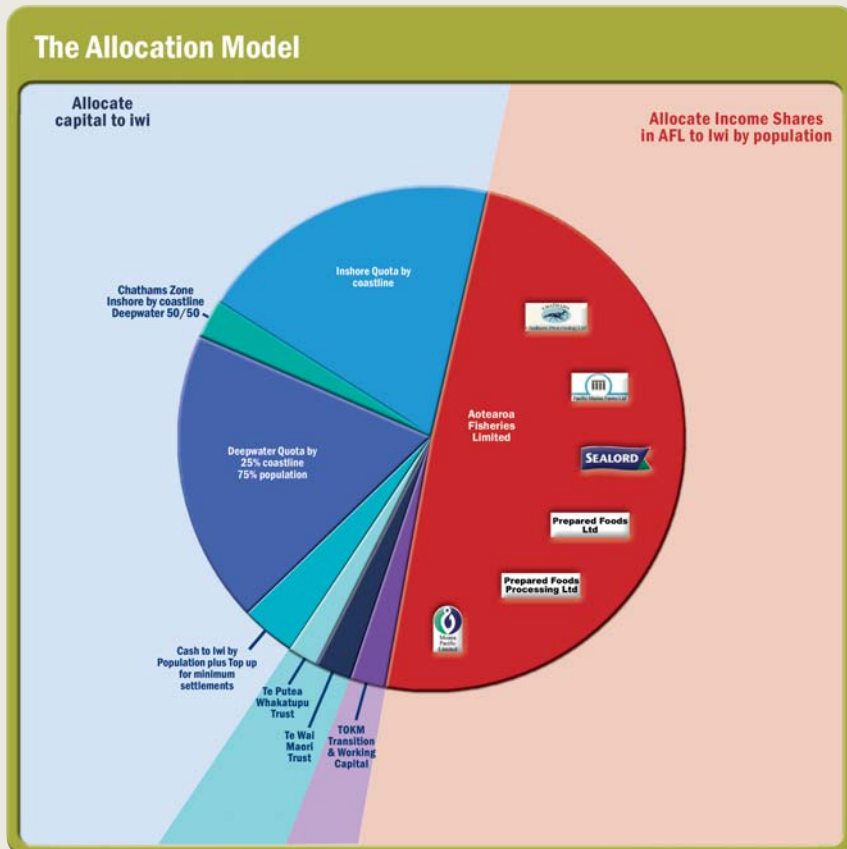


FIGURE 3



- (c) Where the Maori Land Court does not have jurisdiction, Te Ohu Kai Moana, Te Wai Maori Trust and Te Putea Whakatapu Trust will be accountable, as appropriate, to Iwi as the final beneficiaries through the ordinary legal principles and procedures relating to trusts and judicial review.
13. Altering or removing one of the elements of *He Kawai Amokura* has the potential to undermine all of the other elements and unravel the whole. It is a finely balanced set of compromises and structures that is contained in this Report, the presentation of which now has the support of the majority of Iwi and Maori. This Report makes explicit the basis on which the Commission has forged its view and the guiding principles that underpin those decisions. In order to fulfil the Commission's task of developing this final allocation model it has:
- Found a compromise that is fair, and maximises the support of Iwi and Maori, and
 - Developed a sustainable allocation model that ensures the settlement is durable and maximises the opportunity for Maori commercial success.

SUMMARY ON EXTENT OF AGREEMENT

14. Having regard to the responses received to *Ahu Whakamua*, and subsequent discussions between representatives of the Commission and Iwi, the Commission considers that it has the support of 93.1% of Iwi representing 96.7% of Iwi-affiliated Maori to proceed to report to the Minister in relation to allocation.
15. This Report therefore sets out a fair and durable allocation model that creates wealth, ultimately for the benefit of all Maori, through the central management of certain combined assets on behalf of Iwi and the ultimate allocation of all the Settlement to Iwi in part immediately, in part over time, and finally on wind-up of the post-allocation entities.

BALANCE OF THIS REPORT

The balance of this Report comprises:

- (a) Part C – Relevant Considerations: This part of the Report discusses the legal and other principles that have guided the Commission in the development of *He Kawai Amokura*.
- (b) Part D – Consultation and Agreement Process: This part of the Report outlines in some detail the Commission's process since August 2000 on the path towards allocation.
- (c) Part E – Explanation of Components of the Allocation Model: This part of the Report describes in detail each element of *He Kawai Amokura*.
- (d) Part F – Implementation Plan: This part of the Report addresses the steps necessary to implement *He Kawai Amokura*, particularly during the expected transition period of five years.
- (e) Part G – Appendices: This part of the Report importantly contains, as Appendix 1, the Draft Maori Fisheries Development Bill that, once enacted, will enable the implementation of *He Kawai Amokura*.



Relevant Considerations

PART C

1. This Part of the Report sets out the broad principles that have guided the Commission when considering and finally arriving at the allocation model in this Report. The Commission, as a statutory body, has no power to distribute the assets that it holds except in accordance with the Maori Fisheries Act 1989 and its amendments.
2. The Maori Fisheries Act 1989 as amended by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 identifies the Commission's powers and functions in relation to both PRESA and POSA. In particular, the Act identifies the process that the Commission must follow in developing a proposal for PRESA and POSA allocation. However, while a number of key principles are discernible from the legislation and the underlying Settlement, there is also a degree of ambiguity. This is evident, for example, in the litigation that has taken place in relation to the issue of Iwi-only allocation and the settlement of freshwater fisheries claims.¹ The legislation is also not highly prescriptive in terms of either the matters that the Commission must take into account or the ultimate decision that the Commission must reach.
3. Guidance has been given by the Courts in litigation involving the Commission and the Settlement.² However, there is no exhaustive list of considerations and the Commission has had to consider and develop criteria to assist it in fulfilling its statutory functions in relation to allocation.
4. In terms of allocation, the Commission is therefore faced with a unique and difficult statutory task. It has been recognised by the Courts that the Commission is a unique specialist body.³ In the end, subject to any mandatory legal requirements and having regard to all relevant considerations, including consultation with Iwi and other interested Maori, the Commission must

exercise its discretion in determining the scheme for allocation, including proposals for a new Maori Fisheries Act, to be included in its Report to the Minister.

5. While the Commission has consulted widely over many years and has sought agreement in relation to its preferred model for allocation, the Court of Appeal has recognised that in the absence of agreement the Commission itself may decide, by majority as a last resort, on a scheme for the Minister's consideration.⁴

LEGAL CONSIDERATIONS

PRESA

6. In relation to PRESA, the Commission must "*consider how best to give effect to*" the resolutions in Schedule 1A, namely:⁵
 - (a) Examine the alternative methods of allocation;
 - (b) Consult with Iwi, and
 - (c) Prepare discussion material,

with the aim of enabling agreement to be reached on the "optimum method" of PRESA allocation.
7. The optimum method must:⁶
 - (a) Allocate the PRESA assets, and
 - (b) Allocate the PRESA assets solely to Iwi (meaning traditional tribes).

The fact that the Commission must allocate PRESA solely to Iwi or bodies representing Iwi has been firmly established by the High Court, the Court of Appeal and the Privy Council.⁷
8. The Commission must also "*consider how best to give effect to*" the allocation of the former assets of AFL, PRESA cash, and other PRESA assets on the same basis as the PRESA quota is allocated.⁸

¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 and *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 (Iwi-only allocation); *Te Arawa Maori Trust Board v Attorney-General*, High Court, CP 448CO/99, 5 December 2000 (freshwater fisheries).

² See, for example, *Te Runanga o Muriwhenua & Ors v Te Runanganui o Te Upoko o Te Ika & Ors* [1996] 3 NZLR 10; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285; *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17; *Te Arawa Maori Trust Board v Attorney-General*, High Court, CP 448CO/99, 5 December 2000 and the other decisions identified in footnote 8 in Part A of this Report.

³ *Te Runanga o Muriwhenua & Ors v Te Runanganui o Te Upoko o Te Ika & Ors* [1996] 3 NZLR 10, at p 17 (CA); *Te Runanga o Raukawa Inc v Treaty of Waitangi Fisheries Commission*, Court of Appeal, CA 178/97, 14 October 1997 at p 11.

⁴ *Te Runanga o Muriwhenua & Ors v Te Runanganui o Te Upoko o Te Ika & Ors* [1996] 3 NZLR 10, at p 17 (CA).

⁵ Section 6(e)(i) of the Maori Fisheries Act 1989.

⁶ Resolution 1 of Schedule 1A to the Maori Fisheries Act 1989.

⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC and CA); *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 (PC).

⁸ Resolutions 5 and 6 of Schedule 1A to the Maori Fisheries Act 1989.

9. The optimum method for PRESA allocation must be consistent with the Deed of Settlement and ensure that the Settlement is ultimately for the benefit of all Maori.⁹ The Privy Council has stated that if the Commission is unable to develop an allocation model that is ultimately for the benefit of all Maori, then the Commission has no power to allocate the PRESA assets at all.¹⁰ Importantly, however, the Privy Council commented that the requirement that the Settlement must ultimately be for the benefit of all Maori does not mean that there must be an immediate and demonstrable benefit for each individual Maori, although the Court of Appeal observes that Iwi must have in place structures that will assist to ensure that the Settlement is ultimately for the benefit of all Maori.¹¹

POSA

10. Different statutory constraints apply to POSA. The Commission does not have the power to allocate benefits from POSA without a new Maori Fisheries Act.
11. In relation to POSA, the Commission is required to develop, after full consultation with Maori, proposals for a new Maori Fisheries Act that is consistent with the Deed of Settlement and makes provision for:¹²
- the appointment, composition and powers of a body, if any, to succeed the Commission;
 - a procedure for identifying the beneficiaries and their interests under the Deed in accordance with the Treaty of Waitangi, and
 - a procedure for allocating to those beneficiaries, in accordance with the principles of the Treaty of Waitangi, the benefits from the Deed of Settlement.
12. Like PRESA, the proposal for the allocation of POSA must also be consistent with the Deed of Settlement¹³ and must ensure that the Settlement is ultimately for

the benefit of all Maori.¹⁴ The legislation also highlights the importance of the Treaty of Waitangi in the development of a procedure for POSA allocation.¹⁵

13. The proposal for the allocation of POSA must address the matters set out in Annexure A of the Deed of Settlement, including:¹⁶
- The benefits that will be distributed;
 - The identification of beneficiaries;
 - The management of the distribution scheme;
 - Who will receive the benefits and how individual, whanau or hapu interests can be accommodated within Iwi structures;
 - How different levels of interest in different assets and benefits should be addressed, and
 - Dispute resolution processes.

While Annexure A to the Deed is not expressly mentioned in the Maori Fisheries Act 1989, the Act states that any scheme for POSA allocation must be “consistent with the Deed”¹⁷ and the Deed includes Annexure A. The Commission therefore considers that it must pay particular attention to the issues set out in Annexure A in relation to any scheme for POSA allocation.

14. The Commission considers that while the Maori Fisheries Act 1989 and the Deed of Settlement do not prevent the Commission from distributing some or all of the POSA assets, neither do they preclude the Commission from retaining trustee ownership on behalf of Iwi of certain assets and establishing structures and processes to distribute the benefits derived from those assets to Iwi over time.
15. While the references to PRESA allocation in the Maori Fisheries Act 1989 refer to the allocation of “assets”, for POSA the Maori Fisheries Act and the Deed of Settlement mostly refer to the distribution of “benefits”. In the Commission’s view, while the term “benefits” may include the assets themselves, it is not necessarily so limited. Accordingly, the Commission

⁹ Section 3 of Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and clause 4.5.1 of the Deed of Settlement; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 at pp 369-376 (CA); and *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 at paragraphs 19-23 (PC).

¹⁰ *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 at paragraph 19 (PC).

¹¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 at p 376 (CA).

¹² Section 6(e)(ii) of the Maori Fisheries Act 1989.

¹³ Section 3 of Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and section 6(e)(ii) of the Maori Fisheries Act 1989.

¹⁴ Clause 4.5.1 of the Deed of Settlement.

¹⁵ Section 6(e)(ii)(B) of the Maori Fisheries Act 1989.

¹⁶ Clause 4.5.4.2 and Annexure A of the Deed of Settlement.

¹⁷ Section 6(e)(ii) of the Maori Fisheries Act 1989.

considers that, provided any POSA allocation is in accordance with the principles of the Treaty, consistent with the Deed of Settlement and ultimately for the benefit of all Maori, there exists some discretion under the Act and the Deed in relation to the nature of the POSA "benefits" that are to be immediately allocated. However, it is acknowledged that there should be provision for the ultimate distribution of the assets to Iwi (for example, on the wind-up of any post-allocation asset-holding entity). This is particularly so given that the scheme of allocation for POSA is to be implemented through legislation.

16. A range of different and sometimes conflicting views has been expressed by Iwi and other interested Maori on what could or should be proposed in terms of POSA allocation. *He Kawai Amokura* attempts to find a balance between the views expressed by the various groups and the other considerations that are relevant to the Commission's legal obligations.
17. While the Commission is under no obligation to "identify" the beneficiaries and their interests, it must provide for "the development of a procedure" for their identification. The body that succeeds the Commission under the new Maori Fisheries Development Act could therefore implement any procedure developed by the Commission. The same could be said about the requirement to develop a procedure to distribute the benefits of the Deed of Settlement.
18. However, the Commission has developed detailed provisions for POSA that identify the beneficiaries (namely Iwi) and give the basis for the distribution of benefits to those beneficiaries.¹⁸ The Commission considers that this is the best approach if Maori are to achieve final resolution of PRESA and POSA allocation within a reasonable timeframe.
19. Identification of beneficiaries and their interests must be in accordance with the Treaty of Waitangi. The reference to the Treaty in the Deed affirms that the Settlement was based on Treaty fishing rights. The Courts have recognised that the Settlement, while

pan-Maori, is first and foremost a settlement of Treaty claims. This is confirmed in the Preamble to the Deed of Settlement, the Long Title to the Maori Fisheries Act 1989, and the Preamble to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This has also been recognised by the High Court and Court of Appeal.¹⁹

20. Annexure A of the Deed says that, in considering POSA allocation, the Commission should address the identification of Iwi and their fishing interests and how individual, whanau or hapu interests can be accommodated within Iwi structures.
21. The Deed was drafted in 1992. In developing proposals for PRESA allocation since then, the Commission has considered in depth the nature of Maori fishing rights and interests, and by whom they were held. These matters were also reported on by the Waitangi Tribunal and have been extensively considered by the Courts in the allocation litigation.²⁰ Accordingly, the Commission does not consider that there would be anything of merit gained by carrying out further detailed investigation of the exact nature and extent of Treaty rights in commercial fisheries, and the interests of each Iwi, hapu, whanau and Maori in commercial fisheries.
22. There is no express direction in the Maori Fisheries Act 1989 that POSA benefits should be distributed solely to Iwi. However, there is a clear indication in Annexure A of the Deed (as noted above) that Iwi are intended to be the principal beneficiaries, with other interests being accommodated through Iwi structures.
23. This view was supported by the Court of Appeal. In particular, while the allocation litigation to date has focused on PRESA allocation, the Court of Appeal addressed the POSA provisions in the course of its 1999 decision where it said:²¹

¹⁸ See generally Part E of this Report and the Draft Maori Fisheries Development Bill.

¹⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285.

²⁰ A number of clear factual findings on the nature and extent of fisheries rights have been made by the Waitangi Tribunal (Muriwhenua Fishing, Ngai Tahu Sea Fisheries, and Fisheries Settlement Reports) and the Courts (*Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 at pp 307-312 per High Court, and pp 375-376 per Court of Appeal).

²¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 at pp 370-371.

- *“What is occurring is a tribal Settlement – a Settlement with Maori in their tribes”;*
 - *“It is very clear that [the Deed of Settlement] was contemplating only a distribution to Iwi, but on the basis that Iwi must achieve a fair allocation among all Maori”,* and
 - *“The benefits, which are ultimately to be available to all Maori, are to be delivered through tribal mechanisms”.*
24. In these circumstances, hapu, whanau and individual Maori may be acknowledged as the ultimate beneficiaries of the Settlement, but the law requires them to receive benefits through Iwi structures. This is consistent with the Settlement being ultimately for the benefit of all Maori.²²
25. For these reasons, the Commission must ensure that Iwi are representative of and accountable to their hapu, whanau and individual members wherever they may live. Therefore, Iwi organisations will be required to meet minimum standards of structure, accountability, and representation before being recognised as mandated to receive allocation.²³
26. The Maori Fisheries Act 1989 and the Deed of Settlement require the Commission to develop a procedure for allocating POSA benefits in accordance with the principles of the Treaty.
27. Obviously, the POSA assets held by the Commission are not the same assets or interests that were originally held by Maori under the Treaty. The law recognises that neither the Crown nor the Commission can restore to Maori the same rights and interests that were previously held.
28. The issue for the Commission was to decide the relevance of the principles of the Treaty and their application to the allocation of POSA benefits. In this regard, the Commission considers that the relevant principles of the Treaty include the recognition of tribal rangatiratanga and the right to self-regulation or self-management in relation to tribal rights, assets and interests. The Commission believes that these Treaty principles require the recognition of Treaty fishing rights.
29. A principal basis for the claims against the Crown that led to the Settlement was the breach of Treaty commercial fishing rights. It was recognised that Maori had either lost their rights or were stopped from developing them as they were entitled. The Waitangi Tribunal and Courts have recognised that Maori fishing rights were held and exercised as a consequence of whakapapa relationships and that whanau and individuals benefited from fishing rights within those whakapapa relationships.²⁴
30. The Commission considers that the principles of the Treaty also require economic and social considerations to be taken into account. The Waitangi Tribunal has recognised that the essence of the Treaty is forward-looking, with regard to ever-changing circumstances. To the extent that the Settlement provides for and recognises the rights and interests of all Maori, the Commission has an obligation to create a scheme that protects those rights and interests both now and into the future.
31. The Tribunal recognised that such protection might extend to maintaining the central business assets that generate revenue²⁵. There are a number of options by which protection of assets can be reflected in POSA allocation and the measures set out in Part E of this Report and the Draft Maori Fisheries Development Bill represent the mechanisms that the Commission considers appropriate for this.
32. Annexure A states in relation to POSA that *“any distribution system should aim to achieve a fair allocation of the benefits among Maori”*. The Waitangi Tribunal in its Fisheries Settlement Report added:²⁶
- “A fair system of allocation is crucial to the settlement. It would be inconsistent with the Treaty guarantees in our view, if the apportionment of fishing benefits dealt unfairly between the various interests.”*

²² Clause 4.5.1 of the Deed of Settlement.

²³ These standards are set out in section 9 and Schedule 7 of the Draft Maori Fisheries Development Bill and discussed in more detail in Part E of this Report.

²⁴ Findings on the nature and extent of fisheries rights have been made by the Waitangi Tribunal (Muriwhenua Fishing, Ngai Tahu Sea Fisheries, and Fisheries Settlement Reports) and the Courts (*Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 at pp 307-312 per High Court, and pp 375-376 per Court of Appeal).

²⁵ Waitangi Tribunal, Fisheries Settlement Report 1992 (Wai 307) at p 18.

²⁶ Waitangi Tribunal, Fisheries Settlement Report 1992 (Wai 307) at p 21.

33. The Commission therefore considers that a POSA allocation model that is unfair in some material manner is unlikely to accord with the principles of the Treaty. The Commission believes that the concept of “fairness” must be objective and must reflect compromise and balance between all the relevant rights, interests and considerations. The allocation model therefore needs to provide a pragmatic solution as much as a legal one.

General principles – PRESA and POSA

34. In addition to the particular legal considerations identified above in relation to PRESA and POSA allocation, there are also a number of relevant legal factors that apply equally to both.

35. In relation to both PRESA and POSA, the allocation model must not be inconsistent with the Commission's functions or the purposes of the 1989 and 1992 Acts, including:²⁷

- (a) facilitation of the entry of Maori into, and the development by Maori of, the business and activity of fishing;
- (b) granting assistance to any Maori or group of Maori for the purpose of enabling that Maori or group of Maori to enter into or to continue in or to develop the business and activity of fishing, and
- (c) participation and assistance in the promotion, reorganisation or rationalisation of Maori fishing with a view to increasing efficiency and productivity.

36. The Commission must also take into account all relevant considerations, including:

- (a) The views expressed by Iwi;²⁸
- (b) The views expressed by Maori;²⁹

- (c) The Treaty of Waitangi;³⁰
- (d) The Deed of Settlement;³¹
- (e) Maori custom;³²
- (f) Economic considerations;³³
- (g) Social considerations;³⁴
- (h) Alleged lease round inequities;³⁵
- (i) The special circumstances of the Chatham Islands (and any other special circumstances);³⁶
- (j) How Iwi will ensure that ultimately all Maori benefit;³⁷
- (k) Dispute resolution procedures;³⁸ and
- (l) That all Maori be treated fairly.³⁹

37. The matters identified above are not exhaustive of all relevant considerations, but highlight several key matters that arise from the legislation, the Deed of Settlement and the observations of the Courts in relation to the Commission's statutory functions. The large number of considerations, and the tensions inherent in and between several of them, reveal the complexity of the Commission's task.

38. The Commission has had to carefully consider and balance many often conflicting factors and views. The allocation model is, by its nature, a product of this balancing of wide-ranging legal and other considerations, including the many views expressed in the course of the Commission's numerous consultations with Iwi and Maori over the past decade. The appropriateness of the balance that the Commission has elected to adopt is reflected in the significant support that exists for the Commission to proceed with reporting this model of allocation to the Minister.

²⁷ Sections 5(a) and (b) and 6(d) of the Maori Fisheries Act 1989.

²⁸ Section 8(aa) and resolution 2 of Schedule 1A to the Maori Fisheries Act 1989.

²⁹ Section 5(a) of the Maori Fisheries Act 1989 and clause 4.5.1 of the Deed of Settlement.

³⁰ Preamble to the Deed of Settlement; Long Title to the Maori Fisheries Act 1989; Preamble to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC and CA).

³¹ Section 3 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

³² Section 8(a)(i) of the Maori Fisheries Act 1989.

³³ Section 8(a)(ii) of the Maori Fisheries Act 1989.

³⁴ Section 8(a)(iii) of the Maori Fisheries Act 1989.

³⁵ *Te Runanga o Muriwhenua Et Ors v Te Runanganui o Te Upoko o Te Ika Et Ors* [1996] 3 NZLR 10 at p 20 (CA).

³⁶ *Te Runanga o Muriwhenua Et Ors v Te Runanganui o Te Upoko o Te Ika Et Ors* [1996] 3 NZLR 10 at pp 15–16 (CA).

³⁷ Clause 4.5.1 of the Deed of Settlement; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC and CA); and *Manukau Urban Maori Authority Et Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 (PC).

³⁸ Annexure A of the Deed of Settlement.

³⁹ Clause 4.5.5 and Annexure A of the Deed of Settlement.

ALLOCATION AND DISTRIBUTION CRITERIA

39. The Commission has developed and adopted a set of criteria that provides a framework within which allocation proposals, and possible variations and alternatives, may be evaluated. These seven criteria, which are set out below, were highlighted by the Commission in *He Anga Mua* in December 2001 and repeated in *Ahu Whakamua* in August 2002. The criteria are also broadly consistent with criteria previously developed by the Commission in earlier consultations.⁴⁰ These have not generally been the subject of any significant criticism or challenge in the course of the Commission's consultation and agreement process. While each of these criteria aims to consider separate matters, they are not completely mutually exclusive and there are overlaps and inter-relationships between them. The Commission has applied these criteria in addition to the legal and other considerations identified above in its development of both *Ahu Whakamua* and the allocation model in this Report (*He Kawai Amokura*).

Consistent with law

40. The Commission's legal obligations are set out in the Maori Fisheries Act 1989, the Deed of Settlement, and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and have been broadly identified above. The allocation model must be consistent with these obligations. Particular legal constraints in relation to PRESA and POSA are addressed, where necessary, elsewhere in this Report.

Financially viable

41. The allocation model needs to be cost effective, avoiding cumbersome or costly implementation mechanisms. It needs to ensure that enough money is provided to Iwi to fund their ongoing fisheries-related costs and also that sufficient money is available to fund the activities of any post-allocation body.

Technically feasible

42. Technical feasibility means that the allocation model must be:

- (a) Consistent with the QMS and the realities of the commercial fishing industry;
- (b) Transparent (in terms of process, content and outcome);
- (c) Able to be implemented based on information that is available or can be readily obtained, and
- (d) Able to be implemented within a reasonable timeframe.

Consistent with tikanga Maori

43. The allocation model should be consistent with the principles of tikanga Maori as they relate to the Settlement.⁴¹

Responsive to social and economic needs

44. The allocation model should assist Maori in economic and social terms and promote fisheries-related development.⁴²

Capable of delivering desired benefits

45. The allocation model must ensure that the Settlement is ultimately for the benefit of all Maori. The Commission considers that it should seek to deliver benefits both now and for future generations in terms of:

- (a) economic wealth creation;
- (b) influence with Government;
- (c) influence in the fisheries sector;
- (d) integrated management of fisheries, and
- (e) rangatiratanga.

Politically sustainable

46. The allocation model needs to deliver an enduring Settlement. Broad levels of support are needed to ensure that allocation is durable and politically sound. The model must strike a reasonable balance between conflicting interests. The support of Parliament is also important given the need for legislation to effect the allocation of POSA and the Commission's reporting obligations to the Minister for both PRESA and POSA.

⁴⁰ See, for example, the Commission's August 1994 and July 1997 discussion documents.

⁴¹ The issue of tikanga is further discussed in paragraphs 68-70 of this Part of this Report.

⁴² Economic and social issues are further considered in paragraphs 71-74 of this Part of this Report.

DESIGN PARAMETERS AND DECISIONS

47. The design process that culminated in *He Kawai Amokura* involved consideration of a number of complex issues. In considering alternative allocation proposals, the direction taken by the Commission has been influenced by, among other things, views on the balance between several key considerations. These key considerations are to a degree in tension with each other. The balance between them that people perceive as appropriate is dependent on their values and subjective judgments. The Commission believes that the following considerations are of particular importance:

- (a) the nature of the Settlement and the objectives of allocation;
- (b) the desirability of immediate allocation against the central management of assets with benefits distributed over time;
- (c) Maori custom (tikanga Maori);
- (d) economic and social considerations;
- (e) the definition and categorisation of the assets in PRESA and POSA;
- (f) the formulae for apportioning the benefits of the settlement (*He Kawai Amokura* confirms the use of coastline length and population) and how they are applied, and
- (g) ensuring that allocation is ultimately for the benefit of all Maori.

The nature of the Settlement

48. There is a range of views about what the Settlement was intended to deliver and to whom. However, two strong themes have run through the allocation debate over the last decade. These are the recognition of traditional tribal rights and consideration of social and economic need. The Commission has been mindful of both matters.

49. A focus on traditional rights emphasises the fact that the Settlement arose out of particular claims brought under the Treaty of Waitangi. The Settlement represents a package of assets and benefits in response to claims that Crown actions lead to the effective expropriation of rights to commercial fisheries held by Iwi and hapu. The Settlement does not restore those rights (although it does provide a

proxy in the form of quota) and the size of the Settlement package is too small to represent full compensation.

50. Nevertheless, if this view of the Settlement is emphasised, the nature and extent of the historic harm to Iwi rights is very relevant to allocation. In turn, the extent of harm is influenced by the value of the fisheries rights and assets that should have been protected. Many of the original claims emphasised the negative effects resulting from loss of exclusive control over particular fisheries by particular hapu and Iwi. An important part of the Settlement is considered to be the re-establishment of relationships between particular people (Iwi) and particular assets (fisheries interests), albeit under a different legal framework.
51. Those who have emphasised, in their submissions and responses to the Commission, a rights-based approach to entitlements under the Settlement have tended to favour the use of coastline as a formula for allocation.
52. However, some people place far less emphasis on history and instead focus on the Settlement assets, not in terms of rights, but as an opportunity that, with appropriate management, can deliver significant future social and economic benefits to Maori. Under this view, the maximisation of social and economic benefits and their widespread distribution amongst Maori is a more pressing consideration than the re-establishment of particular resource-use relationships. The generally poor socio-economic status of Maori compared with non-Maori is therefore regarded as a central concern.
53. Those who have given relative primacy to this concern in their submissions and responses to the Commission have tended to favour the retention of assets and the distribution of benefits on the basis of population.
54. These themes do not describe the full richness of all views about the Settlement, but they portray an axis between two polar considerations. Many of those who emphasise redress of rights in the first instance also see that redress as supporting ongoing and effective delivery of benefits to address social and economic needs. It is also evident from the Commission's consultations that many Maori are striving for ways

to reconcile both considerations and achieve an outcome that satisfies both visions of the Settlement. The Commission has attempted to achieve this within the framework of *He Kawai Amokura* by:

- (a) allocating some assets immediately while centrally managing other assets to allow for progressive allocation of income over time;
- (b) applying coastline to the allocation of some assets and population to others, and
- (c) applying both coastline and population to the allocation of certain assets.

Immediate allocation, central management or both

55. The current legislative framework and existing case law requires PRESA to be allocated to Iwi, meaning traditional tribes,⁴³ ultimately for the benefit of all Maori. In a PRESA context, allocation is generally understood to mean the direct transfer of ownership of those assets to Iwi.
56. However, somewhat different statutory constraints apply to POSA. The Commission considers that it is neither barred from allocating some or all of the POSA assets nor barred from retaining fiduciary management of them on behalf of Iwi and establishing processes to allocate the benefits derived from those assets to Iwi over time subject to provision for the ultimate allocation of the assets to Iwi.⁴⁴
57. In making decisions on immediate allocation and/or central management within the framework of the Deed of Settlement (including annexure A), the Commission has considered several interconnected issues, including:
- (a) the nature and terms of the Settlement, including recognition of traditional tribal rights, the principles of the Treaty and social and economic considerations (discussed already above);
 - (b) the ideal scale of organisation and the best risk-management strategy for continued and substantive Maori involvement in the seafood sector;

- (c) the readiness of Iwi organisations to manage allocated assets, and
- (d) the need to ensure that the Settlement is ultimately for the benefit of all Maori (discussed further below).

58. Taken together, these considerations generate an overall position on the merits of the immediate allocation of assets to Iwi contrasted with the central management on behalf of Iwi of certain assets and the allocation of benefits over time in the form of dividends with the allocation of assets on final wind-up. These considerations may also make distinctions appropriate between the treatment of different classes of assets.
59. The second of the four considerations noted above involves perceptions about economies of scale and successful risk management in the New Zealand seafood industry. An important underlying goal is to identify the most robust organisational structures that are able to compete successfully over time in the seafood industry, both in New Zealand and internationally.

Characteristics of the New Zealand seafood sector

60. New Zealand seafood businesses face volatile returns and domestic market growth opportunities are limited. For ongoing success fishing interests must be able to operate successfully in the international marketplace. New Zealand companies sell into markets affected by large swings in international supply and currency movements, and are in competition with foreign businesses that are often subsidised. While average returns are satisfactory, businesses require structures that can survive occasional low or even negative returns. The sector has become increasingly capital and skills dependent and this trend shows no sign of abating. Local opportunities for expansion of harvest are constrained. Many fisheries are fully developed and water space for aquaculture is scarce. Opportunities are therefore generally in the areas of adding value and marketing.

⁴³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC and CA).

⁴⁴ This has been discussed in paragraphs 14–15 of this Part of this Report.

61. Quota is the key component in the New Zealand fishing industry. There is generally greater capacity than needed in the areas of catching, processing and marketing, but for all of these operations access to quota is a key ingredient. The significant parcel of quota that is held by the Commission has not to date been subject to long-term management arrangements due to the underlying prospect of allocation to Iwi. Instead, access to this quota has been limited to the lease and sale of ACE from that quota to Iwi. The allocation of legal title to this quota to Iwi, rather than simply annual lease rights, should provide a greater level of benefit to Iwi through:
- (a) the ability of Iwi to enter into long-term management and catch and/or lease arrangements in relation to their quota;
 - (b) the provision of substantial leverage in terms of price and profitability, and
 - (c) being held and managed in many cases alongside other existing Iwi quota holdings thereby utilising the existing infrastructure and operations of the Iwi.
62. Finally, the industry faces ongoing environmental pressure. There are consequent costs in ensuring that the environmental sustainability of the industry is maintained in the eyes of both consumers and Government.

Economies of scale

63. There has been debate over whether Iwi allocation would dissipate the economies of scale that are essential to the good performance of Maori involvement in the seafood industry.
64. Centralised structures provide maximum scope to use scarce skilled or specialised human resources to best effect. There are undoubted economies of scale in some activities; deepwater harvesting operations, for instance, are very capital intensive. Larger structures are better able to support capital intensive vertical integration. On the other hand, larger organisations can be less responsive and harder to change and a large mistake could prove costly to ongoing Maori involvement in the sector.

65. In contrast, small organisations cannot support the full range of specialist expertise that might be ideal. Small organisations can find it more difficult or costly to access capital markets and to export and may have to resort to joint ventures to engage in large investments. Small organisations, however, lend themselves to responsiveness and specialisation in niche markets. Diverse strategies among many small competing companies can contribute to innovation within the sector.

Risk management

66. Viewed as a whole, the Commission believes the best approach is one that enhances the dividend return to income shareholders and also effectively minimises risk. This is achieved by building a strong central organisation that captures the benefits of size and concentration of high quality personnel. As a consequence it secures the position of Maori in the seafood sector. The Commission considers that any centralised structure should, however, include provision for review in order to ensure that the envisaged benefits remain current and to allow a change in direction, including the distribution of all assets to the Iwi beneficiaries if warranted.

Iwi readiness

67. Iwi readiness is a sub-set of the risk-management debate. Some people hold the view that allocation to Iwi is desirable in theory, but would be unwise in practice. They observe that Iwi organisations lack the range of structures, processes and skills to give confidence that the organisation will successfully cope with the commercial demands that allocation will entail. They view the upgrading of Iwi capabilities as an essential precursor to allocation and that central management of assets should only endure as long as necessary for this upgrading to be completed.

Tikanga Maori

68. Tikanga Maori (Maori custom) has been used to support a range of positions within the allocation debate. It is generally accepted, however, that some recognition in any allocation proposal of the traditional relationship between Iwi and the fisheries proximate to their rohe is consistent with tikanga

Maori, although there remains debate about the extent (if any) to which this relationship should prevail over other considerations.

69. Tikanga Maori is so all encompassing that few, if any, considerations can be raised that cannot be related to some particular aspect of tikanga Maori. Such references enrich debate about allocation and provide a uniquely Maori means of articulating balance between important cultural concepts.
70. The final allocation model must be able to be described and defended in terms of tikanga Maori. However, selective reference to aspects of tikanga Maori is unlikely to advance agreement. The Commission considers that the allocation model in this Report is consistent with tikanga Maori to the greatest extent possible having regard to the other factors that the Commission must also consider.

Economic and social considerations

71. The Commission has had regard to economic and social considerations in developing *He Kawai Amokura*. However, there have been differing views expressed to the Commission on the manner and extent to which such considerations should be taken into account in any proposal.
72. Some argue that the economic and social impacts suffered by Iwi and Maori as a result of the loss of fisheries rights should be directly reflected in any proposals. It would be difficult, however, to quantify in any precise way the extent to which loss of fisheries has contributed to the present day socio-economic status of Iwi and Maori as many other factors are also relevant, including loss of land-based resources, geographic location and population demographics.
73. On the other hand, some argue that a population-based formula reflects the economic and social realities faced by Iwi as it would provide benefits relative to their present membership. A population formula would also avoid any need to undertake costly assessment processes to establish the extent of current economic and social impacts from the past loss of fisheries rights.

74. Others suggest that a coastline formula is consistent with economic and social goals as it allows economic and social benefits to flow through to all Maori by enhancing the economic base of all Iwi. Having regard to all relevant matters, the Commission considers that on balance the use of a population formula in whole or in part for the allocation to Iwi of certain benefits and assets is a more appropriate mechanism for addressing economic and social considerations.⁴⁵

Definition and categorisation of assets in PRESA and POSA

75. The assets that the Commission holds are identified in Part A of this Report. However, the Commission has had to develop an appropriate categorisation for the assets prior to their allocation.
76. There are four generally accepted categories of assets in both PRESA and POSA, namely:
- (a) Inshore Quota;
 - (b) Deepwater Quota;
 - (c) Shares, and
 - (d) Cash.
77. The Commission has defined Inshore Quota and Deepwater Quota on the basis of reports from the National Institute of Water and Atmospheric Research (NIWA) and Clement and Associates Limited that examined the depths at which each stock was commercially caught.⁴⁶ The Commission has also classified certain quota as Freshwater Quota and Harbour Quota for which somewhat different allocation mechanisms will apply.⁴⁷ This same approach will be used to classify each future POSA fishstock as they enter the QMS based on the most recent catch information available from NIWA.⁴⁸

⁴⁵ The question of population is discussed further in paragraphs 95–101 of this Part of this Report. Social and economic considerations are also discussed in the context of alleged lease round inequities in paragraphs 131–134 of this Part of this Report.

⁴⁶ See the discussion of quota classification in paragraphs 6–12 of Part E of this Report.

⁴⁷ The consequent classifications for each of the fishstocks to be allocated by the Commission are set out in Schedule 1 to the Draft Maori Fisheries Development Bill.

⁴⁸ The methodology for classifying future POSA fishstocks is set out in detail in section 5 of the Draft Maori Fisheries Development Bill.

Formulae for allocating assets and how they are applied

78. While the Commission has considered a range of differing proposals, the following two elements have been widely accepted in the consultation with Maori:

- (a) Iwi Population (using Iwi affiliation statistics from the 2001 New Zealand Census), and
- (b) Coastline length (as a proportion of QMA coastline length).

79. The Commission has made three decisions concerning the appropriate use of these elements, namely:

- (a) The first decision is the manner in which Iwi population figures and coastline length for each Iwi are determined. The Commission has given careful consideration to the manner in which Iwi affiliation statistics from the 2001 New Zealand Census are utilised. The Commission has also considered both the basis upon which Iwi coastlines will be measured and how disputes between Iwi regarding their respective coastline lengths may be resolved.
- (b) The second is a choice as to which categories of assets (Inshore Quota; Deepwater Quota; shares; cash) should each of these formulae apply. In *Ahu Whakamua* the Commission considered the parameters that should appropriately be applied to each category of asset and in some cases determined that a combination of the formulae should be applied. These parameters are also reflected in *He Kawai Amokura*.
- (c) Where a combination of the formulae is to be applied, the third decision to be made is the weighting that should be applied to the formulae. An example of this is the decision to allocate PRESA Deepwater Quota 25% on the basis of coastline length and 75% on the basis of Iwi population.

80. When considering these decisions, the Commission has been conscious to ensure that any proposals are consistent with legislation while also taking into account the nature of the Settlement, Maori custom, economic and social considerations, the views expressed in consultation and the level of agreement likely to be achieved.

81. Broadly speaking, the wider application of coastline length is supported by those who emphasise the underlying tribal rights and the nature of the fishing claims that eventually led to the Settlement, as well as the desirability of re-establishing strong Iwi connections with local fisheries resources.

82. The wider use of population is generally supported by those who emphasise economic and social factors and the desirability of a distribution of Settlement benefits on a per-capita or needs basis.

Iwi coastline

83. The length of an Iwi's coastline is used to determine the allocation to Iwi of Inshore Quota and, in part, Deepwater Quota. The application of coastline lengths by the Commission in *He Kawai Amokura* recognises the relationship that coastal Iwi have to fisheries adjacent to their tribal rohe.

84. For the purposes of allocation, the Commission or Te Ohu Kai Moana will define the length of coastline within each Quota Management Area along the line of the mean high water mark. The end points of the coastline for each Quota Management Area shall be the points as defined by the Fisheries Act 1996 for that Quota Management Area. In making those measurements:

- (a) rivers are cut off where the mean high water mark meets the natural entrance points of the river mouth and the distance across the river mouth is included in the coastline measurements;
- (b) the coastline length of harbours and bays whose natural entrance points are greater than 10 kilometres apart are included in the coastline measurements, and
- (c) the juridical bay formula is applied to harbours and bays whose natural entrance points (based on the high water mark) are less than 10 kilometres apart in order to determine whether those harbours and bays should be included in the coastline measurement.⁴⁹

⁴⁹ The juridical bay formula is explained in more detail in Schedule 6 to the Draft Maori Fisheries Development Bill.

85. Before adopting a definition of a coastline for a Quota Management Area the Commission or Te Ohu Kai Moana shall have the measurements verified by an independent third party.⁵⁰ This verification process will include all measurements of bays, river mouths and coastline (including the coastline of approved islands) to ensure that the measurements have been correctly made.
86. In *Ahu Whakamua* the Commission indicated that it had endorsed the approach taken by the *Taumata Paepae* regarding the inclusion of island coastlines into coastline measurements provided that the island met certain criteria. This approach is maintained in *He Kawai Amokura*.
87. The Commission will include the coastline of an island (other than islands located within harbours and bays) when calculating the coastline of a QMA where it can be demonstrated that the island has:
- Ahi kaaroa (long term and current habitation on the island);
 - A traditional and separate fishing history associated with the island, and
 - Occupation of the island, such as existing marae and other communal infrastructures.
- The Commission has therefore recently asked all Iwi to notify the Commission of any islands that they believe should be included in the measurement of coastline under the Commission's criteria.⁵¹
88. Coastline lengths will need to be agreed between all affected Iwi in the particular QMA.⁵² Due to the binding nature of the coastline agreements, only Mandated Iwi Organisations⁵³ can execute coastal length agreements with all other affected Mandated Iwi Organisations that have coastline within the relevant Quota Management Area. However, a Recognised Iwi Organisation can negotiate and discuss the terms of a coastline agreement either with other affected Recognised Iwi Organisations or other Mandated Iwi Organisations.
89. When agreement is reached between Mandated Iwi Organisations this will need to be confirmed in a document that identifies the respective coastlines (in terms of either specified boundary points or agreed percentages of the coastline of a QMA) that have been agreed by the affected Mandated Iwi Organisations within the relevant Quota Management Area.
90. Any coastline agreement or determination of an Iwi's coastline for the purpose of calculating that Iwi's entitlement under allocation is not intended to:⁵⁴
- bind the Iwi to which it relates or any other Iwi in any other matter that is before the Waitangi Tribunal, the Maori Land Court or any other Court except as is envisaged under the new Maori Fisheries Act;
 - bind, compromise, advantage or disadvantage or operate as a precedent for any other matter between Iwi, and
 - disturb or affect any rights, aboriginal title rights or any rights arising from the Treaty of Waitangi in relation to any other matter.
91. There are two possible methods of agreeing coastline lengths between Iwi in relation to a fishery. First, Mandated Iwi Organisations can reach agreement regarding their coastal boundaries such that the Commission can calculate each Iwi's respective length of coastline within the coastline of the QMA for which quota is to be allocated. Second, where Mandated Iwi Organisations do not wish to record or fix specific boundary points, the Iwi may agree the percentage of the coastline for the fishery that should be used to calculate each Iwi's entitlement. For example, it could be agreed that Iwi A will get 20%, Iwi B 30% and Iwi C 50% of the total coastline for a particular QMA.
92. Once all affected Mandated Iwi Organisations have mutually agreed and executed a coastline agreement, the coastline agreement will be filed with Te Ohu Kai Moana. Te Ohu Kai Moana will verify that all affected Mandated Iwi Organisations have been appropriately

⁵⁰ This is confirmed in clause 5 of Schedule 6 of the Draft Maori Fisheries Development Bill.

⁵¹ Panui, Commission to all Iwi, dated 3 March 2003.

⁵² Agreements as to coastline are the subject of section 8 of the Draft Maori Fisheries Development Bill.

⁵³ Mandated Iwi Organisations are discussed in more detail in paragraphs 267-272 of Part E of this Report.

⁵⁴ This is confirmed in section 7(2) of the Draft Maori Fisheries Development Bill.

included and are parties to the coastline agreement. Mandated Iwi Organisations need only enter into coastline agreements for those Quota Management Areas that are adjacent to their tribal rohe.

93. Once the Commission has approved the terms of the coastline agreement and has allocated quota to the respective Mandated Iwi Organisations, the coastlines as set out in the agreement are permanently established for allocation purposes and cannot be later amended once allocation has occurred.⁵⁵
94. If agreement cannot be reached, then the issue will be addressed using the dispute resolution procedures that the Commission proposes to introduce.⁵⁶ In such cases, the Mandated Iwi Organisations that are involved in a coastline dispute must engage in good faith in a dispute resolution process. If the matter remains unresolved, the dispute may be referred to Te Ohu Kai Moana and/or to the Maori Land Court for determination. Te Ohu Kai Moana is not bound to decide the dispute and can refer it to the Maori Land Court. In determining a coastline dispute Te Ohu Kai Moana or the Maori Land Court may attribute coastlines to Iwi either by specifying lengths of coastline or percentages of coastline between two defined points irrespective of the views of the disputing Mandated Iwi Organisations.⁵⁷

Iwi population

95. The Commission has determined to base the Iwi population component of the allocation model on the Iwi affiliation statistics from the 2001 New Zealand Census.
96. The use of Census data by the Commission cannot advantage or disadvantage any individual person of Maori descent because the confidentiality of individual data entries are protected by legislation and it is impossible to trace back Iwi populations to the individual Census responses. The way that any person of Maori descent benefits is by personal interaction with their Iwi.
97. The Commission has, in liaison with Statistics New Zealand, made a number of adjustments to the raw 2001 Census figures in order to ensure that all Iwi populations are fairly reflected for the purposes of allocation. As a result of these adjustments, the

"notional Iwi affiliate population" (which is set out in Schedule 4 of the Draft Maori Fisheries Development Bill attached as Appendix 1 to this Report) is greater than the total number of Maori identified in the 2001 Census. The reason for this is the fact that the Commission recognises that a person of Maori descent may affiliate to more than one Iwi. In such circumstances, the Commission has determined that if a person of Maori descent entered the names of two or more Iwi in response to the identity of Iwi question in the 2001 Census, the Commission would increase the population of each of those identified Iwi by one person.

98. The allocation model in this Report is not a template for individual Iwi benefit distribution policies in themselves, however the Commission considers that the responsibility that Iwi have to each of their affiliates is essentially equal. Therefore, any distribution policy based on tribal "purity" would be very difficult to administer by Iwi. The Commission cannot make any reasoned decision about which Iwi a multiple-affiliated individual will align with, or whether they will expect or seek any benefits from the Settlement at all. In the Commission's view this also sits more comfortably with tikanga in that no individual Maori is required to be "divided" among the Iwi that they are affiliated to.
99. The Commission considered other options including for example using Iwi registers, historical population figures and both earlier and later Census data. However, the allocation of the Settlement must use finite figures to allow accurate calculations of Iwi entitlements to be made. None of the alternative options were sufficiently robust and they could be open to manipulation and/or significant dispute. Therefore the Commission determined that using the 2001 Census data was the fairest reflection of the nature of Iwi population and affiliation. This and the other adjustments made by the Commission to the 2001 Census data are set out in Appendix 3 to this Report.

⁵⁵ However, Iwi are able to exchange and/or sell Allocated Quota subject to the restrictions set out in Part 8 (sections 61-67) of the Draft Maori Fisheries Development Bill.

⁵⁶ The dispute resolution procedures are discussed in Part E of this Report. See also Part 9 of the Draft Maori Fisheries Development Bill.

⁵⁷ See section 70 of the Draft Maori Fisheries Development Bill.

100. The Commission has taken professional advice, including from appropriate personnel at Statistics New Zealand, before making any adjustments to Census statistics. Where Statistics New Zealand identified that improvements could be made in the Commission's calculations, those improvements have been made by the Commission. As a result of the adjustments identified in Appendix 3, the Iwi affiliate populations identified in Schedule 4 of the Draft Maori Fisheries Development Bill are the Iwi population figures that the Commission proposes to utilise for those aspects of the allocation model where distribution is to be made in whole or in part on the basis of Iwi population. Those figures are expressly stated to be without prejudice to any matter other than the new Maori Fisheries Development Act.⁵⁸
101. Consistent with *Ahu Whakamua*, the allocation model in this Report seeks to achieve an appropriate balance between these objectives having regard to all relevant considerations.

Ensuring that the Settlement is ultimately for the benefit of all Maori

102. The Court of Appeal and Privy Council have confirmed that the Commission has an obligation to ensure that the Settlement is ultimately for the benefit of all Maori.⁵⁹ This necessarily applies to both PRESA and POSA. If the Commission did not believe that this could be achieved then it could not reasonably promote a proposal for allocation and it must report that fact to the Minister.⁶⁰
103. However, the Commission considers that the PRESA and POSA proposals in this Report, providing as they do a balance between allocation and retention, enable the Commission to meet its obligations to both Iwi and all Maori.
104. Concerns have been expressed by some that a significant number of Maori individuals and whanau are uncertain of their tribal origins, have weak associations with their Iwi, or live outside their tribal rohe. These Maori may encounter difficulty in

directly participating in benefits distributed through Iwi. A key question that the Commission therefore considered was whether the allocation of all assets to Iwi organisations would ensure that the Settlement will ultimately be for the benefit of all Maori, or whether other mechanisms should also be used. In the end, the Commission has determined that the central management of some assets with the allocation benefits over time is necessary to help meet this requirement. This approach is reflected in *He Kawai Amokura*.

105. It has also been alleged that Maori with little or no connection with their Iwi would be better served if there was also an ability to allocate some benefits directly to urban Maori organisations or hapu and other sub-tribal groupings.
106. The Commission has no discretion to allocate PRESA assets to non-Iwi organisations, due to the Court's confirmation that PRESA is to be allocated solely to Iwi.⁶¹ However, the Commission considers that, in view of Iwi support, the establishment of a fund accessible to all Maori, Te Putea Whakatupu Trust, will assist in providing wider access to the benefits of the Settlement.⁶² The Commission believes that Te Putea Whakatupu Trust (which is an enhancement of the Development Putea proposed in the Commission's 1998 PRESA allocation model) ensures that the benefits of a proportion of the Settlement are ultimately available to Maori who do not know, or choose not to associate with, their Iwi.
107. In relation to POSA, the Commission considers that the long-term security of the Settlement and wider Maori participation in the benefits of the Settlement will also be assisted through the central management of the Commission's corporate assets (ie, companies) under a Trust (Te Ohu Kai Moana) on behalf of Iwi. This will ensure an ongoing flow of benefits to Iwi (and ultimately all Maori) over time while also providing for the final allocation of those corporate assets to Iwi upon wind-up of the Trust.

⁵⁸ See section 6 of the Draft Maori Fisheries Development Bill.

⁵⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC and CA); *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17 (PC).

⁶⁰ "...Any scheme must be in accordance with the Commission's overriding duty and accountability to the Maori people. If that cannot be achieved by distribution to Iwi, the Commission is under no obligation to make any distribution at all" *Manukau Urban Maori Authority and Ors v Treaty of Waitangi Fisheries Commission and Ors* [2002] 2 NZLR 17 (PC) at paragraph 19.

⁶¹ See paragraph 7 in this Part of this Report.

⁶² The establishment of Te Putea Whakatupu Trust is addressed in more detail in Part E of this Report.

108. In addition, the Commission considers that Iwi should make suitable arrangements to ensure benefits flow to all members of their hapu and whanau including urban Iwi members living outside their tribal rohe. This is to be achieved by Iwi improving structures (including access to governance processes) and forming relationships with representative Maori organisations, particularly urban Maori organisations.

Representation ⁶³

109. Iwi organisations must demonstrate they can provide reasonable access for Iwi members to participate in governance and access the benefits from the Settlement, irrespective of their location. The Commission has established various minimum constitutional requirements. These minimum standards must be met before any Iwi organisation will be confirmed as a Mandated Iwi Organisation and eligible to execute coastline agreements and receive a share of allocated assets and benefits from the Settlement.

Structures ⁶⁴

110. Iwi organisations will need to meet the Commission's requirements that set out what are appropriate structures to receive and manage assets and benefits that will be allocated to the Mandated Iwi Organisations. These requirements are to protect the asset base and promote efficient and accountable management.

Iwi registers ⁶⁵

111. Membership registers are a critical requirement for Iwi organisations. Iwi organisations need a system whereby they can reliably identify and contact their membership. Through registers, Iwi organisations can demonstrate an ability and willingness to communicate with their members and provide for full participation in decision-making processes. The Commission requires that all representative Iwi

organisations reach the minimum registration thresholds required of them.⁶⁶ The minimum thresholds and the ongoing duty to continue seeking further registrations improve the mandate and accountability of representative Iwi organisations.

112. The proposed Maori Registration Service may also assist Iwi in the development of registers.

OTHER SPECIFIC CONSIDERATIONS

113. In addition to the matter notified and considered above, a number of specific issues have been raised in the course of consultation and litigation concerning allocation. Four issues have been the subject of particular focus in this regard, and which have been specifically considered by the Commission in the development of the allocation model in this Report, namely:

- (a) allegations of lease round inequities;
- (b) impacts from depletion of fisheries;
- (c) Chatham Islands fishery, and
- (d) freshwater fisheries.

Allegations of lease round inequities

114. The Commission has provided assistance to Iwi through tendering quota, leasing quota and most recently providing ACE from quota on an annual basis since the creation of the Maori Fisheries Commission in 1989. This assistance has been provided in fulfilment of the Commission's statutory functions and to enable Iwi to gain first hand experience in the industry.

115. The provision of assistance through annual tender, lease and ACE rounds has been carried out by the Commission pursuant to the Commission's functions of granting assistance under section 5 of the Maori Fisheries Act 1989. Subject to consistency with the statute and having regard to those matters specified in section 8 (namely, Maori custom, social and economic considerations), the Commission has a wide discretion when granting assistance to Maori or

⁶³ The issue of Iwi representation is discussed further in Part E of this Report and in section 9 and Schedule 7 of the Draft Maori Fisheries Development Bill.

⁶⁴ The issue of Iwi structures is discussed further in Part E of this Report and in section 9 and Schedule 7 of the Draft Maori Fisheries Development Bill.

⁶⁵ The issue of Iwi registers is discussed further in Part E of this Report and in section 47(1)(c) and Schedule 7 of the Draft Maori Fisheries Development Bill.

⁶⁶ See section 47(1)(c) and Column 4 of Schedule 4 of the Draft Maori Fisheries Development Bill.

groups of Maori. This discretion allows the Commission to develop policies relating to the granting of assistance, including policies for the annual tender and/or lease of quota distributions.

116. From 1990 to 1992/93, quota was leased on a competitive tender basis with a preference known as the Maori Development Incentive (MDI), given initially to Maori and subsequently in a graduating scale from Maori individuals to Iwi bodies. In these tender rounds, the Commission sought to allow Maori greater access to its quota holdings than would have been possible with a fully commercial highest-bidder-takes-all tender. As a result of the MDI, Iwi and other Maori groupings tendering for the lease of quota held by the Commission received a preference over bids from non-Iwi/Maori commercial fishing operations.
117. The context in which the Commission made its initial decisions in relation to the tender round policies is important. The period from 1990 to 1993 was a pioneer phase when there was little institutional infrastructure and significant uncertainty. Court proceedings against the Crown were still (at that early stage) extant and discussions were occurring between the Maori Fisheries Negotiators and the Crown. The nature and extent of the final settlement was yet to be determined. The quota to be provided to the Commission by the Crown under the 1989 'interim settlement' was being transferred incrementally. During this same period the Commission was also required by statute to provide half of its quota to Aotearoa Fisheries Limited⁶⁷, which in turn managed the quota on a largely commercial basis. This entire period was one of change that is expressly referred to in the Maori Fisheries Act 1989 as the "transition period".⁶⁸
118. Furthermore, the delivery of quota through the tender process was subject to delay and intense seasonal commodity pressures. The result of this period of growth, exploration and development was

that the Commission provided preferential access to communal groups, through the application of the policies that encouraged development and participation.

119. Annual lease rounds since October 1993 have proceeded on a different basis and have not used tenders or an MDI. Quota and ACE has been apportioned by the Commission between Fisheries Management Areas (FMAs) on a coastline/population formula for annual leasing. Where the rohe of more than one Iwi lies within an FMA, those Iwi are required to reach agreement on their respective shares of the available quota for that FMA.
120. The design process for the lease rounds had significant Iwi input and the final model was created in consultation with Iwi. It incorporated Iwi concerns, such as addressing the precedent effect that the annual lease rounds could have on final allocation through the inclusion of express "without prejudice" clauses in the lease documents.⁶⁹ The distribution of all Inshore Quota to those Iwi in each FMA who have coastline within each respective FMA had significant support from Iwi. The mixed population/coastline formula for Deepwater Quota was subject to a range of views, but the Commission considered that it represented a reasonable compromise and a fair reflection of its various statutory requirements.
121. Importantly, therefore, Iwi were involved in creating and approving the lease round criteria in 1993. Beyond the division of quota between FMAs by the Commission, the particular distribution of quota leases among Iwi within each FMA was a matter for agreement by those Iwi and no prescribed formula was imposed by the Commission.⁷⁰ Furthermore, Iwi

⁶⁷ This company, which is now wound up, is a different company to Aotearoa Fisheries Limited that is proposed to be established under *He Kawai Amokura*.

⁶⁸ Section 7 of the Maori Fisheries Act 1989.

⁶⁹ In all annual lease and ACE rounds Iwi who participate are required to sign deeds of waiver and indemnities. In these deeds, participants must formally acknowledge that annual distributions are:

- Without prejudice and create no expectation to the entitlement of the Iwi to any future leasing or allocation of quota or other assets by the Commission, and
- Not binding or to be treated as a precedent for any future availability, lease or allocation of quota by the Commission.

⁷⁰ Although, in the event of disputes, the Commission operated a Disputes Working Group which by necessity made decisions in order to enable leasing to begin before the fishing opportunity was lost through the commencement of the fishing season.

and other interested parties continued to be consulted and have their views considered when the policy was further developed in 1996 and 2001.

122. Both the tender rounds and subsequent lease rounds have promoted participation by Maori in the business and activity of fishing through preferential or discounted access to quota. They have also provided Maori with a valuable learning experience in the modern business of fishing without being subject to the full range of risks and responsibilities of quota ownership.
123. It has been alleged by some groups in the course of litigation relating to allocation that inequities resulted from the Commission's tender and lease rounds with some Iwi unfairly gaining more benefit than others. The claim has been made that the Commission's allocation model should take such alleged inequities into account and make provision for them when determining relative Iwi shares in the final allocation of assets by the Commission. These allegations have been based, in part at least, on the observation made by the Court of Appeal in 1996 that:⁷¹

"Any past inequities in the lease rounds would fall to be taken into account and adjusted as far as reasonably practicable in a future Settlement."

124. While this comment by the Court may not be binding, it is accepted that the Commission should review the assistance it has provided to Iwi through the tender, lease and ACE rounds, and consider:
- (a) Whether the policies were substantively equitable;
 - (b) Whether any inequities arose from the application of the policies, and
 - (c) Whether the accrued benefits received by Iwi through the tender, lease and ACE rounds should be taken into account and adjusted for in the allocation model in this Report.

125. The term "inequity" was not defined by the Court of Appeal in 1996 nor is it a term that is readily capable of singular definition. The concept of equity revolves around the notion of fairness which, with regard to the law, may be considered in terms of both process and the outcome or effects of such process. Consequently, the Commission has considered the issue of inequities in a broad manner in order to ensure that its assessment of the allegations is necessarily comprehensive and robust. The Commission has approached the issue of alleged lease rounds inequities by considering the creation, application and consequential effects of its tender and lease policies against the principles of fairness, reasonableness and impartiality.
126. The Commission has examined the annual tender and lease rounds between 1990 and 2000 to ascertain whether the policies were created and applied fairly and reasonably. These enquiries have established to the satisfaction of the Commission that there was no procedural impropriety, bias or predetermination in the development of the policies. Furthermore, the Commission has concluded that there was no procedural impropriety, bias or predetermination exercised by the Commission in the application of the policies that has not previously been identified and addressed by the Commission. The Commission's extensive examination and analysis of annual tender and lease rounds between 1990 and 2000 did disclose some isolated administrative errors, which in terms of nature, size and effect were not considered by the Commission to be material and therefore did not warrant further consideration in terms of the development of the allocation model in this Report.
127. The other, previously identified issues related to the first MDI Deepwater tender round in May 1990 and MDI tender round 10 in October 1992. In the October 1992 tender round (finfish and paua) it was claimed that unfair results occurred in the application of the tender round policies. This affected all Iwi consortia participating in the tender round. In the May 1990 Deepwater tender round, a series of errors occurred in the preparation of lease documentation. Ngati Wai was the only Iwi affected.

⁷¹ *Te Runanga o Muriwhenua Et Ors v Te Runanganui o Te Upoko o Te Ika Et Ors* [1996] 3 NZLR 10, at p 20.

In both cases, however, the Commission entered into a settlement with the groups involved, and therefore considers that any inequities that might have existed have already been addressed.

128. Therefore, the Commission has concluded that no inequities presently exist. The Commission has not identified any material errors of process or substance in the tender and lease rounds that could reasonably be described as an inequity. Therefore, the Commission does not consider that it could reasonably require any adjustment to be made to *He Kawai Amokura* on account of previous lease and tender rounds.
129. It is also notable that the policies behind the lease rounds since 1993/94 have been tested on several occasions. In 1993, the High Court and Court of Appeal considered the lease-round methodology and made the interim finding that it met all relevant statutory and administrative law standards.⁷² The lease-round methodologies were substantively tested in Court proceedings in 1996 and again were found to be lawful.⁷³
130. However, simply because Iwi received unequal amounts of assistance through the annual lease rounds does not, in the Commission's opinion, amount to an inequity. The Settlement affected the rights of all Iwi, but not necessarily to an equal extent. At the time of the Settlement there had been no comprehensive investigation and quantification of the precise nature and extent of each Iwi's interest in commercial fisheries and one of the purposes of the Settlement was to avoid the need to embark upon that task.
131. The subsequent debate in relation to allocation itself has revealed that the issue of rights and interests in the Settlement may be approached from a number of different premises, some relying on traditional rights, others on contemporary social and economic need. Whether one considers Iwi's interests according to traditional access to and control of fisheries resources, or size and location of rohe, or number of

Iwi members or socio-economic status, all Iwi will necessarily differ. What may be perceived to be "fair" or "equal" on one approach may be argued to be unfair or unequal on another. The Commission has had regard in its annual tender and lease decisions to a range of relevant considerations, different views and, in its discretion, it has determined what it considered to be an appropriate and reasonable compromise. In such circumstances, unequal outcomes between Iwi, in the absence of some other procedural or substantive flaw, are not in the Commission's view inequitable.

132. The allegation is also made that some Iwi have obtained more of an economic benefit through the granting of assistance by the Commission and that this in itself constitutes an inequity. This reflects an argument based on unequal outcomes of lease rounds in economic terms. It is argued that in the allocation model this cumulative benefit should be provided for, that is, the unequal economic gain should be deducted from those Iwi that received the economic benefit.
133. However, the population component of the lease round formula in the Commission's post-1993 lease rounds was included as a means of addressing both overall fairness and social and economic considerations under section 8 of the Maori Fisheries Act. The Court of Appeal has confirmed that this use by the Commission of a population component in leasing reflected a regard to economic and social considerations:⁷⁴

"While the mix of coastline and population factors may to some at least seem a rather blunt instrument for giving effect to the statutory criteria, and while in the opinion of some there may be better ways of approaching the very difficult problem which the Commission faces, what is abundantly clear is that the Commission cannot be said to have had no regard

⁷² *Area 1 Consortium Limited v The Treaty of Waitangi Fisheries Commission*, High Court, M 1357/93, 27 September 1993 and Court of Appeal, CA 224/93, 29 September 1993.

⁷³ *Te Runanga o Raukawa v The Treaty of Waitangi Fisheries Commission*, High Court, CP 322/96, 7 August 1997. This decision was also upheld on appeal: Court of Appeal, CA 178/97, 14 October 1997. Other unsuccessful lease-round cases include *Hauraki Maori Trust Board v Treaty of Waitangi Fisheries Commission*, High Court, CP 562/94, 12 February 1996 and *Phares v Treaty of Waitangi Fisheries Commission*, High Court, CP398/94, 23 December 1994.

⁷⁴ *Te Runanga o Raukawa Inc v Treaty of Waitangi Fisheries Commission*, Court of Appeal, CA 178/97, 14 October 1997.

to economic considerations. The Commission's whole purpose in using population as an ingredient in its approach is to reflect such considerations, albeit in a broad way. This is perfectly plain from the evidence ...

We are satisfied that in deciding upon its general approach the Commission did have regard to economic and social considerations via the population aspect of its approach."

134. The use of population as one factor during the annual lease rounds therefore clearly reflects the Commission's regard to economic and social considerations in the annual lease of quota. Both fairness and social and economic considerations were also among the matters taken into account by the Commission when it increased to 75% the weighting given to the population component of the formula for the allocation of Deepwater Quota in the allocation model. In its consideration of social and economic factors in the course of finalising the allocation model in this Report, the Commission had regard not only to Iwi populations, but also generally to the assistance that the Commission has granted cumulatively to various Iwi over the years, including the assistance from the lease rounds. These considerations were among the matters that influenced the Commission in its decision to maintain an increased weighting of 75% for the population component of the formula for the allocation of Deepwater Quota in the final allocation model that is contained in this Report.
135. It has also been put to the Commission that some Iwi have received significant assistance through the annual lease rounds. That assistance together with the allocation to those Iwi of their entitlements under the Settlement would exceed the proportion that each Iwi would receive based on a methodology that allocated solely on the basis of population. For those Iwi it was suggested that some assets should be deducted to bring their overall distribution in proportion to an allocation based on population. The Commission has already consulted and sought agreement on a proposal that incorporates both coastline and population but does not deduct assistance granted during the tender, lease and ACE rounds. It is impractical to now introduce a change

as drastic as that which is discussed above. This proposal is viewed by the Commission as being without merit.

136. It has also been suggested that, to the extent that any final method of allocation differs from the formula used by the Commission for earlier annual lease rounds, those previous lease rounds must necessarily have been inequitable and should therefore be adjusted for in final allocation. However, this view fails to recognise the important distinction between leasing quota on an annual basis and the final and permanent allocation of such quota by the Commission. Different statutory functions and processes apply. This distinction reflects an even more fundamental policy differentiation within the Maori Fisheries Act, namely, the prohibition on the sale or transfer of quota by the Commission prior to the implementation of the final allocation model.⁷⁵ The Commission is, however, expressly empowered to lease quota.⁷⁶ A lease by its very nature is not a permanent vesting of the property or asset concerned and, in terms of the Maori Fisheries Act, is not allocation.
137. In conducting the annual lease rounds, the Commission is fulfilling a principal function of granting assistance under section 5(a) and (b) of the Maori Fisheries Act. The exercise of this function is not restricted to leasing, but also extends to providing scholarship assistance, research funding, and other grants of assistance. In developing proposals for PRESA and POSA allocation on the other hand, the Commission is performing a specific function subject to a prescribed statutory process, which carries with it particular legal and political considerations and obligations that necessarily extend beyond the issues considered in the annual lease of quota. Furthermore, as noted above, the annual lease rounds are expressly conducted on a without prejudice basis with regard to both future lease rounds and the final allocation of assets by the Commission.

⁷⁵ See section 7 of the Maori Fisheries Act 1989 and section 19(2) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

⁷⁶ Section 7(1) of the Maori Fisheries Act 1989.

138. Finally, the Commission has considered both the submissions received on *He Anga Mua* and the responses to *Ahu Whakamua* in relation to alleged lease round inequities (which were expressly discussed in both publications). None of the Iwi recognised by the Commission expressed support for the inclusion of the annual lease rounds, by way of adjustment to the final allocations to be received by Iwi, as part of the allocation model.
139. Having regard to all of the matters above, the Commission considers that it is neither appropriate nor practicable to adjust *He Kawai Amokura* to provide for previous tender or lease round policies or outcomes.

Impacts from depletion of fisheries

140. "Depletion" is a term that is applied to fisheries to describe two quite distinct conditions. In common language, people often describe a fishery as depleted if there are fewer fish in the sea than there used to be. In other words, the fish stock is smaller.
141. Fisheries scientists do not use "depletion" in this way. Rather they use the term to describe a fishery that has a lower yield of harvestable fish than it could potentially produce – that is – there are or have been more fish being caught in any year than can hatch and grow. By and large New Zealand's commercial fisheries are not depleted in this sense. Even fisheries such as Snapper 1 around Auckland are producing harvestable yields close to the theoretical maximum sustainable level and have been consistently doing so for many years.
142. The standard fisheries management requirement under the QMS is to manage the size of the fishstock at a level that maximises its sustainable yield. The QMS has been explicitly endorsed by Maori under the Deed of Settlement. A fishery in this condition supports high quota values because it produces high levels of harvest over time with low risk to the sustainability of the fishery.
143. Yield should not be confused with annual catch. In a developing fishery, yields are actually enhanced if some of the fishstock is removed. In this "fishing down" phase, catches comprise a combination of annual yield and stock reduction. When the target stock size is reached, annual harvest will be restricted to the annual yield. This pattern can give a false impression of declining production.
144. There is a view that some Inshore fisheries are depleted and that an adjustment should be made for this in the allocation model. To the extent that there may be fisheries where the yield is below the Maximum Sustainable Yield (MSY) level, the QMS imposes a stock management strategy designed to correct this situation in a reasonable time. All fisheries will be above or below the MSY level at any moment, but the QMS is designed to move them towards this target. The question is whether Iwi with particular interests in fishstocks temporarily below MSY have a claim on assets that they would not receive if the same fishery happened to be at MSY.
145. The only available source of such assets the Commission could access would be to use quota that would otherwise go to other Iwi whose fisheries are not depleted. If this was done it would mean permanently taking assets off other Iwi to provide to those Iwi who are suffering temporary loss while the system is rested and recovers. It is considered that any such adjustments are entirely inappropriate – they would create long-term allocation distortions for some Iwi on the basis of short-term anomalies for other Iwi. These distortions could only be managed by continual redistributions every time new MSY information became available. Such redistributions would represent an unnecessary source of friction and an unwarranted cost. They would also provide perverse management incentives.
146. Harvests available to quota owners can be reduced for reasons other than through reductions in sustainable yield. For instance, the size of the commercial fishery could be reduced through the allocation of a greater relative share of the Total Allowable Catch (TAC) to customary harvesters. This balance will need to be decided by Iwi and promoted by Iwi.
147. The size of the commercial fishery could also be reduced through the allocation of a greater relative share of the Total Allowable Catch (TAC) to recreational fishers. Alternatively, access to fishing grounds may be denied because of the exclusive

allocation of space to other marine users or because of closures to satisfy non-sustainability objectives. In both cases, however, these are future uncertainties that may or may not occur and, in either event, cannot readily be predicted. Such matters affect all commercial fishers, not only Maori. Decisions on these matters are taken by the Crown.

148. The Commission considers that quota owners themselves, assisted by its successor (Te Ohu Kai Moana), should continue to contest decisions that would result in any erosion of the fisheries rights gained through the Settlement.
149. Having considered all these matters, including submissions received in response to this issue in *He Anga Mua* and the responses to *Ahu Whakamua*, the Commission does not consider that any adjustment is reasonably practicable for depletion or related issues within *He Kawai Amokura*.

Chatham Islands fishery

150. The issue of the Chatham Islands and its associated fishery is an important one. Acknowledgement that the Chatham Islands is a "special case" in the context of fisheries matters, including allocation, has been expressed in decisions of both the Waitangi Tribunal and the Courts.
151. The Waitangi Tribunal in its *Fisheries Settlement Report 1992* recorded:⁷⁷
- "... those from the Chathams were staunch advocates for a separate settlement for their islands, presenting a compelling case based upon the rigours of their lives, their dependence on the fisheries, the extent of their fishing resource and the chilling prospect of continuing mainland domination. ...*
- Again the Chatham Islanders presented a special case. They claim the greatest sea resource in relation to land, mass and population, and the greatest community dependence on the seas;"*

152. In 1996, the Court of Appeal recorded that:⁷⁸

"The people of the Chatham Islands, a small population very largely dependent on the resources of the ocean, appear to have strong grounds to be treated as a special case."

"We accept the Commission's view that a wide range of factors have to be considered, and we have noted that there appear to be special cases such as the Chatham Islands."

153. The High Court also reached a similar conclusion later in 1996 when it stated:⁷⁹

"On the evidence before the Court there is no doubt that the Chatham Islands presents a 'special case' for reasons of its geographical location, its history of fishing and its economic and social dependency on fishing."

154. The circumstances of the Chatham Islands include the significant fishery that surrounds it, geographic isolation, and an overwhelming cultural, social and economic dependence on fishing. However, Chatham Islands Iwi⁸⁰ have a very small coastline and population compared with mainland Iwi. If standard formulae based on coastline and population measures were applied to Chathams Iwi, those Iwi would receive only small quota parcels in some important commercial fish species, thereby suffering serious detriment as a result.
155. The Commission has carefully considered the particular circumstances of the Chatham Islands, together with the comments of the Waitangi Tribunal and the Courts and the various submissions that have been made by both Chatham Islands Iwi and others in relation to the allocation of the Settlement Assets, particularly quota, that relate to the Chatham Islands. In light of these matters, the Commission has determined that there is good reason for treating the Chatham Islands as a unique case for the purpose of the allocation of quota and this has been reflected in the allocation proposals that the Commission has released in recent years (including both *He Anga Mua* and *Ahu Whakamua*).

⁷⁷ Fisheries Settlement Report 1992 (Wai 307) at pp 5-6.

⁷⁸ *Te Runanga o Muriwhenua v Te Runanganui o Te Upoko o Te Ika* [1996] 3 NZLR 10 at pp 15-16 and 20.

⁷⁹ *Te Iwi Moriori Trust Board v Treaty of Waitangi Fisheries Commission*, High Court, Goddard J, CP 255/96, 7 October 1996 at pp 11-12.

⁸⁰ The Chathams Iwi recognised by the Commission are Ngati Mutunga ki Wharekauri and Moriori.

156. The Commission has therefore included within the allocation model in this Report provision for the creation of a Chatham Zone comprising a 200 nautical mile area around the Chatham Islands. This 200 nautical mile zone will be treated for allocation purposes (and only for allocation purposes) in effect as if there is a separate Quota Management Area within this zone for each fishstock.
157. Within the Chatham Zone it is proposed that:⁸¹
- (a) All Inshore Quota (both PRESA and POSA) will be allocated to the Chathams Iwi on the basis of coastline;
 - (b) 50% of Deepwater Quota (both PRESA and POSA) will be allocated to Chathams Iwi on the basis of coastline and 50% will be allocated to all Iwi in New Zealand on the basis of Iwi population (including those Iwi of the Chathams Island), and
 - (c) In respect of that area where the 200 nautical mile Chatham Zone overlaps with the area within 200 nautical miles of the baseline of the territorial sea on the east coast of mainland New Zealand (the Overlap Zone), the quota attributable to that Overlap Zone will be apportioned 50/50 between the Chatham Zone and the appropriate QMA for the quota within the Overlap Zone.
158. Chatham Island Iwi also have entitlements, with all other Iwi, to other PRESA and POSA assets including:
- (a) a share of the 75% of Deepwater Quota for QMAs outside the Chatham Zone that is to be allocated to all Iwi in proportion to Iwi population;
 - (b) PRESA cash on the basis of Iwi population, and
 - (c) income shares in AFL based on Iwi population.

Freshwater fisheries

159. As the High Court has confirmed,⁸² the 1992 Fisheries Settlement settled Maori claims relating to commercial freshwater fishing rights along with those relating to marine fisheries. This means that the Commission must also have regard to Maori rights and interests in commercial freshwater fisheries as well as commercial marine fisheries when developing any proposal for PRESA and POSA allocation. The High Court confirmed this in the *Te Arawa* decision where it commented that any loss of commercial freshwater fisheries rights should be compensated for in the Commission's allocation proposal.
160. Freshwater fisheries are of special significance to Iwi where their use has and remains a vital part of that Iwi's tradition and practice. The Commission acknowledges that some Iwi have played a more active role in advancing freshwater fisheries issues than other Iwi. The Commission also acknowledges that all Iwi traditionally had freshwater fisheries interests to varying degrees.
161. The key problem is in setting the size and form of the provision for commercial freshwater fisheries in any allocation proposal. The Settlement does not provide full restitution for any commercial or non-commercial customary Maori fishing rights, nor were the rights and losses of each Iwi calculated at any stage for either marine or freshwater fisheries. The normal method of sizing any compensation is to look at the size of the loss. Only two detailed investigations of marine fisheries rights were ever undertaken by the Waitangi Tribunal, for *Muriwhenua* and *Ngai Tahu*. The Commission does not have access to any detailed investigations that quantify Iwi rights or losses to freshwater fisheries. The Settlement itself was implemented to stop the need to repeat such investigations as these would only consume significant resources over a lengthy period without resolving what would be received and how this might be apportioned across Maori.

⁸¹ The specific allocation rules for the Chatham Zone are addressed in more detail in Part E of this Report below and in section 53 of the Draft Maori Fisheries Development Bill.

⁸² *Te Arawa Maori Trust Board v Attorney-General*, High Court, CP 448CO/99, 5 December 2000.

162. Instead, the Settlement represents an attempt to balance principles of redress for lost Treaty rights with a pragmatic response to the impracticalities of obtaining reliable information on specific losses. It must also be recognised that the Settlement comprises a limited set of assets and benefits that are ultimately for the benefit of all Maori. In addition, with the exception of eels, the quota assets received by the Commission under the Fisheries Settlement are in respect of marine fisheries. The Commission has therefore also considered this fact in determining the manner in which provision for the settlement of freshwater fisheries is able to be best made in the allocation proposal.
163. To investigate fully the extent of commercial freshwater fishing rights (including the relative dependency of each Iwi on those fisheries, and specific losses suffered) would entail substantial research costs. As with marine fisheries, the Commission considers that such research would be partial at best and still provide little guidance of the respective shares across Iwi or between freshwater and marine fisheries. Given this, and that such work would also delay allocation significantly, the Commission has decided another approach is necessary.
164. It is considered that some provision for the loss of commercial freshwater fisheries is needed. As with marine fisheries, however, such provision cannot exactly reflect the precise nature and extent of either the commercial freshwater fisheries of individual Iwi or the losses suffered to those fisheries. Therefore, as the allocation model reflects, the Commission has taken the view that freshwater fisheries need to be recognised in several ways that both acknowledge part (as for all Maori fisheries) of what was lost and what can be positively provided now.
165. Where contemporary commercial freshwater fisheries exist and are to be introduced to the QMS – at this stage only eels – the Commission considers that it is appropriate that such quota be allocated to the Iwi in whose rohe the commercial fisheries exist. This decision and the method for determining how the quota is to be divided between Iwi whose rohe is in a QMA are consistent with the views expressed by the Freshwater Fisheries Working Group that was supported by the Commission at the time that the *He Anga Mua* proposals were developed and whose report was circulated to Iwi for comment with *He Anga Mua*.
166. The Commission considered these matters and others, when it adjusted the population component of Deepwater Quota on the premise that all Iwi had interests in freshwater to an equal extent and therefore equally lost commercial freshwater fishing rights as a result of the 1992 Settlement. There also exists a tension within the Settlement overall in respect of freshwater fisheries as the assets comprising the Settlement are largely marine based. Greater weighting to population reflects, among other things, a fair allocation of available compensation amongst Iwi providing for a loss of both freshwater and marine fisheries. Therefore consistent with the national settlement of Maori fisheries claims and the Court's obiter comment, the loss of commercial freshwater fishing rights should be one of the factors to be taken into account when considering the overall allocation method. The Commission has already determined that allocation on the basis of population is one of the broad principles which attempts to address fairness and equity.
167. The Settlement only prevents claims in relation to the commercial aspects of freshwater fisheries. The 1992 Settlement does not, however, settle claims (to the Waitangi Tribunal at least) relating to Maori non-commercial fishing rights. The Settlement also has no relevance to sports fish, including trout and salmon, nor does it prevent any claims to freshwater bodies, for example rivers and lakes. This was recognised by the High Court in the *Te Arawa* decision where the Court noted:⁸³
- "In respect of the unresolved claims which Te Arawa lodged against the Crown in 1975, Te Arawa is prevented from pursuing any claim in respect of*

⁸³ *Te Arawa Maori Trust Board v Attorney-General*, High Court, CP 448C0/99, 5 December 2000 at pp 22 and 24–25.

commercial fishing rights. This does not mean that it is required to abandon any claim in respect of the lake itself or the lake bed." (p 22)

"It is common ground that trout and salmon are sports fish. The Conservation Act regulates sports fishing but does not relate directly to commercial fishing. Sports fishing is not commercial fishing within the terms of section 9 of the Settlement Act and the settlement of all Maori commercial fishing claims has no relevance to sports fish as such." (p 24)

"In Te Arawa's case there is a difference between a claim that its people have been prevented from commercially fishing trout in its lakes and a claim envisaging the apportionment of licence fees for fishing for sports fish in their lakes. The former claim has been settled under s 9, but any claim which might lie in respect of the latter has not." (pp 24-25)

"There is a distinction between a claim for commercial freshwater fishing rights, and a claim to compensation perceived in terms of loss of exclusivity of use, including in respect of sports fishing but excluding commercial fishing. Section 9 has settled the former claim but not the latter." (p 25)

168. It is considered that the Settlement does not prevent Treaty claims against the Crown in the Waitangi Tribunal relating to the destruction and loss to the non-commercial component of freshwater fisheries through habitat neglect and the introduction of foreign species. Such claims could possibly seek recommendations that the Crown take active steps to rebuild freshwater fisheries through habitat restoration and other remedial measures such that full non-commercial fishing rights may be enjoyed. Alternatively, such claims could seek compensation for the loss of the non-commercial aspects of freshwater fisheries.

169. Having regard to all these matters, the Commission has determined to provide recognition for commercial freshwater fisheries within the allocation model in the following manner:

- (a) For those freshwater species introduced into the QMS, the quota received by the Commission will be allocated to Iwi within the relevant QMAs based on each Iwi receiving a share of the quota proportionate to the catch history of commercial fishers within the Iwi's rohe. Where agreement cannot be reached, each Iwi whose rohe is within the QMA will receive a share of the quota for that QMA proportionate to the population of that Iwi that lives within the QMA based on the 2001 Census.
- (b) A dedicated Te Wai Maori Trust will be established as an assistance fund for freshwater fisheries development purposes. The Trust will be empowered to work with Iwi to assist in coordinating and funding initiatives for the development of freshwater fisheries with an initial capital sum of \$10 million increasing over time to \$20 million.⁸⁴
- (c) A greater weighting is provided to "population" in the overall allocation model to take into account a range of factors including commercial freshwater fisheries.

⁸⁴ Te Wai Maori Trust is further discussed in Part E of this Report and in Part 5 of the Draft Maori Fisheries Development Bill.



The Consultation and Agreement Process

PART D

1. The Commission has a statutory consultation and agreement process that it must follow in respect of the allocation of PRESA. The Commission must:¹
 - examine the alternative options for allocation;
 - distribute discussion material;
 - consult with Iwi, and
 - enable agreement to be reached upon the optimum methodology for allocation.

The statutory process for the allocation of the benefits of POSA involves the development of proposals for a new Maori Fisheries Act.²
2. These processes have culminated in this Report to the Minister which comprises both a scheme for PRESA allocation and a draft Maori Fisheries Development Bill that implements the allocation of the POSA benefits.
3. The relevant considerations that the Commission took into account when developing *He Anga Mua*, *Ahu Whakamua* and *He Kawai Amokura* have already been addressed in Part C of this Report. Those relevant considerations are therefore not revisited in this Part of this Report, the purpose of which is to describe the extensive consultation processes that the Commission followed when consulting over the proposals in *He Anga Mua*, facilitating agreement in relation to *Ahu Whakamua* and finalising the allocation model.
5. A brief chronological overview of the work carried out by the Commission since 1989 in relation to the development of a proposed method for allocation culminating in the development of *Ahu Whakamua* and the model in this Report is contained in Appendix 2 to this Report. This provides a summary of the Commission's several publications and its extensive consultations with Maori, Iwi and other key stakeholders over the last 12 years. The Commission's consultation efforts have been informed by the experience and backgrounds of all the Commissioners, who bring together a range of diverse skills and abilities.
6. The new Commissioners recognised that the allegations that remain extant needed to be resolved and established a dispute resolution process. The dispute resolution process sought to determine what issues the plaintiff parties had against the Commission and where possible to enter into discussions with those parties to find practical ways of resolving their concerns.
7. The concerns that were raised by the litigant parties were considered when the *He Anga Mua* proposals, *Ahu Whakamua* and indeed this allocation model were developed. It remains the hope of the Commission that any residual concerns that any persons or groups may have in relation to any aspect of the allocation model in this Report will elect to raise such matters with the Select Committee once the proposed Maori Fisheries Development Bill has been introduced to Parliament, rather than pursuing matters with the Court. Recourse to the Courts would involve lengthy delays to allocation which cannot reasonably be in the interests of any party.

PREVIOUS CONSULTATION

4. New Commissioners were appointed in August 2000 and began assessing how best to progress allocation. This necessitated the new Commissioners considering the work completed by the previous Commissioners. In particular, the extensive consultation that had taken place from 1992 onwards, the views and opinions put forward by the Taumata Paepae and the allegations made against the Commission that remain before the Court.

"HE ANGA MUA – A PATH AHEAD"

8. *He Anga Mua* reflected a fundamental shift away from earlier discussion material released by the Commission because it set out options for the allocation and distribution of both PRESA and POSA. By releasing options covering both PRESA and POSA the Commission signalled to Iwi and Maori the desire and need to reach a conclusion to the issue of Maori fisheries allocation.

¹ Section 6(e)(i) and Schedule 1A to the Maori Fisheries Act 1989.

² The Draft Maori Fisheries Development Bill is attached as Appendix 1 to this Report.

9. *He Anga Mua* was released in December 2001 and contained four separate allocation proposals together with a discussion of the possible implications arising from each proposal. The four proposals considered a range of options, from the allocation of all Settlement assets to different combinations of allocation and retention. Each of the proposals considered the Settlement in its entirety. The Commission stated in *He Anga Mua* that it would select the best combination of component parts from the options to ensure Maori maintain a leading role in the New Zealand fishing industry.³
10. Legally, the Commission is only required to pursue agreement in relation to its PRESA allocation model. However, such an overly literal approach was not believed to be in the interests of developing a durable allocation model. Therefore the Commission has sought to facilitate broad agreement from Iwi, Maori organisations and other interested Maori to the entire allocation model (both PRESA and POSA).
11. As a consequence, the Commission has followed a uniform procedure in respect of consultation and agreement over the allocation model as a whole. It is important to note, however, that the process for consultation is different from the subsequent process followed by the Commission when seeking agreement. The individual steps of the consultation process were:
- dissemination of the discussion material, *He Anga Mua*;
 - consultation on the options contained in *He Anga Mua*;
 - analysis of the submissions on *He Anga Mua*, and
 - the development of *Ahu Whakamua*.
- travelling throughout New Zealand explaining the different proposals. The next phase involved Commissioners and key staff debating the proposals and receiving submissions. The Commission had regard to the following factors when drawing up the consultation programme for the Commission:
- the consultation over the previous 10 years;
 - the target audience being Maori of all ages, urban and rural;
 - the appropriateness of venue and delivery;
 - the skills and abilities of the Commissioners, and
 - the need for Commissioners to discuss and explain the proposals prior to receiving submissions.
13. The comprehensive consultation process entered into by the Commission was initiated with the release of *He Anga Mua* on 1 December 2001 at Hopuhopu, Waikato. Invitations were sent to representatives from all Iwi and about 250 people attended the gathering. The Commission had arranged with TVNZ to profile *He Anga Mua* in a special 30-minute programme on *Marae* on Sunday 2 December 2001. The Commission took out full page advertisements in the country's leading newspapers on Saturday 1 December 2001. Commissioner Shane Jones and Chief Executive Robin Hapi appeared on TVNZ's *Marae* programme explaining what was proposed in *He Anga Mua*.
14. Between Monday 3 December and Friday 14 December 2001, Commissioners and staff travelled to 12 marae around the country to conduct "information hui", explaining in detail the proposals in *He Anga Mua*. Each hui was advertised in daily newspapers, as well as community newspapers, around the country. The meetings were also advertised on Iwi radio stations. Commissioners and staff attended 12 regional information hui at the following locations on the following dates:
- 3 December 2001, Kaitaia
 - 4 December 2001, Auckland
 - 5 December 2001, Hamilton
 - 6 December 2001, Rotorua
 - 7 December 2001, Whakatane
 - 8 December 2001, Gisborne
12. It was decided that to engender the widest debate possible on *He Anga Mua* the Commission would separate the consultation phase into two parts; first, the dissemination of *He Anga Mua*, and second, consultation. Disseminating the *He Anga Mua* proposals involved the Commissioners, the Chief Executive Officer Robin Hapi and other key staff

³ *He Anga Mua*, pp 4 and 37.

- 10 December 2001, Napier
 - 11 December 2001, Hawera
 - 12 December 2001, Wellington
 - 13 December 2001, Nelson
 - 14 December 2001, Christchurch
 - 15 December 2001, Chatham Islands
15. During this two-week period, the Commission also advertised extensively on Iwi and commercial radio stations about *He Anga Mua* and its proposed options for resolving allocation. These advertisements also advised that a copy of *He Anga Mua*, as well as summary versions, could be obtained from one of New Zealand's 300 or so public libraries. Advertising was also taken out in leading Maori magazines, such as *Mana* and *Tu Mai*.
16. The Commission received numerous requests from libraries seeking further copies. Such requests continued until the Commission completed consultation in March 2002. More than 3000 copies of the full policy document were distributed to Iwi and other interested groups and persons, as well as 6000 copies of the summary document.
17. Following the information hui the Commission moved into the second stage of consultation, namely the receipt and analysis of submissions. However, before the Commission could begin this phase of consultation, certain groups applied to the Court for an injunction to prevent the Commission from consulting on the *He Anga Mua* proposals until additional information was supplied to them by the Commission. While the applicants were unsuccessful before the Court, the Commission determined to supply the information sought in electronic form.
18. Following the Court application, the Commission attended the following consultation hui to discuss and receive submissions on the proposals contained in *He Anga Mua*:
- 11 February 2002, Te Rau Aroha Marae, Murihiku
 - 12 February 2002, Te Rangimarie Centre, Christchurch
 - 13 February 2002, Te Whakamaharatanga Marae, Chatham Islands
 - 14 February 2002, Whakatu Marae, Nelson
 - 15 February 2002, R.S.A Building, Hokitika
 - 18 February 2002, Hairini Marae, Tauranga
 - 19 February 2002, Omarumutu Marae, Opotiki
 - 20 February 2002, Rahui Marae, Tikitiki
 - 21 February 2002, Pahau Marae, Gisborne
 - 22 February 2002, Waipahihi Marae, Taupo
 - 25 February 2002, Waimarama Marae, Hastings
 - 26 February 2002, Nga Tau E Waru Marae, Masterton
 - 27 February 2002, Takapuwahia Marae, Porirua
 - 28 February 2002, Putiki Marae, Wanganui
 - 1 March 2002, Owae Marae, Waitara
 - 4 March 2002, Te Tii Marae, Paihia
 - 5 March 2002, Te Rerenga Paraoa Marae, Whangarei
 - 6 March 2002, Orakei Marae, Auckland
 - 7 March 2002, Hopuhopu Centre, Hamilton
 - 8 March 2002, Te Pae O Hauraki Marae, Paeroa.
19. Both the information and consultation hui were open to and attended by Iwi representatives, Iwi members, individual Maori, representatives of Maori organisations and other interested parties.
20. Submissions were received by the Commission directly at the consultation hui and by post and facsimile. The Commission formally stopped receiving submissions on 15 March 2002. However, as a matter of practice, the Commission still had regard to submissions received beyond this date. The Commission received submissions from all 58 Iwi recognised by the Commission, together with submissions from many Maori organisations and individual Maori concerning *He Anga Mua*. A synopsis of those submissions is available on the Commission's website.
21. Through the consultation hui and later analysis of the submissions received on *He Anga Mua*, the Commission became aware of several issues. These included the following facts:
- (a) there was no unified view about how allocation should occur;
 - (b) there was support in favour of a methodology that allocated some assets directly to Iwi and retention of other assets by a central body;

- (c) there was support for a development putea to assist those individuals that did not or could not identify with their Iwi;
 - (d) some Iwi identified that they would be unable to manage any allocation due to a lack of Iwi capacity;
 - (e) there were different levels of understanding of the issues involved in allocation from region to region, and
 - (f) there were, and continue to be, conflicts within particular regions that threaten any potential co-operation between Iwi in those regions in the short to medium term.
22. These and other issues assisted the Commission in the direction that it took developing the allocation proposal, *Ahu Whakamua*. The submissions also indicated where support for the different models and their component parts lay. However, levels of support for particular proposals could not define the Commission's decision. In fact, as already noted, the Commission expressly stated that it would seek the best possible combination of components for the allocation model.
23. It is also important to remember that it is the Commission that must ultimately determine the allocation model to be reported to the Minister. While the Commission had regard to all relevant considerations, including the submissions, the submissions alone could not determine the final allocation model, although they did provide useful guidance to the Commission.
24. The submissions showed support for the allocation of PRESA and the retention of POSA. The Commission was cognisant of the many considerations set out in this Report together with the key policy points that arose from the consultation hui when developing *Ahu Whakamua*.

AHU WHAKAMUA – FACILITATION OF AGREEMENT

25. As already set out in Part C of this Report the Commission must endeavour to secure 'agreement' on the optimum method for allocation.⁴ While the Act is silent on what constitutes 'agreement', the Commission realises that the level of support obtained must be politically sustainable, both in respect of PRESA allocation and proposals to be included in the Draft Maori Fisheries Development Bill. For this reason, the facilitation of agreement phase has been a lengthy and intensive one.
26. In order to enable agreement to be reached on an allocation model for all the assets that the Commission holds, the following approach was adopted:
- (a) removal of the 1999 High Court interim restraining order on reporting to the Minister of Fisheries;
 - (b) release of the allocation proposal, *Ahu Whakamua*;
 - (c) attendance at meetings with Iwi organisations and litigant parties to address and discuss *Ahu Whakamua*;
 - (d) receipt of responses from Iwi, Representative Maori Organisations, litigant parties, individual Maori, interested parties, Members of Parliament, industry participants and individual Iwi members by the Commission;
 - (e) assessment of the extent to which support existed for the *Ahu Whakamua* proposal and the Commission's intention to report to the Minister, and
 - (f) refinement of the final allocation model, *He Kawai Amokura* to be reported to the Minister.
27. As has been noted earlier, the Commission was restrained in 1999 by an interim High Court order preventing it from reporting to the Minister of Fisheries on a scheme for the allocation of PRESA. However, the order was based on proceedings that related to the Commission's 1998 PRESA allocation model and, in light of the *He Anga Mua* proposals, the

⁴ Section 6(e)(i) and Resolution 2 of Schedule 1A of the Maori Fisheries Act 1989.

proceedings giving rise to the order could be said to be stale such that the order itself should be removed. Consequently the Commission, in a joint application with Crown Law, applied to the High Court to have the restraining order lifted.

28. On 30 July 2002 the High Court decided to lift the injunction subject to the Commission providing an undertaking to the litigant parties. The terms of that undertaking were to give 20 working days' notice to the litigant parties of the full particulars of any scheme for the allocation of PRESA that the Commission proposed to include in its report to the Minister. Additionally, the Commission undertook to provide, on written request from the parties, the reasons for the inclusion or exclusion of any provision or principle in the proposed allocation scheme where the Commission had not otherwise provided such reasons in *Ahu Whakamua*.⁵
29. The removal of the interim order sent clear signals to all interested parties that the Commission would use all endeavours to fulfil its duty of reporting to the Minister in relation to PRESA and POSA allocation.
30. Upon removal of the interim order, the Commission proceeded to facilitate agreement with the release of its *Ahu Whakamua* proposal on 14 August 2002 at Hopuhopu, Waikato.
31. The Commission made copies of *Ahu Whakamua* freely available upon request to ensure that all those who would be affected were provided with a copy. Accordingly copies were sent to all Iwi, various representative Maori organisations, all Kohanga Reo, all public libraries, all litigant parties and various other interested Maori.
32. *Ahu Whakamua* also remains accessible on-line at the Commission's website (www.tokm.co.nz). Requests for hard copies of *Ahu Whakamua* can also be made on-line at the Commission's website. Finally, a CD-Rom version of *Ahu Whakamua* was produced and sent to all of the groups who received the hard copy of the report. This is still available upon request.
33. Since the release of *Ahu Whakamua*, there has been significant media coverage in both national and local newspapers and on the radio and television. The national media coverage of *Ahu Whakamua*, its distinct elements, and the views of the Commission and Iwi, prompted local and national debate on the proposal. The Commission has taken a pro-active stance in ensuring that Maori are aware of the contents of *Ahu Whakamua* and has, where appropriate, responded to both negative and positive comments made about the Commission and *Ahu Whakamua*.
34. The meetings held with Iwi organisations and the Commission were an important part of seeking agreement. The meetings provided an initial opportunity for the Commission to speak to *Ahu Whakamua*, clarify any outstanding issues and provide answers to any questions. The meetings allowed an in-depth and robust debate to take place on the different aspects of *Ahu Whakamua*.
35. These meetings were not an opportunity for Iwi to try to negotiate or bargain with the Commission over the *Ahu Whakamua* proposal. However, the Commission did listen to the views that were expressed by the various Iwi.
36. Set out below is a list of meetings that the Commission attended with Iwi organisations:
 - 14 August 2002, Launch of *Ahu Whakamua*
 - 9 August 2002, Te Kotahitanga o Te Arawa Waka
 - 20 August 2002, Waikato, Maniapoto and Raukawa
 - 21 August 2002, Hauraki
 - 22 August 2002, Ngati Tuwharetoa
 - 23 August 2002, Ngapuhi
 - 24 August 2002, Ngai Tahu
 - 26 August 2002, Ngati Raukawa, Ngati Toa, Muaupoko and Te Atiawa
 - 28 August 2002, Te Tau Ihu Iwi
 - 29 August 2002, Ngati Kahungunu
 - 30 August 2002, Te Aitanga a Mahaki, Rongowhakaata and Ngai Tamanuhiri

⁵ The Commission has received a number of information requests, all of which have been responded to within the terms of the Commission's undertaking and prior to the release of its Full Particulars Report on 7 April 2003.

- 2 September 2002, Te Taitokerau Iwi
- 3 September 2002, Ngati Wai and Ngati Whatua
- 4 September 2002, Ngaiteurangi, Ngati Ranginui and Ngati Pukenga
- 5 September 2002, Tuhoe, Ngati Awa, Whanau a Apanui, Whakatohea, Ngati Manawa and Ngati Whare
- 6 September 2002, Ngati Kahungunu
- 9 September 2002, Taranaki and Ngati Ruanui Iwi
- 10 September 2002, Atihaunui a Paparangi, Rangitane, Ngati Hauiti and Ngati Apa
- 13 September 2002, Ngati Porou
- 3 October 2002, Ngati Mutunga ki Wharekauri and Moriori

Iwi representatives and individual Maori attended these hui.

37. Set out below is a list of meetings that the Commission held with the litigant parties in order to facilitate agreement over the allocation proposal *Ahu Whakamua*.
- 11 September 2002, Representatives of Ryder, Traditional Tribes and Muriwhenua
 - 12 September 2002, Te Waka Hi Ika o Te Arawa litigants
 - 13 September 2002, Te Runanga o Ngati Porou
 - 16 September 2002, Urban Maori Authorities
 - 18 September 2002, Te Runanga o Raukawa
 - 23 September 2002, Ngati Tuwharetoa and Te Arawa
38. As the facilitation of agreement process continued a united Iwi group emerged that did not agree with *Ahu Whakamua*. That group was called Iwi Forum. Iwi Forum included members of a lobby group called the Treaty Tribes Coalition who were highly supportive of the Commission's previous 1998 model. The Iwi Forum released a counter-proposal to the Commission's *Ahu Whakamua* proposal, called *Te Amorangi Hei Mua*.
39. As part of the agreement process the Commission met with the representatives and advisors of Iwi Forum to discuss *Ahu Whakamua*, consistent with those meetings the Commission had with other Iwi.

40. However, from October 2002 the facilitation of agreement process, despite the best endeavours of the Commission, began to polarise Iwi between the Iwi Forum model *Te Amorangi Hei Mua* and *Ahu Whakamua*.
41. The Commission saw support for many of the features of *Ahu Whakamua* contained in *Te Amorangi Hei Mua*. The Commission also debated and considered aspects of *Te Amorangi Hei Mua*. Between October and November 2002 the Commission met with a number of Iwi that did not support either *Te Amorangi Hei Mua* or *Ahu Whakamua*.
42. The Commission formally ceased receiving responses on *Ahu Whakamua* from Maori, Iwi, Maori organisations and other interested Maori on 27 September 2002. However, the Commission continued to have an open mind to all responses and still considered those responses received after that date.

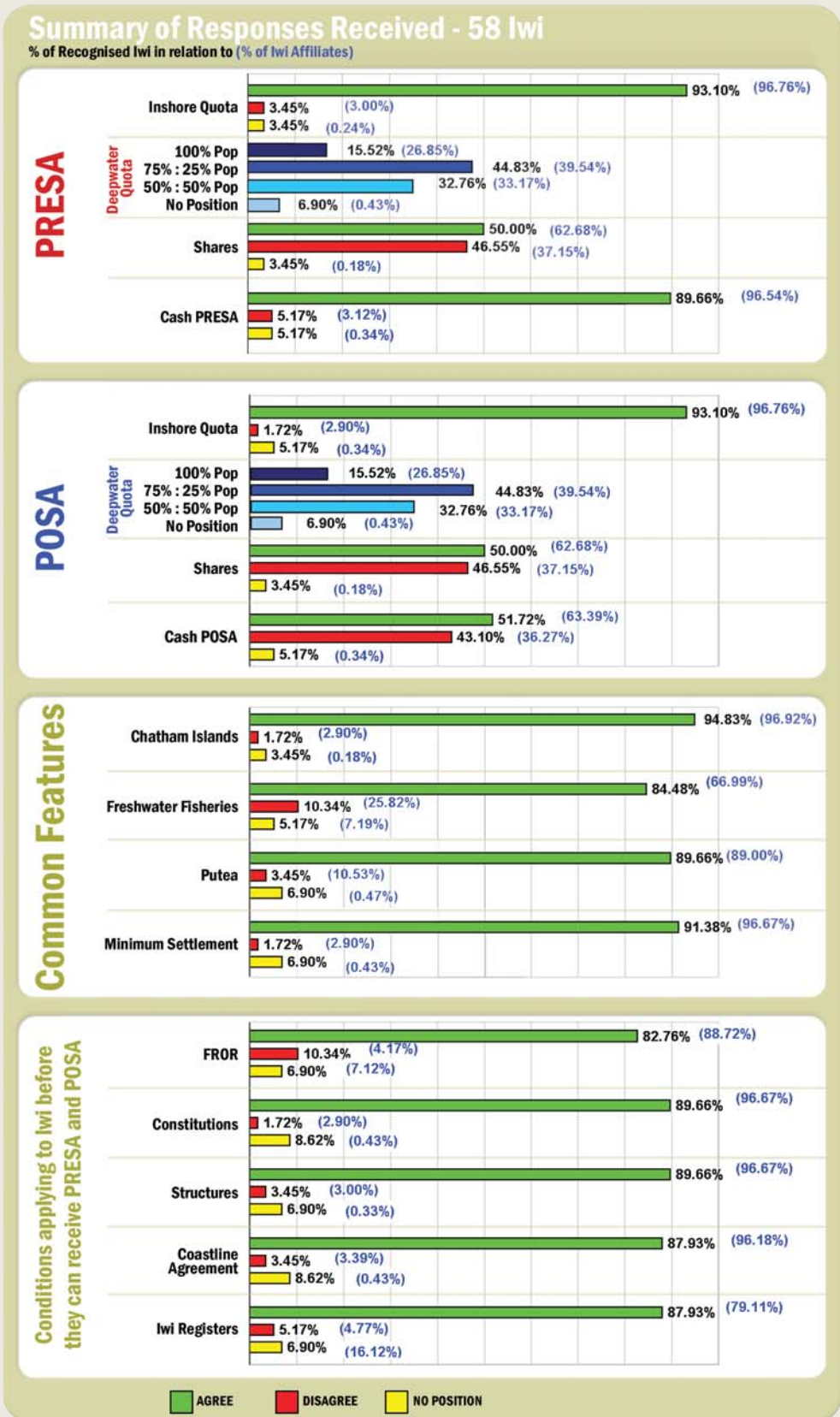
FINALISATION OF THE ALLOCATION MODEL

43. All responses from Maori, individual Iwi members, Iwi organisations, Maori organisations, litigants and other interested parties to *Ahu Whakamua* were considered by the Commission. In particular, the Commission had regard to:
- (a) the extent that there was support for the *Ahu Whakamua* proposal in its entirety;
 - (b) the extent to which there was support for specific elements of the *Ahu Whakamua* proposal;
 - (c) the extent to which there was support for the Iwi Forum's *Te Amorangi Hei Mua* proposal, and
 - (d) the commonalities and differences between the *Ahu Whakamua* proposal and alternative proposals including that promoted by the Iwi Forum.

44. The Commission's power to determine the final composition of the allocation model was exercised having regard to a wide range of factors. The essence of the matters considered by the Commission are set out in this Report. However, this Report cannot hope to encapsulate every aspect of the Commission's thinking. Achieving agreement is also a distinct and separate process from consultation on the alternative options for allocation. The level of agreement that exists for any particular model cannot pre-determine how the Commission should ultimately exercise its statutory decision-making power. The final decision rests with the Commission.
45. The Commission, having considered all relevant matters, determined that some aspects of *Ahu Whakamua* could be enhanced by making certain modifications that would improve the allocation model without substantively changing the components of *Ahu Whakamua*. The Commission has therefore made some modifications and refined some aspects of the proposal set out in *Ahu Whakamua*, consistent with the overall objectives of allocation. These are now reflected in the allocation model proposed in this Report, *He Kawai Amokura*. The Commission considers that these modifications and refinements enhance the level of agreement to the allocation model such that there is now almost unanimous support from Iwi for the Commission to report to the Minister.
46. Figure 4 shows the Commission's assessment of the level of support from the 58 Iwi for each of the principal components based on the responses received to *Ahu Whakamua* and subsequent discussions with a number of Iwi representatives. Levels of support for the differing formulae that have been promoted by various groups for Deepwater Quota are shown in Figure 4, which clearly shows the range of views on this particular issue and the risks in terms of support if the Commission altered its decision from a 75% population, 25% coastline split.

CONCLUSION ON EXTENT OF AGREEMENT

47. To assess whether the support received for *Ahu Whakamua* would be maintained and/or enhanced by modifications reflected in the allocation model in this Report, the Commission contacted representatives from a wide range of Iwi and from the principal Maori organisations that made written responses to *Ahu Whakamua*. The purpose of contacting these groups was to conclude the extent to which agreement existed for *He Kawai Amokura*.
48. For practical reasons, including cost and delay, it was not possible to contact and explain the nature of the changes to every person or group that provided a response. The Commission felt that it would not be in the interests of allocation to disrupt the process by contacting every individual Maori that provided a response on *Ahu Whakamua*. However, the Commission had regard to their responses to *Ahu Whakamua* in its consideration of possible modifications to the allocation model.
49. As a result of the Commission's final contact with Iwi representatives, the Commission considers that it has support from 93.1% of Iwi, representing 96.7% of Iwi-affiliated Maori, to proceed in reporting to the Minister, the prerequisite for which was the release of the Full Particulars Report.

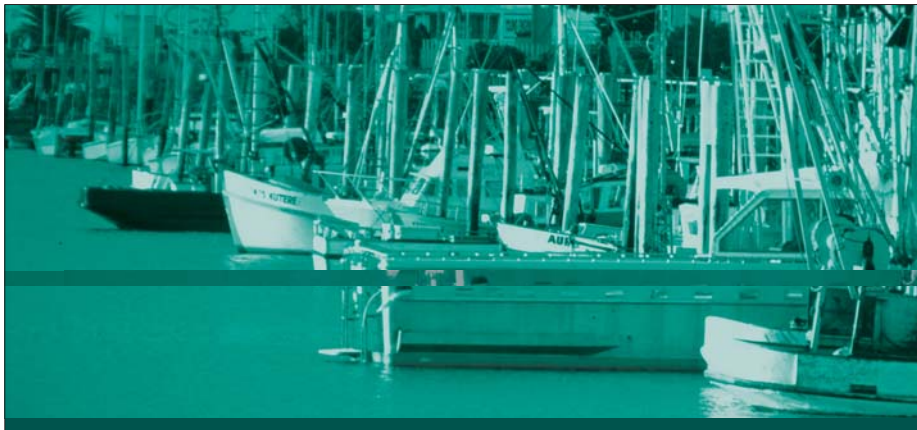


FULL PARTICULARS REPORT

50. As previously stated the Full Particulars Report was provided to litigants, all Iwi and other interested Maori 20 working days prior to the presentation of this Report to the Minister. Commissioner Shane Jones also appeared on the television programme *Marae* to debate the Full Particulars Report and the Commission has made public statements where necessary on the Report, largely in response to public statements made by other parties about the Commission's proposal, many of which contained factual inaccuracies.
51. The Full Particulars Report provided an additional opportunity for the litigant parties to consider the essential detail of the proposed allocation model and does not form part of the Commission's legal consultation requirements. However, the Commission continued to analyse the Full Particulars Report as the 20 working days elapsed and throughout this period remained receptive to any comments that litigants, Iwi, interested Maori or other stakeholders expressed concerning the Full Particulars Report. As a result, certain minor inconsistencies in *He Kawai Amokura* and the Draft Maori Fisheries Development Bill were identified and rectified over this period.

REPORT TO THE MINISTER

52. During the 20 working days' notice period no Iwi has indicated a change in their support by initiating proceedings to prevent the Commission from formally reporting to the Minister. In fact, the Commission has received significant support from Iwi to proceed to present this Report to the Minister.
53. The Commission therefore remains firmly of the view that the allocation model in this Report, *He Kawai Amokura*, provides the most robust and durable means of ensuring the allocation of the assets and benefits of the Settlement to Iwi ultimately for the benefit of all Maori.



Explanation of the Components
of the Allocation Model

PART E

1. This Part of the Report addresses in detail each specific component of the allocation model. In both developing and making its final decisions in relation to these components, both individually and collectively, the Commission has had due regard to the legal and other considerations identified in Part C of this Report and the many views expressed to it over the course of the Commission's several consultation rounds and in submissions over the last decade. The final decisions reached reflect this process and also the need to achieve a balanced compromise between differing views and expectations in order that the final allocation model is durable, politically sustainable, lawful and fair.
2. As has been emphasised already, these components cannot reasonably be viewed in isolation from each other, but rather they form an integrated whole – *He Kawai Amokura* – that must be considered in its entirety in terms of what it will provide for Iwi, and ultimately all Maori, both now and in the future.
5. Accordingly, the Commission proposes to allocate POSA quota to Iwi using the same formulae that the Commission proposes to use for the allocation of PRESA quota (as set out below).
6. While quota is often described for fisheries purposes solely with reference to Inshore and Deepwater Quota, for the purpose of the allocation model in this Report the Commission has classified quota into six categories. Each of these categories of quota is to be dealt with in a different way in terms of allocation to Iwi.
7. In summary, under the allocation model in this Report, there are six different categories of quota and six different mechanisms by which particular Iwi entitlements are determined in respect of PRESA and POSA quota:
 - (a) Inshore Quota will be allocated to Iwi, 100% on the basis of coastline;³
 - (b) Deepwater Quota will be allocated to Iwi, 75% on the basis of Iwi population and 25% on the basis of coastline;⁴
 - (c) Quota within the Chatham Zone, identified on the basis of commercial catch data within that zone, will be allocated:
 - (i) for Inshore Quota to Chatham Island Iwi on a 100% coastline formula, and
 - (ii) for Deepwater Quota 50% to Chatham Island Iwi on a coastline formula and 50% to all Iwi on the basis of Iwi population;⁵
 - (d) Quota for QMAs that coincide solely with FMA 6, FMA 10 (where FMA 10 supports a commercial fishery)⁶ or the residue of FMA 4 (not covered by Chatham Zone) will be allocated to Iwi solely on the basis of Iwi population;⁷

QUOTA – PRESA AND POSA

3. The statutory provisions relating to POSA differ from those relating to PRESA. While the Commission consequently considers that it has some discretion regarding whether the POSA assets are physically allocated, the Commission does not believe there is any sound basis for differentiating between the treatment of POSA quota and PRESA quota.
4. The Commission is required to allocate PRESA, including PRESA quota, to Iwi.¹ In relation to POSA, the Commission's proposal must be consistent with both the principles of the Treaty of Waitangi and the Deed of Settlement. The findings of the Waitangi Tribunal in relation to Maori fishing rights have already been identified above.² The Commission considers that the return of quota, as the modern-day equivalent of the traditional right of Iwi to fish, appropriately reflects Treaty principles including rangatiratanga, redress for past breaches and the right to development. This is also consistent with clause 3.2 of the Deed of Settlement, which records the Crown's obligation to provide the Commission with POSA quota in the form of 20% of any new species introduced to the QMS, and supports the allocation of such POSA quota to Iwi.

¹ See paragraph 7 of Part C of this Report above.

² See paragraph 21 of Part C of this Report above.

³ See section 51 of the Draft Maori Fisheries Development Bill and the discussion in paragraphs 15–17 of this Part of this Report.

⁴ See section 52 of the Draft Maori Fisheries Development Bill and the discussion in paragraphs 19–23 of this Part of this Report.

⁵ See section 53 of the Draft Maori Fisheries Development Bill and the discussion in paragraphs 36–43 of this Part of this Report.

⁶ See section 57 of the Draft Maori Fisheries Development Bill and paragraph 28 of this Part for further discussion on FMA 10.

⁷ See sections 55, 56 and 57 respectively of the Draft Maori Fisheries Development Bill and the discussion in paragraph 27 of this Part of this Report.

- (e) Quota within harbours, identified on the basis of commercial catch data, will be allocated to Iwi whose rohe abuts the harbour by agreement of those Iwi,⁹ and
 - (f) Freshwater Quota will be allocated on the basis of commercial catch history following agreement between Iwi whose rohe is within the FMA or, failing agreement, to those Iwi on the basis of Iwi population resident in the area of the QMA within the Iwi's rohe.⁹
10. The Commission has considered these findings and similar acknowledgements in various Court decisions and concluded that there is a reasonable distinction to be made between Inshore and Deepwater fisheries based on the degree of control that could traditionally be exercised over the Deepwater fisheries. This distinction has received substantial support during the Commission's various consultation processes.
 11. The depth of 300m has been chosen as the cut-off point for the Inshore/Deepwater split because a depth of 300m corresponds approximately with the continental shelf consistent with the Tribunal's findings that Ngai Tahu had exclusive fishing rights out to 12 miles (the approximate edge of the continental shelf).

Quota classification

8. In the first instance, the Commission has categorised all PRESA and POSA quota (other than Freshwater Quota) into Inshore and Deepwater depending on whether the fish in a Quota Management Area (QMA) are caught predominantly in inshore waters (depths of less than 300m) or predominantly in deepwater (depths over 300m).¹⁰
9. The division between Inshore and Deepwater fisheries has been made because there is a distinction drawn between Inshore and Deepwater fisheries in the Waitangi Tribunal's fisheries reports. In both the *Muriwhenua Fishing Report* and the *Ngai Tahu Sea Fisheries Report* the Waitangi Tribunal found that the claimants had authority over the Inshore fisheries adjacent to their coastline. In relation to Deepwater fisheries, the Tribunal found that the Muriwhenua Iwi had a "development right" to the offshore fisheries, but did not clearly define what this right might mean in practice (Wai 22, p 236). In the *Ngai Tahu Sea Fisheries Report*, the Tribunal found that Ngai Tahu had a Treaty development right to a reasonable share of the sea fisheries off their rohe extending beyond 12 miles to the 200 mile EEZ and that such a right was exclusive to Ngai Tahu (Wai 27, p 303).
12. For existing fishstocks, the Commission's classification of each fishstock was based on earlier reviews of available commercial catch data prepared by NIWA and Clements. Those classifications have been used by the Commission in all annual lease and ACE distribution rounds since 1995 as well as being the basis for the relative distributions shown in *He Anga Mua* and *Ahu Whakamua*. The Commission has determined, in order to provide clarity and certainty to Iwi, to continue to use these classifications that had been the basis of consultation and agreement. The Commission's resulting classifications for the purpose of allocating existing QMS fishstocks are set out in Schedule 1 of the Draft Maori Fisheries Development Bill.
13. Where quota is allocated to Te Ohu Kai Moana after the commencement of the new Maori Fisheries Development Act, Te Ohu Kai Moana will also need to determine whether the quota to be received, and subsequently allocated to Iwi, is Freshwater, Inshore or Deepwater Quota. The classification process that will apply is set out in section 5 of the Draft Maori Fisheries Development Bill.
14. This process provides that, where it is abundantly clear that the fishstock, on the basis of biological or anecdotal evidence, is either a Freshwater, Inshore or Deepwater fishstock, Te Ohu Kai Moana must publish in the *Gazette* the appropriate description for the fishstock as Freshwater, Inshore or Deepwater.

⁸ See section 54 of the Draft Maori Fisheries Development Bill and the discussion in paragraphs 29-35 of this Part of this Report.

⁹ See section 58 of the Draft Maori Fisheries Development Bill and the discussion in paragraphs 24-25 of this Part of this Report.

¹⁰ See the classifications in Schedule 1 of the Draft Maori Fisheries Development Bill for species currently in the QMS and section 5 of the Draft Maori Fisheries Development Bill for the criteria for classifying the quota for new species.

However there may be cases where it is not clear whether the fishstock is Inshore or Deepwater. In those instances, where evidence suggests that a particular fishstock may be taken between the depths of 200 metres and 400 metres, Te Ohu Kai Moana must consider the most recent 5 years of available catch histories for that fishstock and classify it as follows:

- (a) where at least 75% of the fishstock is taken in depths greater than 300 metres, it is Deepwater;
- (b) where at least 75% of the fishstock is taken in depths of 300 metres or less, it is Inshore, and
- (c) where neither paragraph (a) or (b) applies, Te Ohu Kai Moana must decide whether the fishstock is Deepwater or Inshore based on:
 - (i) the fishing equipment used to take the fishstock, and
 - (ii) the location where the fishstock was taken.

Inshore Quota

15. The PRESA Inshore Quota being allocated is that received from the Crown under the 1989 interim Settlement together with any additional quota purchased by the Commission since that time in pursuit of its policy target of 10 % of those fisheries.¹¹ It does not include any Inshore Quota held within Moana Pacific Fisheries Limited, nor does it include any quota that the Commission held for certain stocks that were in excess of the target 10%.
16. The POSA Inshore Quota being allocated is the 20% of quota received from the Crown through the introduction of new species into the Quota Management System since 1993.¹² It does not include any quota held within Sealord, Chatham Processing Limited, Prepared Foods or other companies or Trusts (including Moana Pacific Fisheries Limited following its transfer from Te Ohu Kai Moana Limited).
17. PRESA and POSA Inshore Quota will be allocated to Iwi according to a coastline formula. That is, an Iwi share of quota for each Inshore fishstock within a Quota Management Area (QMA) is determined by the ratio of that Iwi's coastline to the total coastline of the relevant QMA for that species.
18. The Commission considers that quota is the closest proxy in modern terms to the customary rights that Maori had to commercially fish. The proposed allocation of Inshore Quota on the basis of a coastline length formula is consistent with the findings of the Waitangi Tribunal regarding the rights and interests that tribes had to the fish off their coast. The Commission considers that the coastline formula is a practical way of transforming this concept into an allocation of fishing rights, which also enables consistency with the QMS. It is also consistent with the statutory recognition that is given to Iwi and hapu in relation to non-commercial customary fishing rights in coastal areas. The use of the coastline formula for the allocation of Inshore fishstocks has received significant support during the Commission's consultation rounds and in the responses received to *Ahu Whakamua*.

Deepwater Quota

19. The PRESA Deepwater Quota being allocated is that quota received from the Crown under the 1989 interim Settlement together with any additional quota purchased by the Commission since that time in pursuit of its policy target of accumulating 10% of all commercial fisheries.¹³ It does not include any Deepwater Quota held within Moana Pacific Fisheries Limited.
20. The POSA Deepwater Quota being allocated is the 20% of quota received from the Crown through the introduction of new species into the Quota Management System since 1993.¹⁴ It does not include any quota held within Sealord, Chatham Processing Limited, Prepared Foods or other companies or Trusts (including Moana Pacific Fisheries Limited following its transfer from Te Ohu Kai Moana Limited).

¹¹ See Part 1 of Schedule 1 to the Draft Maori Fisheries Development Bill for the PRESA Inshore Quota that is to be allocated.

¹² See Part 2 of Schedule 1 of the Draft Maori Fisheries Development Bill for the POSA Inshore Quota that is to be allocated.

¹³ See Part 1 of Schedule 1 to the Draft Maori Fisheries Development Bill for the PRESA Deepwater Quota that is to be allocated.

¹⁴ See Part 2 of Schedule 1 of the Draft Maori Fisheries Development Bill for the POSA Deepwater Quota that is to be allocated.

21. PRESA and POSA Deepwater Quota will be allocated to Iwi according to a formula that uses a ratio of 25% Iwi coastline and 75% Iwi population. Iwi coastline will be determined in the same manner as for Inshore Quota above and the size of an Iwi's population will be derived from the 2001 Census.¹⁵
22. The Commission proposes that Deepwater Quota be allocated on a different formula from Inshore Quota because of the different level of control traditionally exercised over Deepwater fisheries as already discussed above. The Waitangi Tribunal has noted that the Maori fishing right in relation to Deepwater fisheries is not the same as the right to Inshore fisheries, but is more in the nature of a "development right" and therefore may be less "exclusive" to the particular Iwi with coastline adjoining the Deepwater fishery.¹⁶ The use, in part at least, of a population formula has been said by many to be a better reflection of the non-exclusive, development nature of Deepwater fisheries, reflecting as it does a general indicator of contemporary social and economic need and relativity among Iwi.
23. In the submissions received on *He Anga Mua* and also in the responses to *Ahu Whakamua*, there were significant bodies of support for both the allocation of Deepwater fisheries based on a 50/50 coastline/population formula and for its allocation exclusively on a population formula. In the end, the Commission has determined that a 75% population: 25% coastline formula is appropriate having regard to the following factors:
- the less exclusive nature of the development right in Deepwater fisheries;
 - social and economic considerations including the differing socio-economic needs of Iwi of different sizes;
 - recognition that the Settlement also settles claims in relation to commercial freshwater fisheries in which all Iwi had a traditional interest, but which (aside from tuna (eels)) are unlikely to be realised in the form of commercial freshwater species within the QMS in the foreseeable future, and
 - the need to secure agreement among Iwi with differing views.

Freshwater Quota

24. At the present time the only freshwater species that has been introduced into the QMS is South Island eels. The Commission has determined that it is appropriate for that fishstock, and also for any other freshwater species that may be introduced to the QMS, to be allocated to Iwi whose rohe is within the QMA established for the freshwater species.
25. It is proposed that in the first instance that this quota will be allocated between those Iwi with rohe within the relevant QMA in proportion to the commercial catch of the freshwater species by all fishers that has occurred within each Iwi's rohe. Where agreement cannot be reached between the Iwi on a distribution under this formula, it is proposed that each Iwi whose rohe is within the relevant freshwater QMA will receive a share of quota for that QMA proportionate to the population of that Iwi, based on the 2001 Census, that live within the area of that QMA. In this latter event, Te Ohu Kai Moana will secure demographic information from Statistics New Zealand derived from the 2001 Census that indicates the number of Iwi members that live within the part of each Iwi's rohe that is within the freshwater QMA.

Fisheries Management Areas 4, 6 and 10

26. The Commission proposes a different allocation formula for those fishstocks whose QMA is restricted solely to FMA 6, FMA 10 and that portion of FMA 4 that is not within either the separate Chatham Zone or the Overlap Zone.
27. The quota for fishstocks whose QMA is restricted solely to FMA 6 or that portion of FMA 4 that is not within the separate Chatham Zone or the Overlap Zone shall be distributed to all Iwi solely upon the basis of Iwi population. There are no adjacent coastlines for such areas and therefore neither the Inshore nor Deepwater formulae can apply due to the coastline component within them. However, where a fishstock is part of a larger QMA that encapsulates not only FMA 6 and/or the residual portion of FMA 4,

¹⁵ See paragraphs 95–101 of Part C and Appendix 3 of this Report, which explain how the 2001 census data was applied.

¹⁶ Fisheries Settlement Report 1992 (Wai 307) at p 18.

but also another FMA (for example Bluenose 3 which takes in FMAs 3,4,5 and 6) those fishstocks are allocated in accordance with the general Inshore and Deepwater formula for that QMA.

28. Fishstocks within FMA 10 are to be treated as development fisheries only. It is therefore proposed that all quota for FMA 10 will be held by Te Ohu Kai Moana. Should it appear that a TACC may be set for a FMA 10 fishstock which will provide for a commercial catch, that quota will be distributed to all Iwi on the basis of Iwi population.

Harbours with commercial catches

29. A number of Iwi with coastlines within harbours (for example Kaipara Harbour) have wanted the coastline lengths within these harbours to form part of the coastline used to calculate their entitlement to quota on the basis that the fisheries within those harbours have traditionally supported them. However, because some harbours have extensive coastlines within them, the outcome would be very heavily distorted in favour of such Iwi, particularly where there are few commercial species or only small quantities of fish in those harbours compared to the open sea.
30. Notwithstanding this, the Commission recognised that a specific allowance should be made for Iwi bordering harbours which had recognised commercial catches provided that it did not distort coastline measurements. The Commission therefore proposes, on a species by species basis, to identify, isolate and allocate to Iwi whose rohe abut harbours that support a commercial fishery, a proportionate amount of the quota for the relevant QMA. The Commission considers that this is fair and reasonable and recognises local environmental and abundance issues on a fishstock by fishstock basis. The harbours that have been recognised by the Commission are set out in the Draft Maori Fisheries Development Bill.¹⁷
31. In 1996, a survey was carried out to determine the percentage of PRESA QMS fishstocks commercially taken within harbours. The work involved identifying the relevant harbours by examining Ministry of Fisheries records and then carrying out a field survey of commercial fishers using their local knowledge to arrive at the percentage of fishstocks caught within
- each harbour. The list of PRESA harbours that support a commercial fishery and the proportion of the TACC in these harbours are set out in Schedule 3 of the Draft Maori Fisheries Development Bill.
32. No POSA fishstocks were included in the survey, but it is expected that POSA harbours assessment will be completed before allocation and Iwi will be advised of the results in due course. The survey will include all current POSA fishstocks and will also assess those fishstocks that the Crown has announced it intends to introduce into the QMS before 2005. Any POSA fishstocks that the Crown introduces prior to 2005, but which are not covered in the POSA harbours survey, or any POSA fishstocks introduced after 2005, will be assessed in a later survey that Te Ohu Kai Moana will carry out. In all cases the Draft Maori Fisheries Development Bill provides that Te Ohu Kai Moana may by notice in the *Gazette* specify POSA Harbour Quota for any of the harbours set out in Schedule 3 of the Bill.
33. Where a commercial catch is taken from a harbour, the Commission will use the results of the survey and take the highest of the range of catches over the five years as the percentage of the catch within the harbour that will be applied to the quota held by the Commission in the relevant fishstock. The resultant amount of quota will be reserved for allocation to those Iwi who have a boundary that abuts that harbour. Iwi who have a rohe boundary which abuts a harbour will still receive a proportion of quota based on the juridical bay formula.
34. Where more than one Iwi is involved, it is proposed that the reserved quota is divided by agreement between those Iwi or, where agreement cannot be reached, by using Te Ohu Kai Moana's proposed dispute resolution procedures.¹⁸
35. After the deduction and separate allocation of the Harbour Quota from the quota held by the Commission for those relevant QMA, the balance of the quota will be allocated on the usual formula. It is anticipated that all Harbour Quota will be Inshore

¹⁷ See section 54 and Schedule 3 of the Draft Maori Fisheries Development Bill.

¹⁸ See discussion in this Part of this Report and Part 9 of the Draft Maori Fisheries Development Bill.

Quota and therefore it will be allocated to those lwi with rohe adjacent to the relevant QMA. The fact that an lwi has been allocated Harbour Quota in relation to a particular QMA, does not preclude lwi from also being allocated quota for the balance of the QMA, provided they have a seaward coastline within the QMA.

Chatham Zone

36. As already noted, the Commission considers that good reasons exist for treating the fisheries interests of Chatham Islands lwi as a unique case.¹⁹ Recognition of those reasons has also received support in previous consultations and was supported in both the consultation on *He Anga Mua* and the responses to *Ahu Whakamua*.
37. The Commission has therefore determined that for allocation purposes there is to be a Chatham Zone comprising the area within 200 nautical miles of the baseline of the territorial sea around the Chatham Islands as determined under the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.
38. Within the Chatham Zone it is proposed that:²⁰
- All Inshore Quota (both PRESA and POSA) will be allocated to the Chathams lwi on the basis of coastline.
 - 50% of Deepwater Quota (both PRESA and POSA) will be allocated to Chathams lwi on the basis of coastline and 50% will be allocated to all lwi in New Zealand on the basis of lwi population (including those lwi of the Chathams Island).
 - In respect of that area where the 200 nautical mile Chatham Zone overlaps with the area within 200 nautical miles of the baseline of the territorial sea on the east coast of mainland New Zealand (the Overlap Zone), the quota attributable to that Overlap Zone will be apportioned 50/50 between the Chatham Zone and the appropriate QMA for the quota within the Overlap Zone.

The Chatham Zone and the Overlap Zone is shown in Figure 5.

39. Chatham Island lwi also have entitlements, with all other lwi, to other PRESA and POSA assets including:
- a share of the 75% of Deepwater Quota for QMAs outside the Chatham Zone that is to be allocated to all lwi in proportion to lwi population;
 - PRESA cash on the basis of lwi population, and
 - Income Shares in AFL based on lwi population.
37. The Chatham Zone will be treated for allocation purposes (and only for allocation purposes) in effect as if there is a separate Quota Management Area within this zone for each fishstock.
39. For Deepwater Quota within the Chatham Zone, the Commission has decided to provide a different (ie, 50/50) formula to that for Deepwater Quota elsewhere in New Zealand in general recognition of the dependence of the Chatham Islands on fishing.
40. The Commission also notes that under the Fisheries Act 1996, when the Crown introduces any new species into the QMS, it generally establishes a separate Quota Management Area (QMA) centred on the Chatham Islands (ie, corresponding with FMA 4) unless fisheries management reasons deem this unsuitable. The Fisheries Act 1996 also provides that the Chatham Islands Enterprise Trust will receive any surplus quota (normally reserved to the Crown) after allocating quota to Te Ohu Kai Moana (20%) and existing fishers based on their entitlements in the catch history years.

MOANA PACIFIC FISHERIES LIMITED

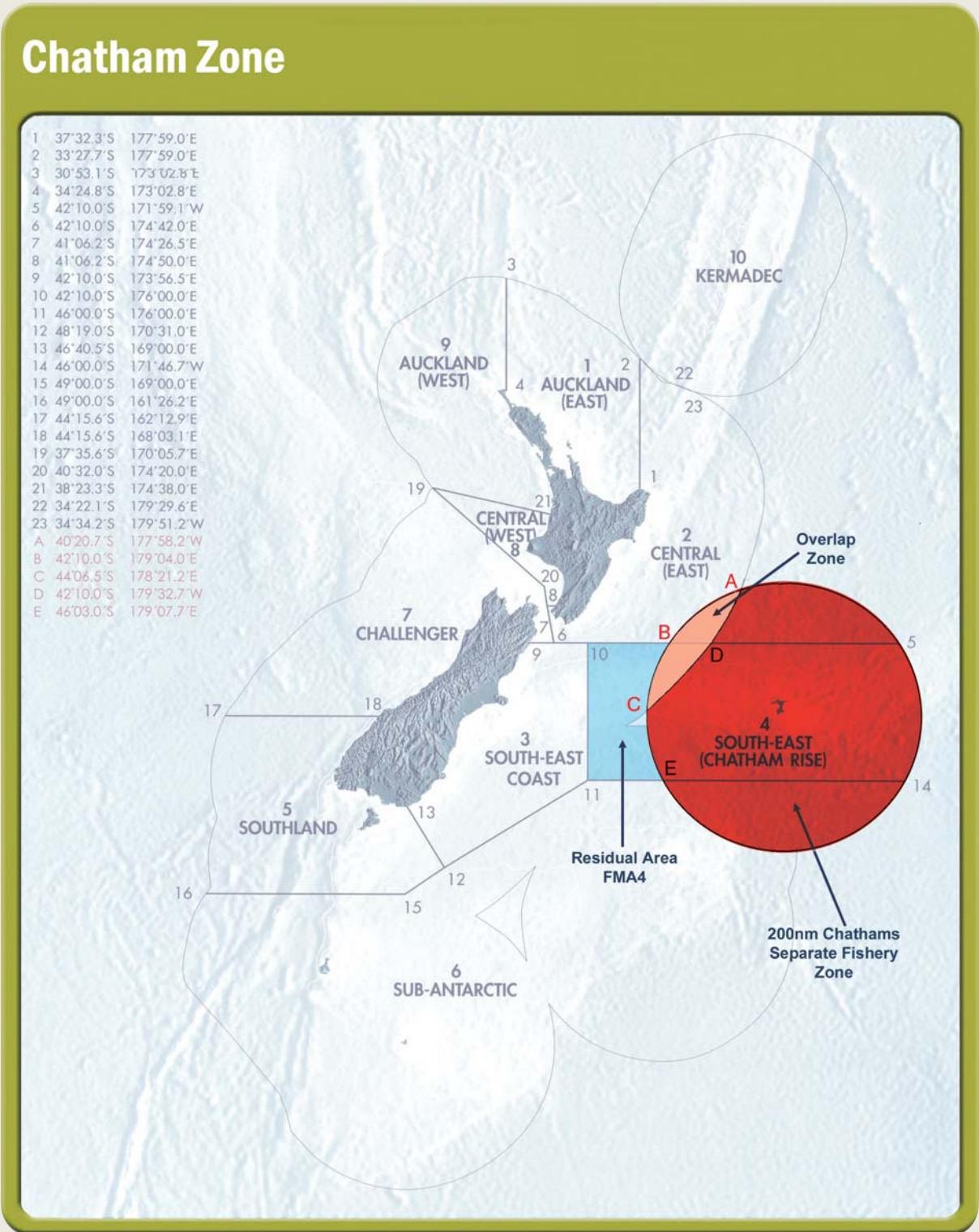
41. The Commission's only PRESA company shareholding is an 83.74% interest in Moana Pacific Fisheries Limited (MPFL), which is held by the Commission's wholly owned subsidiary, Te Ohu Kai Moana Limited.²¹ The remaining 16.25% shareholding in MPFL is owned by Te Kupenga Limited (TKL), a company in which the Commission has an 18.6% shareholding.

¹⁹ This has been recognised by the Waitangi Tribunal (Fisheries Settlement Report 1992) and the Courts (*Te Runanga o Muriwhenua & Ors Te Runanganui o Te Upoko o Te Ika Association Inc & Ors* [1996] 3 NZLR 10), and was also supported by Taumata Paepae.

²⁰ The specific allocation rules for the Chatham Zone are addressed in section 53 of the Draft Maori Fisheries Development Bill.

²¹ Te Ohu Kai Moana Limited was incorporated on 30 June 1994 by the Commission and should not be confused with the Te Ohu Kai Moana Corporate Trustee Limited or the Te Ohu Kai Moana Trust.

FIGURE 5



42. The functions of the Commission are set out in sections 5 and 6 of the Maori Fisheries Act 1989. One of the functions set out in Section 6(d) is:

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

43. MPFL is one of the Commission's major commercial assets which it holds on behalf of Iwi. Any decision contemplating a restructure of either the ownership or the rationalisation of the company's business must be considered for its economic benefits as well as consistency with section 6(d). This is a decision that is not dependent on the fact or prospect of allocation. However, it is addressed in *He Kawai Amokura* because MPFL presently forms part of the Commission's PRESA assets and the decision has consequential effects on the composition of the allocation model.

44. The Commission has decided that there is a stronger future for the company and the Treaty of Waitangi Fisheries Commission's group of companies as a whole if MPFL is operated in a more cooperative way with other Commission group companies. To increase the strength of the corporate assets, it has been decided to place all these assets together to gain greater strength and cohesion for Maori. The Commission reached this decision after an analysis of MPFL and the opportunities available to it as a stand-alone company working with decreasing amounts of Inshore fish available due to:

- TACC fluctuations;
- increasing recreation take, and
- marine reserves and aquaculture.

45. It is proposed therefore that, prior to allocation, the MPFL shares held by Te Ohu Kai Moana Limited will be transferred to the Commission's POSA assets in consideration for the payment of \$40.42 million (being fair market value) from POSA cash into PRESA. This cash will then form part of the PRESA cash that will be available for allocation to Iwi on the basis of Iwi population.²² The fair market value set out here is greater than that estimated in *Ahu Whakamua*. As noted in *Ahu Whakamua* there are a number of different techniques that can be used to estimate the

value of a business. The estimated value provided above was obtained applying the same methodology as used in *Ahu Whakamua*, but based on current information for MPFL.

46. In relation to TKL the Commission has decided that it will transfer its shareholding in TKL from the Commission's PRESA assets to its POSA assets at nil value. In reaching this decision the Commissioners have been influenced by the likelihood that the Commission will be unable to realise any value for its TKL shareholding for the following reasons:

- A number of the shares are subject to exit agreements, which could become active on the allocation of assets to the entity that is a party to the agreement;
- Te Kupenga is a minority shareholder in MPFL;
- The Commission is a minority shareholder in Te Kupenga;
- Shares in MPFL are the only asset of Te Kupenga;
- No dividends have been paid by MPFL for some years;
- There is no capacity for Te Kupenga to influence the payment of dividends;
- There is no apparent market for Te Kupenga shares, and
- It was appropriate that AFL address the issues of future ownership.

PRESA CASH

47. PRESA cash (including the cash received from POSA following the transfer of MPFL) will be allocated to Iwi using a population formula subject to the following special provisions:

- \$20 million is to be set aside as the capital for Te Putea Whakatupu Trust;²³
- \$2.72 million is to be used to top up the allocation of certain Iwi in order to ensure that every Iwi receives at least \$1 million in capital under allocation (comprising the direct allocation of

²² Subject to the special provisions for PRESA cash identified in paragraph 47 of this Part of this Report.

²³ See section 48(1)(a) of the Draft Maori Fisheries Development Bill. The final beneficiaries of Te Putea Whakatupu Trust are Iwi, see section 39(1)(m) of the Bill.

- quota, cash, and that Iwi's relative share of the notional value of the capital in Aotearoa Fisheries Limited);²⁴
- \$10 million is to be set aside as the initial capital for Te Wai Maori Trust to fund freshwater fisheries initiatives;²⁵
 - \$5 million is to be set aside as initial capital for Te Ohu Kai Moana. The interest from the capital, combined with the dividends it will receive from its AFL income shares, will provide sufficient income for Te Ohu Kai Moana to carry out its activities (the capital itself will be held by Te Ohu Kai Moana on behalf of Iwi and cannot be expended),²⁶ and
 - \$18 million that has been committed to fund transitional arrangements.²⁷
48. When these amounts are taken into account, the Commission estimates that \$20.719 million dollars of PRESA cash will be directly allocated to Iwi on an Iwi population basis.
49. As indicated in *Ahu Whakamua*,²⁸ the Commission also intends to use its best endeavours to recover the training and development grants that were advanced to certain organisations between 1990 and 1993. Those grants were made subject to written agreements between the Commission and the organisations which stated that:
- (a) the amount of the grants will be deducted from the final allocation received by the organisation, and
 - (b) if the organisation is ultimately not a recipient of allocation, the Commission can seek repayment of the grant from the organisation.
50. The training and development grants made by the Commission and the recipient organisations are set out in Appendix 4 to this Report. The Commission intends to deduct the amount of the grants from the PRESA cash that is to be allocated to those organisations that receive final allocation. Where organisations received grants from the Commission, but will not receive final allocation, the Commission intends, where possible, to use its best endeavours to secure repayment of the grant from such organisations. Any PRESA cash deducted from allocation or recovered from such organisations on
- account of training and development grants will form part of PRESA cash and will be allocated to all Iwi on the basis of Iwi population.
51. The reason for the allocation of PRESA cash to Iwi on the basis of population is to recognise and provide for social and economic considerations. This formula has received significant support in the Commission's consultation rounds and in submissions received on *He Anga Mua* and was supported in the responses received to *Ahu Whakamua*.²⁹
52. The other specific allocations of cash proposed above are designed to meet specific needs identified during the course of consultation on *He Anga Mua* and in the responses received to *Ahu Whakamua* and to also ensure that the Commission is able to meet its obligations to all Maori.
53. All PRESA cash (\$76 million) will be placed with AFL pending its transfer to Te Ohu Kai Moana and further transfer by Te Ohu Kai Moana to the entities above in the amounts set out above. The remaining PRESA cash held by AFL will be transferred to Te Ohu Kai Moana and allocated to Iwi as and when they meet the Commission's allocation requirements. The interim use of the PRESA cash by AFL will also ensure that it is adequately capitalised and able to take advantage of business opportunities. It is anticipated these funds will be repaid progressively over five years as cash for allocation is required.
54. To meet the transition costs associated with the implementation of *He Kawai Amokura*, it has been decided that the expected deficit between what is currently received from the ACE rounds and the overall costs of transition will be met from PRESA cash. It is estimated that across the expected five years transition period, this deficit will be \$18 million.

²⁴ See sections 48(1)(d), 59 and 60 of the Draft Maori Fisheries Development Bill. This is discussed in greater detail in paragraphs 55-59 of this Part of this Report.

²⁵ See section 48(1)(b) of the Draft Maori Fisheries Development Bill. The final beneficiaries of Te Wai Maori Trust are Iwi.

²⁶ See sections 48(1)(c) and 48(2) of the Draft Maori Fisheries Development Bill.

²⁷ While this is the sum currently estimated, it is proposed that all annual budgets will be subject to the normal scrutiny process and any transitional funding remaining at the end of the transition (expected to be five years) will be allocated to Iwi on a population basis.

²⁸ *Ahu Whakamua* at pp 87-88.

²⁹ See also the more detailed discussion of population in paragraphs 95-101 of Part C of this Report.

This has increased from the \$16 million noted in *Ahu Whakamua* because an allowance must be provided for the transitional payments to the Te Wai Maori Trust as it establishes its programmes during the transition period. It is expected that these transitional payments may be as much as \$2 million over the five years, starting at \$150,000 per annum and progressively increasing to \$500,000 per annum. However, the precise amount will be determined based on progress and priorities at the time. The budgeting of these programmes will be part of the new Te Ohu Kai Moana annual programme that will be circulated to Iwi for comment prior to the start of each financial year.

MINIMUM SETTLEMENTS

55. The Commission believes that the Settlement should provide a minimum "allocation" in terms of value of \$1 million to each Iwi. To effect this the Commission proposes as part of the allocation model that some PRESA cash be used to top up the allocation of those Iwi whose allocation of PRESA cash, PRESA quota, POSA quota and the Iwi's notional share of the capital value of AFL (calculated by spreading that value across all the income shares in AFL) has a total value less than \$1 million.³⁰
56. The Iwi identified in *Ahu Whakamua* as falling within the ambit of the policy are Ngai Takoto, Ngati Pukenga, Ngati Manawa, Ngati Hauiti, Ngati Whare, Ngati Maru (Taranaki) and Te Atiawa ki Whakarongotai. The Commission has determined to make a top-up payment to these seven Iwi in the amounts specified in section 60 of the Draft Maori Fisheries Development Bill.³¹
57. This policy ensures that each of the identified seven Iwi receive sufficient assets for those Iwi to have ongoing participation in the Settlement. It provides resources to those Iwi to assist them in meeting the obligations that the Commission has required of Mandated Iwi Organisations, including obligations to their members and the ongoing requirements of being quota owners. Additionally, the seven Iwi are small in terms of both population and coastline such that the assets they will receive on allocation are unlikely to provide a significant ongoing revenue stream without the assistance of this policy. This component of *He*

Kawai Amokura strengthens the durability and overall fairness of the allocation model.

58. The Commission recognises that decreases in the value or volume (through TACC reductions) of quota prior to allocation to Iwi could result in more Iwi needing to be covered by the policy and therefore greater levels of financial assistance being required from the available pool of PRESA cash. Such an approach would prevent the Commission from being able to allocate any PRESA cash until all Iwi entitlements are finally determined due to fluctuations in value over time. This uncertainty could delay allocation. Additionally, in order to assess whether Iwi are eligible and, if so, the extent of their entitlement, would require the Settlement to be progressively re-valued because the values of the components of allocation may fluctuate over time. This would be a costly exercise.
59. In order to provide certainty and allow allocation of PRESA cash to proceed without funds being held in reserve and reduce unnecessary costs, the Commission had decided that it will provide the top-ups to those named Iwi at the levels set out in *Ahu Whakamua*. This information was provided to Iwi and there was no significant opposition to this aspect of the *Ahu Whakamua* proposals. It is critical that the Commission determines and fixes now (prior to any allocation of the PRESA cash) how much cash is required for the purpose of minimum settlements as this will consequently affect the entitlements of all Iwi.

POSA STRUCTURE OVERVIEW

60. The success of the Settlement is dependent upon the commercial development and protection of the fisheries assets and the ongoing allocation of benefits to Maori, predominantly through Iwi, from those assets. In the Commission's view, *He Kawai Amokura* is carefully designed to ensure so far as possible:

³⁰ For the purpose of the allocation model the 10 Iwi of Te Arawa and the 12 Iwi of Hauraki are respectively treated as collective units as requested by Te Kotahitanga o Te Arawa Inc and the Hauraki Maori Trust Board. See also Schedule 4 to the Draft Maori Fisheries Development Bill.

³¹ These amounts were set out in Appendix Four of this Report in the column headed 'Top Up to Iwi to reach minimum allocation' and are the same figures that were included in Appendix One to *Ahu Whakamua*.

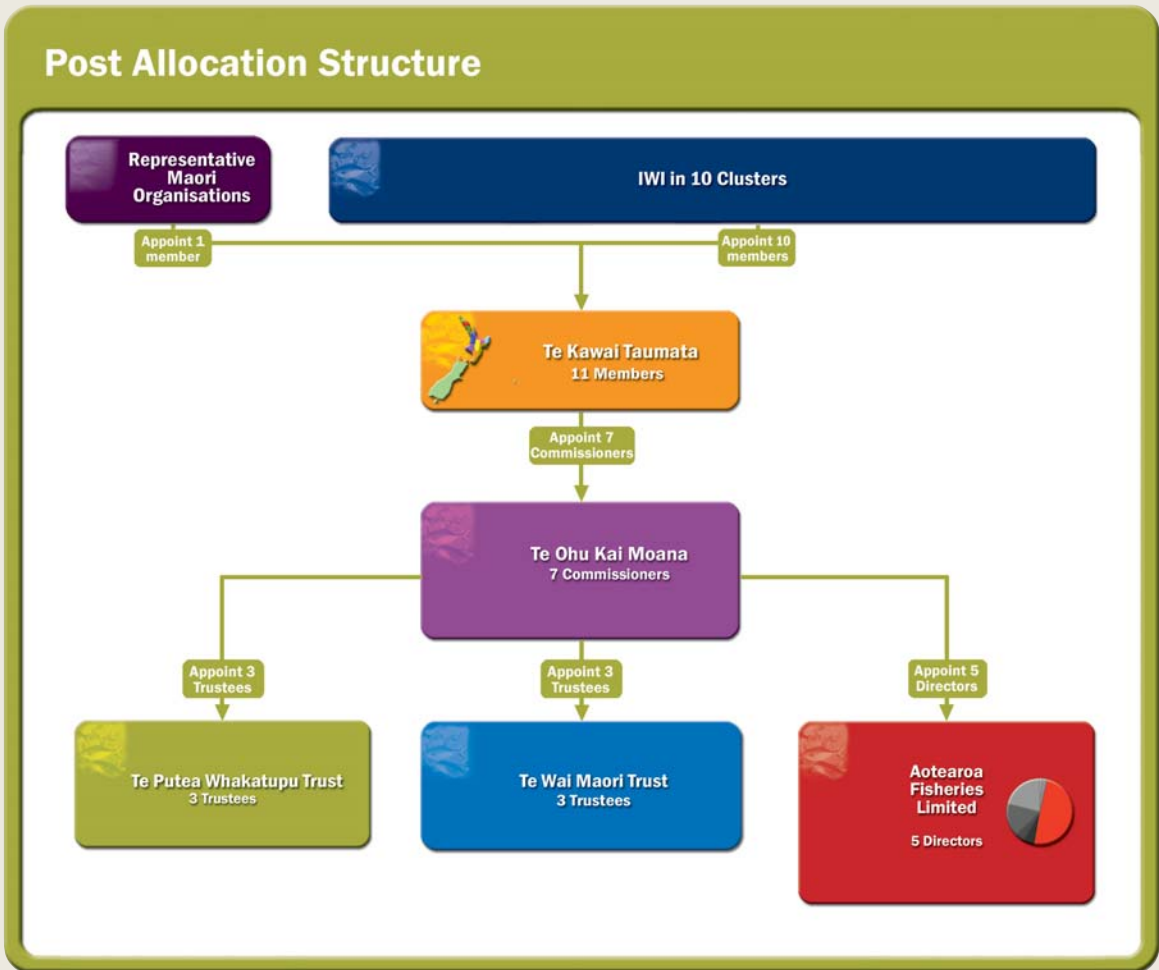
- (a) the preservation and enhancement of the value of the Settlement Assets through sound commercial management;
 - (b) a robust and fair scheme to allocate the Settlement to Iwi ultimately for the benefit of all Maori, and
 - (c) the durability of dividend allocation into the future.
61. The Settlement Assets received from the Crown were held in the first instance by the Maori Fisheries Commission and are now held by the Commission. While the PRESA and POSA quota is held by the Commission, the economic use of that quota has generally been made available to Iwi through the tender, lease and ACE rounds. The companies (Moana Pacific Fisheries Limited from PRESA and all the POSA companies) have been held collectively by the Commission, but managed as separate discrete commercial entities.
62. *He Kawai Amokura* proposes to alter the nature and extent of both the role of the Commission and the role of Iwi in terms of the Settlement Assets. As noted above, it is proposed that PRESA and POSA quota and PRESA cash be allocated to Iwi. With allocation, the custodial role in relation to these significant assets is transferred to Iwi, subject to certain protective mechanisms in relation to the sale and/or exchange of quota.³²
63. There was overwhelming support in the *He Anga Mua* submissions and the responses to *Ahu Whakamua* for the continuation of a central body to promote, advise and actively support on behalf of all Maori in relation to their fishing interests – both commercial and customary, wild fisheries and aquaculture, freshwater and marine – and related policies that affect the ability of Maori to exercise their rights. An overarching trust, Te Ohu Kai Moana, will be established to manage the allocation process and protect and enhance the interests of Iwi and all Maori, particularly in relation to fisheries matters. The proposed post-allocation showing Te Ohu Kai Moana and its inter-relationships with the other post-allocation entities is illustrated in Figure 6.
64. Under Te Ohu Kai Moana is a holding company, Aotearoa Fisheries Limited, that will centrally manage the POSA companies. AFL will issue both Voting and Income Shares. Te Ohu Kai Moana will hold all Voting Shares. Both Te Ohu Kai Moana and Iwi will have Income Shares; with 80% being allocated to Iwi in proportion to Iwi population and 20% being held by Te Ohu Kai Moana.
65. Two central, specialist trusts are also to be established as part of *He Kawai Amokura*, funded in the first instance from PRESA cash. These Trusts – Te Putea Whakatapu Trust and Te Wai Maori Trust – are directed at providing assistance to Maori in relation to fisheries training and skills development and freshwater fisheries initiatives respectively. The establishment of these Trusts has received a high level of support from Iwi during the Commission's consultation and agreement processes. Iwi will be the ultimate beneficiaries of both Trusts, although access to assistance through the Trusts is not limited to Iwi. Te Ohu Kai Moana will appoint the boards for Te Putea Whakatapu Trust and Te Wai Maori Trust.
66. The Crown, under the Maori Fisheries Act 1989, presently appoints Commissioners to the Commission. Under *He Kawai Amokura* an Electoral College, Te Kawai Taumata, will be responsible for selecting the seven Commissioners of Te Ohu Kai Moana. Ten regional groups of Iwi will appoint ten of the eleven members of Te Kawai Taumata.³³ The remaining member of Te Kawai Taumata will be jointly appointed by certain representative Maori organisations.³⁴

³² See Part 8 of the Draft Maori Fisheries Development Bill.

³³ The ten regional Iwi groups are identified in Schedule 4 to the Draft Maori Fisheries Development Bill.

³⁴ The representative Maori organisations are listed in Schedule 5 to the Draft Maori Fisheries Development Bill.

FIGURE 6



RATIONALE FOR THE POSA STRUCTURE

67. There has been some criticism of the Commission's decision to centrally manage the POSA companies and not distribute the Voting Shares in AFL to Iwi. The Commission's decision to initially place the Voting Shares in AFL with Te Ohu Kai Moana is intended to:

- minimise any opportunity for disunity amongst the board of directors of AFL;
- protect vulnerable Iwi from being oppressed within the AFL structure, and
- ensure that *He Kawai Amokura* provides durable access to the benefits of the Settlement for future generations.

68. To a certain extent the post-allocation structure is premised upon the belief that, all things being equal, parties will act to maximise their personal gain notwithstanding that it may be detrimental to the commercial assets overall or to the interests of other participants. The Commission accepts that maximising value is a primary reason behind commercial enterprise. However, if Iwi act to maximise their individual profit from collective assets this will only have a negative effect on the assets and on the ability of the Settlement to endure for future generations. Therefore, the Commission has designed the overall post-allocation structure with a view to ensuring that the management and control of those POSA companies is impartial, neutral and of the highest standards.

69. In particular, the protections have been built around safeguarding the POSA companies and protecting vulnerable Iwi. Bearing both of these considerations in mind, it is necessary to examine the structure from AFL upwards in order to understand the Commission's reasoning behind the design of the post-allocation structure.

Central management

70. The Commission considers that, in order to maximise the value of the POSA companies, they must be integrated under a central management structure. The governance of those companies should not be distracted by regional or Iwi factional agendas because financial performance will rely upon the unified governance and direction of AFL.

71. The Commission is involved in several joint ventures. Any split in the board of directors of AFL could, in particular cases, result in the collective interests of Iwi having less influence in the joint venture and the Board would be unable to advance a clear strategy that adds value to all Iwi shareholders. This would have ramifications on the value and therefore benefit derived from those companies.

72. AFL (or any other central management entity, including that proposed by the Iwi Forum) would inevitably be the nucleus of the Maori presence in the New Zealand seafood sector. The success of AFL's presence overall will be determined by the governance performance of AFL and the relationships, both existing and new, that will be formed between Iwi and the companies managed by AFL. The Commission is of the view that those relationships will not develop in an optimal way if Iwi shareholders perceive that there are opportunities to either asset strip AFL or operate it in a manner that benefits some Iwi at the expense of others.

73. Commercial entities frequently lobby government to influence the direction of policy and the shape of future legislation. It is anticipated that both AFL and Te Ohu Kai Moana will promote and actively support policy that enhances the position of all Iwi and Maori in the seafood sector. Notwithstanding the endeavours of Te Ohu Kai Moana, AFL will need to advance a uniform and principled position that provides consistent treatment across all Iwi. A fractionalised AFL board of directors might lobby government in favour of outcomes that only benefit certain parties and not all Iwi or Maori generally, or might create an environment where AFL could act in a manner that conflicts with or contradicts the views put forward by Te Ohu Kai Moana.

74. The fishing industry is increasingly capital dependent and companies rely heavily on funding provided by banking institutions. The banking institutions have a clear preference for dealing with a single, strong, controlling entity as opposed to a number of smaller companies with multiple small shareholders. To date, the companies within the Commission have benefited from having a single, strong, controlling entity that has attracted support and favourable terms from the banking institutions. Under Te Ohu Kai Moana and AFL

the businesses will continue to have better access to funding on favourable terms from banking institutions.

Appointment of directors and Commissioners

75. The optimum way to minimise the possibility of fractionalised governance of AFL is to ensure that the appointment process for AFL directors is both impartial and neutral. However, any appointment process that allows a direct line of influence from appointing Iwi to the appointed director would raise all the issues identified above. Therefore, the Commission determined that an appointment system that involves Iwi, but prevents them from directly determining the appointments, is necessary.
76. The Commission has therefore decided that the AFL directors will be appointed by Te Ohu Kai Moana. The issue then becomes the appointment of Commissioners to Te Ohu Kai Moana. If Iwi could directly appoint the Commissioners, the same issues identified in relation to the appointment of AFL directors would also arise in relation to the appointment of Commissioners to Te Ohu Kai Moana, and Commissioners representative of particular Iwi interests might then exert control over the particular AFL directors that they appointed. The following results would be likely in that event:
- the neutrality of AFL directors would be affected as Commissioners would then appoint directors to represent their interests;
 - the impartiality of governance of AFL could therefore be compromised as Commissioners seek to influence governance decisions for the benefit of their Iwi supporters;
 - there would be a loss in the value of the POSA companies, and
 - there would be a consequent detrimental impact on the overall durability of the Settlement.
77. The Commission has decided to minimise self interest by establishing a representative democratic appointment process for Commissioners, who in turn will appoint the directors of AFL. The Commission has decided that the most effective way to achieve this aim is to create an Electoral College, Te Kawai Taumata. An Electoral College will provide Iwi with

direct ability, on a regional basis, to participate in the appointment of the Commissioners of Te Ohu Kai Moana. Te Kawai Taumata will comprise 10 regional Iwi representatives and one representative of certain Maori organisation. Importantly, these 11 members of the Te Kawai Taumata appoint seven Commissioners, which again reduces the problems associated with single Iwi appointments. The seven Commissioners in turn appoint the five directors of AFL. This appointment process minimises the amount of undue influence that can be directly placed on the directors of AFL. Importantly Commissioners are not able to appoint one director per Commissioner. Therefore Commissioners will need to act in the best interests of the company overall and appoint a board of directors that has the best mix of relevant skills and experience.

Shareholding

78. An important focus of *He Kawai Amokura* is to ensure that allocation is fair and provides a durable redress consistent with the underlying objectives of the Settlement. Consultation on the proposals contained in *He Anga Mua* and the responses received on the *Ahu Whakamua* proposal confirm that Iwi and the Commission agree that protections should be put in place to ensure that Iwi (and Maori through their Iwi) continue to have a significant presence in the fishing industry. The Commission has therefore continued to limit shareholder participation in AFL to Iwi and Te Ohu Kai Moana only.
79. Subject to the limitation on shareholder participation, it is important to ensure that neither small nor large Iwi are placed in a vulnerable shareholder position in a company that has limitations on who can own shares.
80. The Commission gave consideration to the possibility of Iwi directly holding Voting Shares in AFL. If this were done on the same basis as the distribution of Income Shares (ie, by population), this would result in six major Iwi holding more than 52% of the Voting Shares. This would mean that these six Iwi (10% of Iwi) would, if operating as a group, control all the day-to-day business decisions. Importantly, this group acting with others could also carry out major

transactions and the 44 smallest Iwi (75% of Iwi) would collectively hold less than 25% of the shares and would be unable to prevent the transaction from occurring.

81. If Iwi received Voting Shares in this fashion, and as any sales are subject to restricted shareholder participation, Iwi with larger interests could have forced out minority Iwi shareholders in an environment where their shares could only be offered to the remaining Iwi. This would in turn allow large power blocks to develop and this significant part of the Settlement would be restricted to a few Iwi. This would not enhance the durability of the Settlement.
82. If, however, the major Iwi did not act as a group, but were at odds with one another over key policy directions, AFL would not have firm direction and could miss key opportunities as a result of shareholders worrying about the impact on their regions. This would reduce the performance of AFL to the detriment of all.
83. Alternatively, the Voting Shares could be distributed on the basis of one Iwi one vote. This alternative would allow those same smaller Iwi (75%) a disproportionate level of control compared to their income share entitlements (less than 25%). This could obviously be exercised in a way that would be at the expense of those with most at stake from Income Shares, but this would mean a reduction in company performance and a negative result for all.
84. While complicated voting systems could be devised to minimise gaming behaviour, the Commission considers the most effective solution that provides a fair result for all Iwi is to allow impartial central management of AFL and its sub-companies with ongoing allocation over time, as is proposed in *He Kawai Amokura*. The Commission considers this to be the most robust result when impartial central management is combined with an ability to review this governance structure after a period of 12 years, which period is designed to allow the post-allocation structure to settle in. Future reviews will take place regularly at intervals between five and 10 years.
85. The Commission has received significant support to present this Report to the Minister. There are compelling reasons to retain the Voting Shares in an

impartial body that has equal obligations to all Iwi and Maori generally. Notwithstanding the support for impartial control and management, the Commission believes that this approach is also the fairest in view of other relevant considerations. The Commission considers that the decision that Te Ohu Kai Moana hold the Voting Shares in AFL, in combination with the provision for review, reflects a consideration of Treaty rights (including development rights), social and cultural concerns and economic considerations, and allows for sustainable long term allocation over time through the Income Shares. Importantly, the ultimate allocation of AFL on wind-up will go to Iwi who hold Income Shares in proportion to their shareholdings.

TE KAWAI TAUMATA

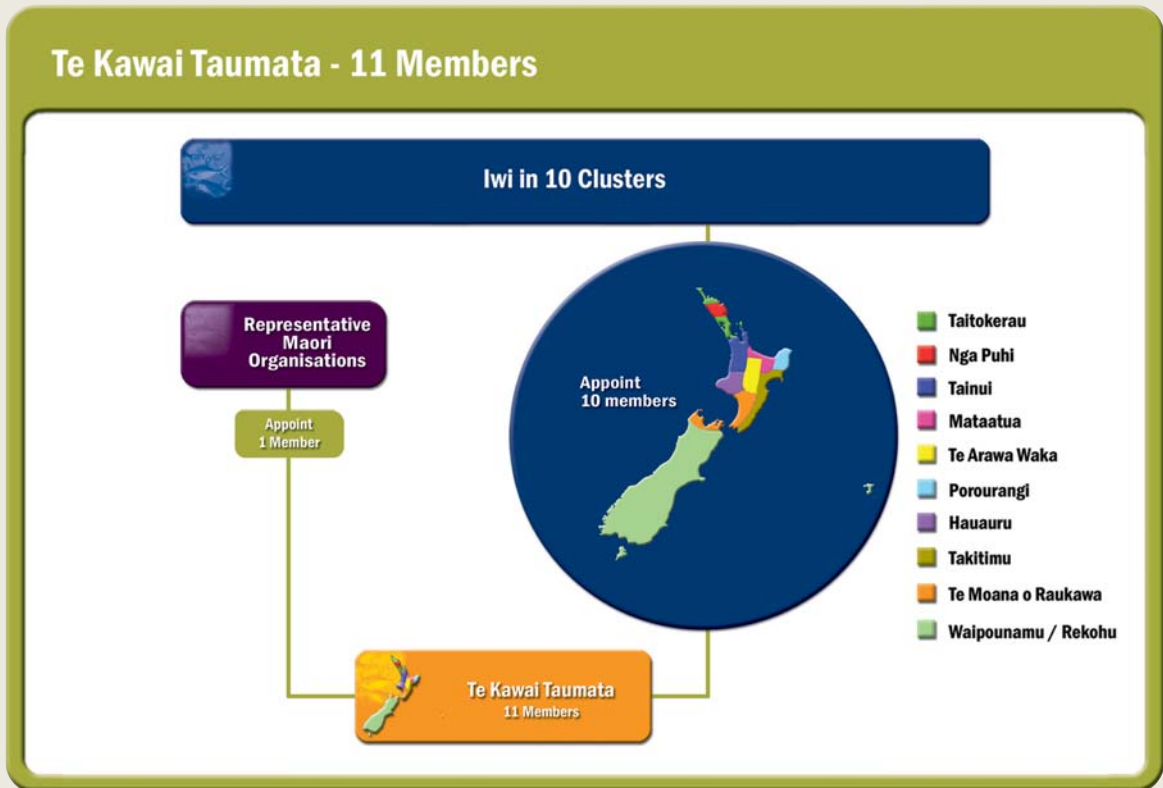
86. Te Kawai Taumata is a representative Electoral College within the proposed post-allocation structure that will appoint the Commissioners to Te Ohu Kai Moana. Te Kawai Taumata will be comprised of:
 - (a) ten regional Iwi representatives appointed by Mandated Iwi Organisations (as the owners of Income Shares in AFL) who represent the beneficiaries of the allocation and/or appointed by Recognised Iwi Organisations (as those Iwi bodies are likely to become and/or establish the Mandated Iwi Organisations), and
 - (b) one representative elected jointly by certain specified non-Iwi representative Maori organisations (in order to enable those bodies to have input to the selection process).

The structure of Te Kawai Taumata is illustrated in Figure 7.

87. The sole function of Te Kawai Taumata will be to appoint and remove the seven directors (called Commissioners) of Te Ohu Kai Moana Corporate Trustee Limited, the corporate trustee of Te Ohu Kai Moana. The initial seven Commissioners will be appointed by the Minister of Maori Affairs from those current Commissioners in office at the time of appointment.³⁵

³⁵ See section 20(1) of the Draft Maori Fisheries Development Bill.

FIGURE 7



88. Of the initial Commissioners, three will retire after a term of two years with the remaining four retiring after a term of four years.³⁶ This will ensure there is appropriate continuity of Commissioners who are experienced in both the operations of Te Ohu Kai Moana and the allocation model. Commissioners can be appointed for a maximum of two consecutive terms after which they must stand down for a minimum of two years.³⁷ All Commissioners hold office for four years except the three initial Commissioners referred to above.
89. Te Ohu Kai Moana will initiate the establishment of Te Kawai Taumata six months prior to the expiry of the terms of the initial three Commissioners by requesting the Mandated Iwi Organisation or Recognised Iwi Organisation of the first named Iwi in each regional group in Schedule 4 of the Draft Maori Fisheries Development Bill to undertake the process set out in section 23(4) of the Draft Bill. Te Ohu Kai Moana will also request the Federation of Maori Authorities to undertake the process set out in section 23(5) of the Draft Bill to select the representative and his or her alternate on behalf of the Representative Maori Organisations.
90. As set out in the Draft Maori Fisheries Development Bill, any initial Commissioner can be removed by the Minister of Maori Affairs and a Commissioner will automatically vacate office as a Commissioner if disqualified under s151(2) of the Companies Act 1993.³⁸ Upon the removal or vacation of office by a initial Commissioner or Te Kawai Taumata will need to appoint the replacement. Te Ohu Kai Moana will be required to initiate the establishment of Te Kawai Taumata should either of those events occur in the manner set out in section 22 of the Draft Maori Fisheries Development Bill.
91. In *Ahu Whakamua* it was proposed that Te Kawai Taumata required a two-thirds majority for its decisions. However, the Commission has determined upon further consideration to change this to only require a simple majority so that the potential for deadlocks over decisions is reduced.
92. Where, for whatever reason, all the Commissioners are not replaced, those Commissioners will remain "in office" until such time as replacement Commissioners have been appointed. This is the current position under section 31(3) of the Maori Fisheries Act 1989. Te Kawai Taumata will determine the appointment of replacements for the Initial Commissioners and all future Commissioners upon the expiry of their terms or the removal/vacation of those Commissioners from office. Where Te Kawai Taumata is unable to determine a replacement Commissioner for all of the retiring Commissioners due to a voting deadlock, the Draft Maori Fisheries Development Bill provides that Te Kawai Taumata will determine by vote which of the retiring Commissioners shall be replaced. The others will continue in office until a replacement Commissioner can be agreed.³⁹
93. When appointing new Commissioners Te Kawai Taumata should consider the skills that each candidate has and make appointments on the basis that each successful candidate possesses skills that add to (and do not overly duplicate) the skills that are already present, thereby allowing for a balanced team of suitably qualified Commissioners. Te Kawai Taumata should consider the best combination of collective skills, experience and qualities that will assist Commissioners in working together to collectively carry out the functions of Te Ohu Kai Moana for the benefit of all Iwi and Maori.
94. It was proposed in *Ahu Whakamua* that the Electoral College would comprise nine members with Iwi divided into eight regional groups with each group appointing one member to the Electoral College and then a further member being appointed by a group comprising certain representative Maori organisations.
95. However, having considered the various responses received to *Ahu Whakamua*, the Commission considers that several modifications are warranted in relation to Te Kawai Taumata, in particular, relating to the composition of the Iwi and representative Maori organisations groups and consequently the number of members on Te Kawai Taumata.

³⁶ See section 20(4) of the Draft Maori Fisheries Development Bill.

³⁷ See section 20(7) of the Draft Maori Fisheries Development Bill.

³⁸ See section 21(3) of the Draft Maori Fisheries Development Bill.

³⁹ See section 20(6) of the Draft Maori Fisheries Development Bill.

Regional Iwi groups

96. Three modifications are proposed with the consequent creation of two additional regional Iwi groups and an increase in the total membership of the Electoral College from 8 to 10 regional groups each represented by one regional representative in Te Kawai Taumata.
97. First, what was group "G" in *Ahu Whakamua* is altered so that the Taranaki-Wanganui Iwi remain together but the Iwi of the Wellington region join with their whanaunga ("relations") of the Upper South Island. These modifications, in the Commission's view, better recognise the "kinship" ties of the Iwi within these groups.
98. Secondly, Ngaiterangi, Ngati Ranginui and Ngati Pukenga have been removed from what was Group "D" in *Ahu Whakamua* and placed in Group "E" with the Iwi of Mataatua. This aligning of Tauranga Moana with the rest of the Mataatua Waka is a result of responses received from these groups and recognises the historical and cultural links that they have to their Waka and the commercial fisheries company in which they all share an interest.
99. The final change to the Electoral College is to move Te Whanau a Apanui and Ngati Porou from the previous Groups "E" and "F" respectively into a single regional group. Again this recognises their "kinship" relationship and provides an improved population balance between the groups.
100. In the Commission's view none of these modifications should unduly impact upon the groups that Iwi are leaving or joining. The Commission considers that the new groupings can more naturally work together and the modifications enhance the overall proposal put forward in *Ahu Whakamua*.
101. The ten regional groupings now contained in Te Kawai Taumata are shown in Figure 7. The full list of Iwi within each group are shown in Schedule 4 of the Draft Maori Fisheries Development Bill.

Representative Maori organisations

102. In *Ahu Whakamua* it was proposed that eight representative Maori organisations would make up a single group to elect a member to the Electoral College. These organisations were envisaged to be

pan-Maori and representative of those Maori that could not, or choose not to, identify with their Iwi.

103. One organisation that was proposed to be included in the representative Maori organisation group was the Maori Congress. Further investigation has revealed that while this body still exists it comprises a membership representing traditional Iwi. In such circumstances, the Commission considered that it was not appropriate to include the Maori Congress as a representative Maori organisation. Communications with other proposed representative Maori bodies has confirmed that the remaining bodies are willing to participate in the Electoral college structure.
104. The representative Maori organisations making up the eleventh Te Kawai Taumata group are:
 - (a) Federation of Maori Authorities;
 - (b) Manukau Urban Maori Authority;
 - (c) Maori Womens Welfare League;
 - (d) New Zealand Maori Council;
 - (e) Te Runanga o Nga Maata Waka Inc;
 - (f) Te Runanganui o Te Upoko o Te Ika Association Incorporated, and
 - (g) Te Whanau o Waipareira Trust.

These representative Maori organisations are listed in Schedule 5 of the Draft Maori Fisheries Development Bill attached as Appendix 1 to this Report. The representative Maori organisations cannot be added to or removed once the Bill is enacted, other than by legislative amendment.

105. While the increase in the number of regional groupings does proportionately reduce the level of representation that representative Maori organisations have on Te Kawai Taumata, the Commission does not consider that this will materially change the degree of influence that the representative Maori organisations member will have in the Commissioner selection process.

Appointments and operation

106. The establishment and functions of Te Kawai Taumata is governed by sections 22–26 of the Draft Maori Fisheries Development Bill and its operating rules are set out in Schedule 8 of the Draft Bill.

107. Iwi organisations within each regional group will have to work together to appoint their member and an alternate to Te Kawai Taumata. The alternate member may act in the place of the member if the member is unable for whatever reason to act as the representative. If Iwi organisations are unable to reach a majority decision on who their member should be by the time Te Kawai Taumata is required to appoint Commissioners, no member will be appointed from that group and Te Kawai Taumata will have one less member when carrying out its functions. This rule will also apply to the group comprising representative Maori organisations.
108. Members (and alternates) of Te Kawai Taumata will be appointed for a term of four years and will be eligible for reappointment for one further term. Members may be removed from office at any time by a majority of the organisations that make up each of the regional Iwi groups listed in Schedule 4 or the representative Maori groups listed in Schedule 5 to the Draft Maori Fisheries Development Bill. Upon replacement or removal of a member by the appointing group, the alternate will continue as the alternate member unless they are reappointed as the member.
109. No member of Te Kawai Taumata can contemporaneously be a Commissioner of Te Ohu Kai Moana Corporate Trustee Limited, a director of any subsidiary company of Te Ohu Kai Moana, or a Trustee of Te Putea Whakatupu or Te Wai Maori Trusts. There will be a stand-down period of two years after a member of Te Kawai Taumata retires from the College before that person will be eligible to be appointed as a Commissioner of Te Ohu Kai Moana Corporate Trustee Limited or a subsidiary company of Te Ohu Kai Moana or a Trustee of Te Putea Whakatupu or Te Wai Maori Trusts.
110. Members of Te Kawai Taumata will not act as "representatives" of the regional group that appoints them. Once selected, the members of Te Kawai Taumata must act with one aim – the appointment of an appropriate team of Commissioners for Te Ohu Kai Moana Corporate Limited. Members will be required to appoint the Commissioners to Te Ohu Kai Moana Corporate Trustee Limited solely on merit and according to the relevant criteria. The objective for Te Kawai Taumata will be to appoint a team of Commissioners that collectively possesses the requisite skills, experience and qualities that will assist them working together to collectively carry out the functions of Te Ohu Kai Moana for the benefit of all Iwi and Maori.
111. The criteria for appointing the Commissioners will be set out in Te Ohu Kai Moana Corporate Trustee Limited's constitution and will include the requirement that all Commissioners are Maori and will, collectively:
- have demonstrated commercial expertise and business skills, and
 - be well versed in matters of tikanga Maori.
112. In addition to the above criteria that were identified in *Ahu Whakamua*, the Commission also considers that the Commissioners should be appointed so that among the group of skills and expertise there is a measure of fisheries expertise in addition to business acumen and knowledge of tikanga Maori.
113. Te Ohu Kai Moana shall be responsible for the ongoing administration of Te Kawai Taumata. In doing so it will ensure there is appropriate separation between the organisation and the appointment of Commissioners. Where the duties are simply administrative (for example, making travel arrangements or arranging accommodation) it will be organised by Te Ohu Kai Moana but where there is advice being offered on the appropriateness of any candidate against the criteria, it is expected that an independent party with expertise will be contracted to provide this assistance.
- TE OHU KAI MOANA⁴⁰**
114. Te Ohu Kai Moana is an overarching Trust that will succeed the Commission. Te Ohu Kai Moana will implement the allocation model in this Report and accordingly the assets and liabilities of the Commission will be deemed to be vested in Te Ohu Kai Moana prior to the commencement of allocation. Te Ohu Kai Moana will act as the prudent trustee of those assets and entities that are to be managed centrally under Aotearoa Fisheries Limited and shall

⁴⁰ See Part 2 of the Draft Maori Fisheries Development Bill.

allocate to Iwi their entitlements pursuant to *He Kawai Amokura*. Many functions of the present Commission will continue under Te Ohu Kai Moana, however, the organisation's emphasis will evolve and change as the Settlement is allocated and the allocation model is implemented.

115. The beneficiaries of Te Ohu Kai Moana are all Iwi. Te Ohu Kai Moana will, as part of allocation, make the distributions set out in this Report to Iwi and the post-allocation structures. In addition, during the life of Te Ohu Kai Moana, it will also be able to make further distributions to both Te Putea Whakatupu Trust and Te Wai Maori Trust to allow them to better advance their purposes. In this latter case Te Ohu Kai Moana will make its intentions clear in the strategic plan, which it will circulate to Iwi for comment prior to the approval of each of its annual budgets. Te Ohu Kai Moana will also have the power to distribute funds in relation to research and development in respect of Maori fisheries. But before making any such distribution Te Ohu Kai Moana will be required to consider whether a matter would be more appropriately dealt with by Te Putea Whakatupu Trust, Te Wai Maori Trust or AFL.

Appointment of Commissioners

116. The trustee of Te Ohu Kai Moana Trust will be a corporate trustee company called Te Ohu Kai Moana Corporate Trustee Limited. Te Ohu Kai Moana Corporate Trustee Limited will be the Trustee and there will be no power to remove or appoint additional trustees. The seven directors of Te Ohu Kai Moana Corporate Trustee Limited will be called Commissioners and will be appointed by Te Kawai Taumata. The appointment process for the Commissioners has been discussed in the section above.

Purpose and activities⁴¹

117. The underlying purpose of Te Ohu Kai Moana is to advance the interests of all Iwi and ultimately all Maori, particularly in the development of fisheries and the business and activity of fishing. Te Ohu Kai Moana is the successor body to the Commission. Consequently, the Commission believes that Te Ohu

Kai Moana should operate in a manner that furthers the agreements expressed in the Deed of Settlement and ensure that Maori and Iwi will continue to have an enduring and substantive presence in the fisheries sector in New Zealand.

118. However, the purpose of Te Ohu Kai Moana is not so constrained as to limit development solely to fisheries. Sensible growth and development in other areas is allowed where such expansion does not detract from the core business of fishing. For example, within Te Ohu Kai Moana Group there is already a company that has utilised its expertise and networks through its fisheries business to launch another product line. Prepared Foods Processing Limited now sells pre-cooked and packaged rations in large quantities to military forces. Where there are commercial advantages that Te Ohu Kai Moana could employ to gain greater profitability while remaining in the core business of fishing, such options will be carefully considered. The Draft Maori Fisheries Development Bill requires that, whenever a subsidiary of AFL wishes to diversify its business beyond fisheries, a special resolution of AFL is required. This means that AFL needs the approval of Te Ohu Kai Moana. In all such cases this will be included in the annual report of Te Ohu Kai Moana.
119. Te Ohu Kai Moana will carry out a number of activities, including:⁴²
- (a) fostering, promoting, commissioning and funding research and conservation of fisheries particularly where those activities are not the responsibility of other entities;
 - (b) protecting and enhancing the interests of Iwi and all Maori, particularly in relation to fisheries and fishing, and related activities;
 - (c) administering PRESA and POSA under the Draft Maori Fisheries Development Bill, including:
 - (i) allocating PRESA and POSA;
 - (ii) managing assets on behalf of Iwi, on a transitional basis where there is no Mandated Iwi Organisation;

⁴¹ See sections 13 and 16 of the Draft Maori Fisheries Development Bill.

⁴² See section 16 of the Draft Maori Fisheries Development Bill.

- (iii) maintaining an Iwi register including details of the Mandated Iwi Organisations
 - (iv) recording, verifying, and implementing agreements between Iwi as to coastlines and the distribution of quota and other assets;
 - (v) assisting Mandated Iwi Organisations to establish registers of those who affiliate to the Iwi by whakapapa (including those living outside the rohe) and their addresses and dates of birth;
 - (v) funding projects that assist Iwi and providing other assistance to facilitate and expedite implementation of the Draft Maori Fisheries Development Bill and compliance with the requirements of Te Ohu Kai Moana, and
- (d) acquiring and disposing of Income Shares, quota and entering into ACE agreements.

Funding for Te Ohu Kai Moana

120. The operating costs of Te Ohu Kai Moana are estimated to be approximately \$2.25 million per annum. The principal method of funding these costs will be through the income received on an annual basis from the Income Shares it holds in AFL. The earnings table in paragraph 156 below illustrates the potential volatility of AFL earnings and, therefore, the annual dividend income receivable by Te Ohu Kai Moana.
121. Te Ohu Kai Moana will have the ability to build reserves during the years where the dividend income exceeds the operational funding requirement. These reserves will be used to fund operations in years where the dividend income may be insufficient to cover operating costs.
122. As set out in *Ahu Whakamua*, Te Ohu Kai Moana will require approximately \$10 million of working capital to provide sufficient revenue to supplement its expected average earnings from the Income Shares of \$1.85 million per annum. As noted elsewhere Te Ohu Kai Moana will be provided with an initial capital reserve of \$5 million from PRESA cash. It is expected that Te Ohu Kai Moana will be able to build financial reserves to a satisfactory operational level over the transition period and beyond.⁴³ Te Ohu Kai Moana will therefore need to be a focused and cost efficient organisation.

123. Te Ohu Kai Moana will only be able to spend the interest earned on the \$5 million capital, but not the capital. The capital shall be, in effect, held on trust on behalf of Iwi, but it can be transferred in whole or in part to either Te Wai Maori Trust or Te Putea Whakatupu Trust. Like Te Ohu Kai Moana, and consistent with the existing limitations placed upon those Trusts, neither Trust will be able to spend any part of the capital that is transferred to it. Upon wind-up of the post allocation entity that holds the capital or a portion thereof, that sum of money will be allocated to Iwi on the basis of Iwi population. Te Ohu Kai Moana may also itself determine to distribute the capital to Iwi on the basis of Iwi population.⁴⁴
124. The Commission has assessed a range of scenarios depicting different currency positions relative to: the New Zealand dollar; different international white fish prices; variations to the TACC and water space availability. The Commission is confident that with both the reserves and the income derived from the Income Shares, Te Ohu Kai Moana will be able to meet its minimum operating costs.
125. The proposed financial structure is based on the fact that AFL meets the criteria required of a Maori Authority under legislation recently enacted by Parliament.

Charitable trust

126. The Commission has sought to create a post-allocation structure that is as tax efficient as possible. Based on tax case-law it is anticipated that Te Ohu Kai Moana will meet the common law tests to be a charitable entity. Charitable status is sought for several reasons:
- (a) the Settlement itself was intended to be tax neutral;
 - (b) there exists general recognition that Treaty settlement entities are charitable because they fulfil a public purpose by resolving claims, and

⁴³ See section 18(2) of the Draft Maori Fisheries Development Bill.

⁴⁴ See section 48(2) of the Draft Maori Fisheries Development Bill.

(c) Te Ohu Kai Moana is not intended to be the final recipient of the Settlement; it is instead merely the trustee of the assets acting for and on behalf of the final beneficiaries.

127. The Commission will need to apply for confirmation of charitable status for Te Ohu Kai Moana and an exemption from income tax on its earnings. While awaiting a decision Te Ohu Kai Moana would continue to pay tax on its assessable income. This would add to costs during the transition period, but will be recoverable once charitable status is achieved.

Accountability

128. For Te Ohu Kai Moana, the Commission has increased the reporting and accountability requirements presently placed on the Commission by Parliament under the Maori Fisheries Act 1989. The accountability mechanisms that are contained in the Draft Maori Fisheries Development Bill are therefore an enhanced form of the Commission's current obligations.

129. Te Ohu Kai Moana will achieve accountability through a number of mechanisms within the allocation model. In particular, Te Ohu Kai Moana will provide Iwi, Maori and other interested parties with information through:

- (i) developing an annual strategic plan for the group and circulating that plan to Mandated Iwi Organisations, Recognised Iwi Organisations and representative Maori organisations for comment prior to its adoption by Te Ohu Kai Moana;
- (ii) reporting annually, within six months of the end of each financial year, to Mandated Iwi Organisations, representative Maori organisations and Recognised Iwi Organisations (and notifying public availability of the report). The report will include, among other things:
 - commentary on the group performance against the strategic plan;
 - a description of the key activities undertaken and any changes to them;
 - audited financial statements;
 - a description of any reserves held and any proposals to distribute them;

- any changes to the purpose of Te Ohu Kai Moana, and
- (iii) holding a hui-a-tau within eight months of the end of the financial year to discuss and address issues arising from the preceding annual report.

130. The seven Te Ohu Kai Moana Commissioners will be subject to both directors' duties and conflict of interest rules contained primarily in the Companies Act 1993 and obligations as trustee of Te Ohu Kai Moana under the Trustee Act 1956 and the common law principles relating to trusts.

131. Additionally, Te Kawai Taumata will have the ability to remove Commissioners should they fail to meet their obligations as a trustee.⁴⁵ As already discussed, Commissioners will also be automatically removed from office if they are adjudicated bankrupt.

132. The Deed of Te Ohu Kai Moana and/or the constitution of Te Ohu Kai Moana Corporate Trustee Limited will also deal with any conflicts of interest, namely, situations where the board has to deal with trust distributions to organisations where the Commissioners have an interest. The definition of interest may have to extend beyond a personal interest to an Iwi or association's interest. A register of interests will be necessary with declarations of interest at appropriate times. This issue will also need to be addressed in respect of Te Wai Maori Trust and Te Putea Whakatupu Trust.

133. Another key measure for accountability is the provision for a review of the overall governance structure and performance of Te Kawai Taumata, Te Ohu Kai Moana and AFL. This is set out in detail later in this Report. The first review will begin 12 years after allocation commences, and then there will be reviews at intervals of between five and 10 years. The matters to be addressed will examine the comparative performance of the group. Recommendations from the review will allow for change to the governance arrangements set out in this Report. While the formal review will begin after 12 years, the minimum performance parameters to be examined are set out and it can be expected that these will be scrutinised each year by Iwi and commentators.

⁴⁵ See section 21 of the Draft Maori Fisheries Development Bill.

Wind-up of Te Ohu Kai Moana⁴⁶

134. Iwi are the beneficiaries of Te Ohu Kai Moana. In the event of the wind-up of Te Ohu Kai Moana or the dissolution of Te Ohu Kai Moana, the Commissioners will distribute the surplus assets of Te Ohu Kai Moana, including capital and accumulated income, in the proportions specified in the third column of Schedule 4 to the Draft Maori Fisheries Development Bill. In this event, Te Ohu Kai Moana will distribute to Iwi in the following manner:

- (a) to Mandated Iwi Organisations if they have charitable status; or
- (b) to an entity with charitable status nominated by the relevant Mandated Iwi Organisation to benefit that Iwi; or
- (c) where a nomination is not made, to an entity with charitable status nominated by the Corporate Trustee to benefit that Iwi.

A wind-up in the above manner will maximise the benefit to Iwi.

AOTEAROA FISHERIES LIMITED⁴⁷

135. There exists overwhelming support for the POSA interests the Commission holds in various fishing companies being managed under one corporate structure called Aotearoa Fisheries Limited (AFL). This component of the allocation model was contained in *Ahu Whakamua* and the Commission has continued to develop this aspect of the allocation model in *He Kawai Amokura*. Key enhancements cover accountability, provision of information, reporting requirements, receipt of surplus assets on wind-up of AFL and protection of the rights of income shareholders.

136. AFL will receive and commercially manage assets for Te Ohu Kai Moana and therefore on behalf of Iwi as beneficiaries under the Deed of Settlement. Iwi are the direct beneficiaries and provide the conduit through which all Maori may ultimately benefit.

137. Under *He Kawai Amokura* the shareholders of AFL will be:

- (a) Te Ohu Kai Moana, which will own all of the voting shares and 20% of the income shares,⁴⁸ and

- (b) Individual Iwi, who will be allocated 80% of the income shares on the basis of Iwi population.⁴⁹

138. The commercial relationships between Iwi, Te Ohu Kai Moana and AFL are shown in Figure 8.

139. AFL will be a substantial business by New Zealand standards and particularly within the New Zealand fishing industry. The equity value of the company is assessed to be approximately \$350 million.

140. Although AFL will be a substantial business, the Commission anticipates that AFL will increasingly benefit through the coordinated manner in which its subsidiaries are structured and their activities are managed. The key reasons for re-organising the POSA companies under one corporate structure (AFL) are set out in Figure 9.

141. Having decided to proceed with AFL, the Commission will continue to examine the structure and management of the POSA entities in order to increase the value for the Commission's beneficiaries. Any re-organisation of the POSA entities by Te Ohu Kai Moana could not be inconsistent with *He Kawai Amokura* and the Draft Maori Fisheries Development Bill.

Appointment of directors

142. AFL will have at least five directors who shall be appointed by Te Ohu Kai Moana. The principal role of the directors will be to provide independent judgement, outside experience and objectivity to the management of AFL. It is vital to the success of AFL that the directors are impartial. No more than two directors can be Commissioners or employees of Te Ohu Kai Moana.⁵⁰ In respect of those companies that AFL governs, no more than 40% of the directors appointed can be either Commissioners or employees of Te Ohu Kai Moana.⁵¹

⁴⁶ See section 14(f) of the Draft Maori Fisheries Development Bill.

⁴⁷ See Part 3 of the Draft Maori Fisheries Development Bill.

⁴⁸ The 20% income shareholding is required to fund the ongoing activities of Te Ohu Kai Moana. See section 27(5)(a) of the Draft Maori Fisheries Development Bill.

⁴⁹ See section 27(5)(b) of the Draft Maori Fisheries Development Bill.

⁵⁰ See section 28(1) of the Draft Maori Fisheries Development Bill.

⁵¹ See section 28(2) of the Draft Maori Fisheries Development Bill.

FIGURE 8

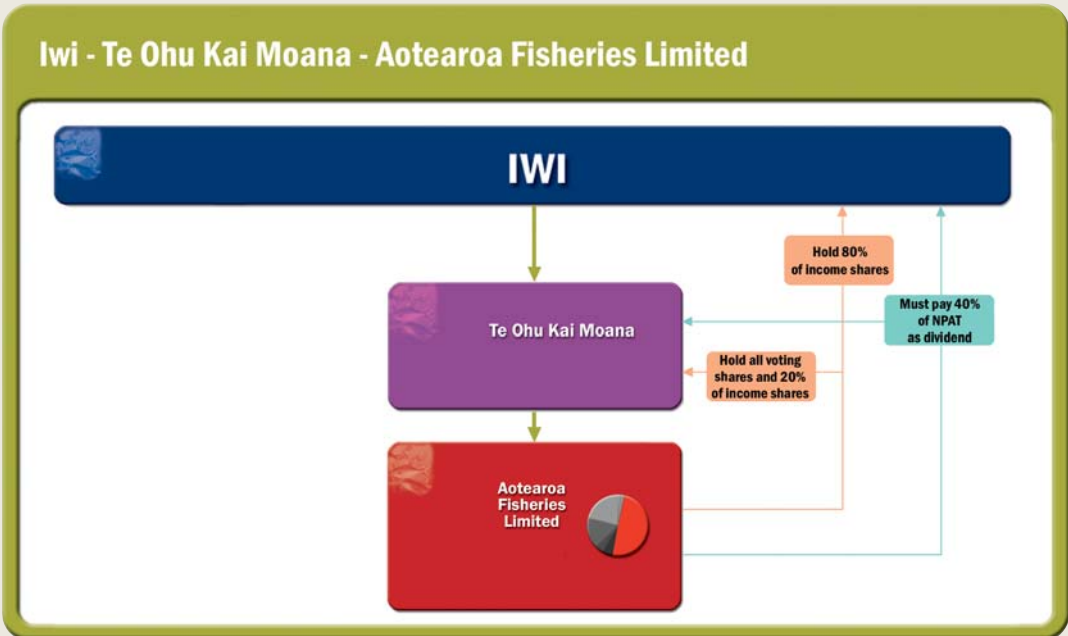
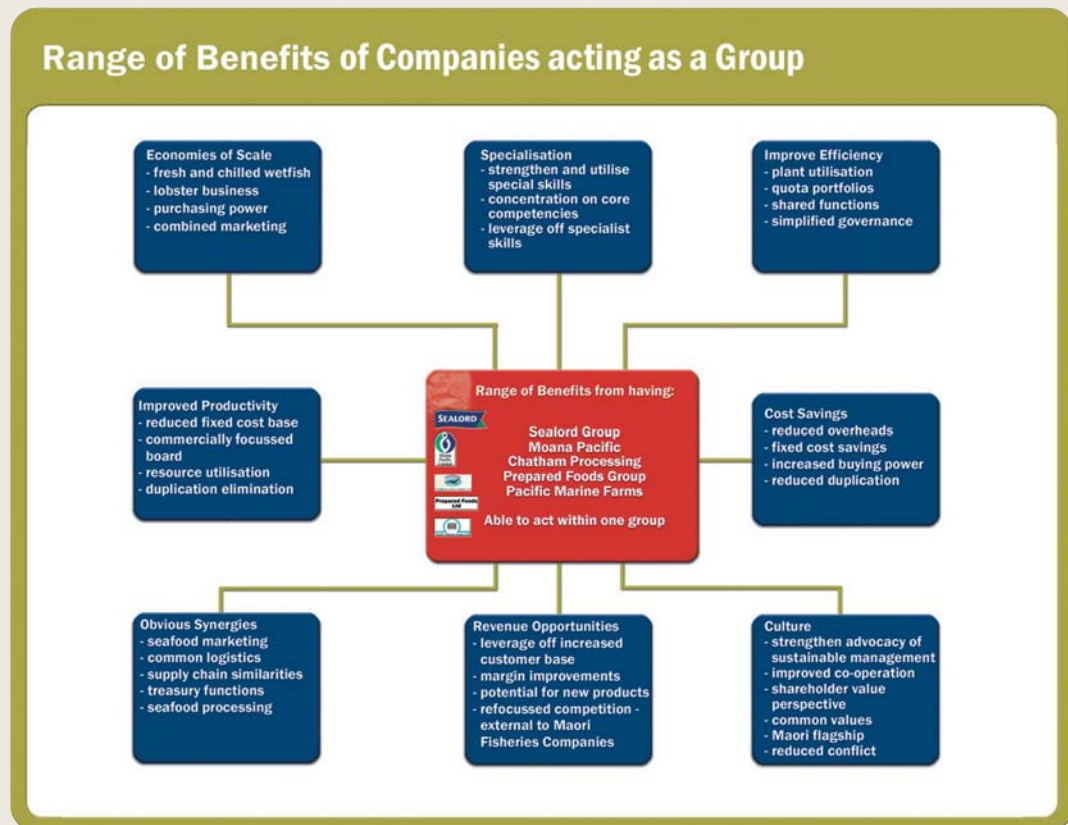


FIGURE 9



143. No AFL director will be able to be a Trustee of either Te Putea Whakatupu Trust or Te Wai Maori Trust or be, or have been, in the preceding two years, a member of Te Kawai Taumata. The directors will rotate every four years. Te Ohu Kai Moana will have the power to remove any director. There will be a transitional arrangement where two directors will rotate after three years, two more directors will rotate after four years, and the last director will rotate after five years in order to allow continuity of governance.
144. The criteria for selection of directors of AFL will be based solely on the needs of the Board and the company and will be contained in the AFL constitution. Director appointments will only be made where the individual has the requisite skills and experience.

Accountability

145. As part of its annual accountability regime it will develop a Statement of Corporate Intent with AFL. AFL will report to Te Ohu Kai Moana on a monthly basis giving a report of the group as a whole. It will also provide formal un-audited half yearly financial statements along with audited yearly financial statements and an accompanying report on all key areas of focus.⁵² This level of reporting for AFL is in line with standard reporting procedures for public companies and will be provided to both voting and income shareholders. The Draft Maori Fisheries Development Bill requires this regime to be included in the constitution of AFL.⁵³
146. AFL will be subject to a level of governance accountability that is similar to a publicly listed company. To this end it can be expected to adopt the best practice procedures used by outstanding performers in the industry.
147. In recognition of some of the likely concerns that may arise in respect of the allocation model the Commission has restricted the ability of Te Ohu Kai Moana to take any action that affects the rights of Income Share holders unless that action has been approved by a special resolution of each group of shareholders.⁵⁴
148. Furthermore, Te Ohu Kai Moana will not be entitled to distributions from AFL on the basis of holding the Voting Shares.⁵⁵ Therefore, the only way that Te Ohu Kai Moana can receive income from AFL is through the 20% of Income Shares that it holds.⁵⁶ Consequently, both Iwi and Te Ohu Kai Moana have a mutual interest in the successful performance of AFL.
149. The retention of the Voting Shares in AFL by Te Ohu Kai Moana is an important feature of *He Kawai Amokura*. In *Ahu Whakamua* it was proposed that all Voting Shares in AFL would be held by Te Ohu Kai Moana with a prohibition being placed on the disposal of those shares to Iwi and non-Maori. However, in order to enhance the level of agreement to the Commission presenting this Report to the Minister, a review has been added to the allocation model.⁵⁷ The review will be conducted after a settling-in period of 12 years and could recommend, for example, that Voting Shares be distributed to Iwi in the same proportion as the Income Shares that Iwi hold at the time. Therefore the review operates as a significant accountability mechanism.
150. Finally, all shareholders will be able to exercise any rights conferred on them by the Companies Act 1993 such as being able to pass non-binding recommendations on the governance of AFL.

Wind-up of AFL

151. Part of the requirement in developing an allocation proposal for POSA assets is the identification of the beneficiaries of the Settlement. The Commission has identified in *He Kawai Amokura* that for POSA, Iwi are the direct beneficiaries of the Income Shares that will provide ongoing allocation benefits. Furthermore, the Commission has determined that should AFL be wound up the allocation of surplus

⁵² See section 32(c) of the Draft Maori Fisheries Development Bill.

⁵³ See section 32(c) of the Draft Maori Fisheries Development Bill and compare to section 14(d)(ii) of the Draft Maori Fisheries Development Bill.

⁵⁴ See section 32(b) of the Draft Maori Fisheries Development Bill.

⁵⁵ See section 30(1) of the Draft Maori Fisheries Development Bill.

⁵⁶ See section 27(5)(a) of the Draft Maori Fisheries Development Bill.

⁵⁷ See Part 6 and Schedule 9 of the Draft Maori Fisheries Development Bill.

assets will be to the holders of Income Shares in proportion to their shareholding. This clearly sets out who the beneficiaries of AFL are both in the interim through the Income Shares and also in the advent of a wind-up.⁵⁸ Additionally, the wind-up provisions increase the possible value of Income Shares in AFL.

Debt to asset ratio and dividend payments

152. New Zealand corporate history has many examples of companies that have failed because they were under capitalised. To withstand the extremes of fishing industry cycles and the volatility of the foreign exchange markets it is essential that AFL is adequately capitalised from the outset. The POSA cash has therefore been retained within AFL to provide a conservatively geared business able to withstand any cyclical economic downturns experienced within the fishing industry.

153. AFL will be required to make annual dividend payments to the holders of the Income Shares. The amount of the annual dividend will be 40% of the consolidated Net Profit after Tax (NPAT) of AFL.⁵⁹ The balance of the NPAT will be retained within AFL to enable it to take advantage of investment and growth opportunities within the fishing industry and so further enhance the value of the business.

154. Dividend payments to owners of Income Shares will commence once Te Putea Whakatupu Trust and Te Wai Maori Trust are initially capitalised to \$20 million and \$10 million respectively.⁶⁰ While this point in time is dependent on a number of factors it is expected to be in the year beginning 1 October 2007.

155. Earnings projections for AFL have been prepared. The projections have been based on the current earnings projections of the commercial assets in their current form and do not take into account the significant rationalisation benefits that are expected to be available from restructuring these assets within AFL.

156. As approximately 90% of the AFL Group sales revenue is generated from exports, the earnings projections are extremely sensitive to changes in the value of the New Zealand dollar against the main trading currencies. Given the likely volatility of earnings, a variety of financial modelling has been undertaken to establish estimates for the range of earnings expected from AFL. These are summarised in the table below.⁶¹

NET PROFIT AFTER TAX	Exchange Rate Scenario NZ\$/US\$ (\$M)		
	Financial Year	.4500	.5000
2003/04	28	26	24
2004/05	29	21	14
2005/06	30	22	14
2006/07	31	22	14

157. The proposed rationalisation of the commercial assets has significant potential to increase the levels of earnings in AFL. These benefits have not been quantified in any detail and are not included in the earnings projections shown in the table above.

TE PUTEA WHAKATUPU TRUST⁶²

158. The Commission's 1998 PRESA allocation proposal incorporated a central fund – a "Development Putea" – that set aside a portion of the PRESA cash to be independently managed. The proposed putea aimed to provide benefits to be accessed by all Maori. This proposed Development Putea received support from Taumata Paepae and Iwi generally when contained within the 1998 PRESA allocation proposal. A similar proposal was again contained in *He Anga Mua* and received a broad range of support.

159. It has been authoritatively stated that the Settlement is ultimately for the benefit of all Maori,⁶³ but that the vehicle to which the assets must be allocated is Iwi.

⁵⁸ See section 32(a) of the Draft Maori Fisheries Development Bill.

⁵⁹ See section 30(2) of the Draft Maori Fisheries Development Bill.

⁶⁰ See section 30(5) of the Draft Maori Fisheries Development Bill.

⁶¹ Based on current tax rates. The overall tax liability for the group may be effected by the operation of recent amendments to the Maori Authority Tax Regime.

⁶² See Part 4 of the Draft Maori Fisheries Development Bill.

⁶³ See section 3 of the Draft Maori Fisheries Development Bill.

160. The tagging of a portion of allocation assets to a Development Putea was conceived as a mechanism that would reduce the risk that Maori who do not know the identity of their Iwi or do not have strong connections to their Iwi could be excluded from accessing the benefits of the Settlement.
161. It was considered unfair to expect Iwi generally, and particularly Iwi with large unaffiliated Maori populations domiciled in their rohe, to apportion part of their allocation for access by those Maori who do not affiliate. This would create disparities dependent upon location of particular Iwi.
162. In *Ahu Whakamua* this concept of a Development Putea was housed within a Putea Trust. The proposal for a Putea Trust received widespread support in the responses to *Ahu Whakamua*. This is now called Te Putea Whakatupu Trust. Te Putea Whakatupu Trust will comprise a central fund that is accessible to all Maori and Iwi. This measure assists the allocation model in providing that the Settlement is ultimately for the benefit of all Maori. The Commission therefore proposes that \$20 million of PRESA cash be set aside as a capital injection for Te Putea Whakatupu Trust.⁶⁴
163. All Maori will have the right to apply to Te Putea Whakatupu Trust for assistance. Te Putea Whakatupu Trust will prepare an annual plan setting out its key priority programmes for the forthcoming year, and seek Te Ohu Kai Moana's approval of the plan. It is envisaged that Te Ohu Kai Moana will require the Trustees to provide their annual report for discussion at Te Ohu Kai Moana's annual hui-a-tau.⁶⁵
164. The Commission in its opinion has the authority to transfer the PRESA cash into Te Putea Whakatupu Trust as part of the allocation model. Iwi responses to *Ahu Whakamua* and the 1998 PRESA allocation model showed Iwi agreement to the creation of the fund, however, for the avoidance of doubt the Commission shall through statutory provision create Te Putea Whakatupu Trust.⁶⁶

Purposes

165. It is proposed that on the establishment of Te Putea Whakatupu Trust the activities of the existing Te Ohu Kai Moana Charitable Trust established in 1994 will be taken on by Te Putea Whakatupu Trust.
166. The purposes of Te Putea Whakatupu Trust will include:⁶⁷
- Promoting, facilitating access to and funding education, training programmes and opportunities for Maori in relation to fishing and fisheries;
 - Funding skills development in the fishing industry, especially in relation to young Maori, and
 - Establishing, promoting and funding scholarships, grants and educational opportunities in order to promote research into and the advancement generally of Maori fishing and fisheries.
167. Te Putea Whakatupu Trust is aimed at developing Maori human capital. The purposes above are very broad and will allow Te Putea Whakatupu Trust to grant assistance in a wide range of situations.
168. Provided that there is a relevant connection with fishing or fisheries, the Trustees could approve an application from any Maori person for assistance with:
- education programmes;
 - training programmes;
 - scholarships, and
 - research.
169. Following allocation, Iwi will have a significant responsibility for ensuring benefits are distributed to their members. It is for this reason that the Commission (supported by observations from the Courts⁶⁸) has established minimum structure and accountability requirements that must be met before allocation can occur.⁶⁹ It is expected that the development of human capital of Iwi members will

⁶⁴ See section 38(2) of the Draft Maori Fisheries Development Bill.

⁶⁵ See section 39 of the Draft Maori Fisheries Development Bill.

⁶⁶ See Part 4 (sections 35-39) of the Draft Maori Fisheries Act.

⁶⁷ See section 36 of the Draft Maori Fisheries Development Bill.

⁶⁸ See, for example, *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 at pp 374 and 376.

⁶⁹ See section 9 and Schedule 7 of the Draft Maori Fisheries Development Bill.

be substantially funded by the Iwi concerned. If not fully funded by Iwi, the Commission expects that, where joint programmes are proposed, the majority of the funding will come from Iwi.

170. Accordingly, while Iwi will not be precluded from applying to Te Putea Whakatupu Trust, it is envisaged that the Trustees may give different weighting to applications for assistance that are from or directed to Maori who:
- Do not live in their rohe; or
 - Do not have any connection with their Iwi; or
 - Have not yet identified their Iwi or do not wish to associate with their Iwi.

Funding

171. Te Putea Whakatupu Trust will be established with an endowment of \$20 million from PRESA cash. Te Putea Whakatupu Trust will fund its activities from its annual income from that endowment.⁷⁰ However, Te Ohu Kai Moana may, at its discretion, make distributions to Te Putea Whakatupu Trust from time to time if the circumstances permit.⁷¹

172. The operation of Te Putea Whakatupu Trust, including Trustees' direct costs and any grants of assistance made by that Trust, will be funded from the income derived through the investment of Te Putea Whakatupu Trust capital fund. Te Putea Whakatupu Trust will be unable to distribute grants of capital.⁷² The management of the Trust capital will be carried out by AFL on a contractual basis if the Trustees so decide. In this regard, the Commission believes that it is efficient to share resources within the overall Te Ohu Kai Moana Group where that cooperation adds value by reducing administration costs.

Constitution, structure and appointments

173. Te Putea Whakatupu Trust will be a trust.⁷³ It will have the power to distribute income, but not capital, to any Maori or Maori organisation for the purposes of increasing the range of skilled and qualified Maori able to participate in all levels of the industry.⁷⁴ Te Putea Whakatupu Trust will have one corporate trustee, Te Putea Whakatupu Corporate Trustee Limited ("TPWCTL").⁷⁵

174. The directors of TPWCTL (in effect, the "Trustees" of Te Putea Whakatupu Trust) will be appointed by Te Ohu Kai Moana. Te Putea Whakatupu Trust deed will require that the three Trustees will collectively:⁷⁶

- be experienced and well-versed in matters of tikanga Maori;
- have a proven track record of working with Maori and Maori organisations to improve their well-being, and
- have human resource development, education and training expertise and experience.

175. One of the trustees of Te Putea Whakatupu Trust can be a Commissioner of Te Ohu Kai Moana, but no Trustee can also be a director of AFL or any of its subsidiaries.⁷⁷ No person may be appointed a trustee if they have been a member of the Te Kawai Taumata in the preceding two years.

Accountability

176. Te Putea Whakatupu Trust will be a subsidiary of Te Ohu Kai Moana, but must act independently pursuant to the requirements of Te Putea Whakatupu Corporate Trustees' constitution, the trust deed and the general law. The requirements set out above will be specified in the deed of Te Putea Whakatupu Trust. The Trust deed will address conflicts of interest (that is, situations where the Trust has to deal with distributions to Iwi where a Trustee has an interest).⁷⁸

177. Te Ohu Kai Moana will have the power to remove any Trustee.⁷⁹ The trustees will be appointed for a period of up to four (4) years and will be able to be re-appointed at the end of their term for one further term. To maintain some continuity there will be a

⁷⁰ See section 38 of the Draft Maori Fisheries Development Bill.

⁷¹ See section 38(3) of the Draft Maori Fisheries Development Bill.

⁷² See section 39(1)(f) of the Draft Maori Fisheries Development Bill.

⁷³ See section 35(1) of the Draft Maori Fisheries Development Bill.

⁷⁴ See sections 36 and 39(1)(k) of the Draft Maori Fisheries Development Bill.

⁷⁵ See section 35 of the Draft Maori Fisheries Development Bill.

⁷⁶ See section 37 of the Draft Maori Fisheries Development Bill.

⁷⁷ See sections 37(4) and 37(5) of the Draft Maori Fisheries Development Bill.

⁷⁸ The constitutional documents of Te Putea Whakatupu Trust will deal with Trustee conflicts of interest consistent with the law generally.

⁷⁹ The power to remove Trustees will be contained in the constitutional documents of Te Putea Whakatupu Trust.

transitional arrangement where one Trustee will retire after two years, one more Trustee will retire after three years, and the last Trustee will retire after four years.

178. Te Putea Whakatupu Trust will prepare an annual plan setting out its key priority programmes for the forthcoming year, and seek Te Ohu Kai Moana's approval of the plan. It will report annually and provide opportunity for discussion of its programmes at Te Ohu Kai Moana's annual hui-a-tau.⁸⁰
179. These requirements will be in the constitution of TPWCTL and/or Te Putea Whakatupu Trust's deed, which are to be developed by a working party during the transitional period in liaison with Iwi. The Trust deed will specify the reporting requirements of the Trust.

Review and wind-up of Te Putea Whakatupu Trust

180. The performance of Te Putea Whakatupu Trust will be initially reviewed after six years and thereafter to coincide with the Te Ohu Kai Moana review discussed later in this Report.
181. Should Te Putea Whakatupu Trust be wound up the trustees will, in respect of each Iwi that Te Ohu Kai Moana recognises, distribute surplus assets to a charitable entity nominated by each Iwi's Mandated Iwi Organisation in proportion to the Iwi population as set out in the Draft Maori Fisheries Development Bill.⁸¹
182. The Recognised Iwi Organisations that have not yet reached Mandated Iwi Organisation status or fail to nominate a charitable entity will have their share of the assets of Te Putea Whakatupu Trust transferred to a new charitable trust with similar purposes. That Trust shall only relate to those Iwi that did not receive assets on winding up of Te Putea Whakatupu Trust.

TE WAI MAORI TRUST⁸²

183. As discussed in Part C of this Report above, the 1992 Fisheries Settlement settled Maori claims relating to commercial freshwater fishing rights along with those relating to marine fisheries.⁸³ The Commission has therefore determined that it is appropriate to

make provision for commercial freshwater fisheries in *He Kawai Amokura*.

184. In *Ahu Whakamua*, four elements were proposed for the recognition of commercial freshwater fisheries, namely:
- For those freshwater species introduced into the Quota Management System, the quota received is to be allocated to Iwi within the Quota Management Areas based on each Iwi receiving its share of what has been historically caught in its rohe by commercial fishers;
 - A contestable fisheries development fund to assist with the restoration of freshwater fisheries, among other things;
 - A freshwater fisheries working group to work with Iwi and hapu involved in initiatives developing freshwater fisheries, and
 - Greater weighting to "population" in the allocation model.
185. The proposals set out in *Ahu Whakamua* were developed having regard to the submissions on *He Anga Mua*, the views expressed during the Disputes Resolution Process, the meetings of the Freshwater Fisheries Working Group, and the report published by the Working Group in February 2002. The Freshwater Fisheries Working Group was established by the Commission to advance proposals on Freshwater Fisheries issues. A copy of its report was distributed to Iwi for consideration after the *He Anga Mua* information dissemination hui, but before the consultation hui. Copies of the report were also made available during the consultation process and the report was placed on the Commission's website.
186. The Commission has continued to develop its approach to the question of freshwater fisheries since the release of *Ahu Whakamua*. Those developments are consistent with the rationale and principles underpinning the proposals that were included in *Ahu Whakamua*. Furthermore, the developments have facilitated greater agreement on the allocation model in this Report.

⁸⁰ See section 39 of the Draft Maori Fisheries Development Bill.

⁸¹ See Schedule 4 of the Draft Maori Fisheries Development Bill.

⁸² See Part 5 of the Draft Maori Fisheries Development Bill.

⁸³ See paragraphs 159-169 of Part C of this Report.

187. The Commission has modified the *Ahu Whakamua* allocation proposal in the following ways in respect of freshwater fisheries:

- (a) The establishment of an assistance fund for freshwater fisheries as a dedicated Trust – Te Wai Maori Trust – solely to advance the interests of Maori in freshwater fisheries management.⁸⁴ The Trust will be empowered to work with Iwi to assist in coordinating and funding initiative for the development of freshwater fisheries management with an initial capital sum of \$10 million increasing over time to \$20 million.⁸⁵
- (b) The activities of the freshwater fisheries working group proposed in *Ahu Whakamua* will now be performed by the Trustees of Te Wai Maori Trust.⁸⁶
- (c) Where freshwater species are introduced into the QMS, the 20% share of such quota that is received by Te Ohu Kai Moana will be allocated to Iwi on the following basis:
 - (i) the quota received by Te Ohu Kai Moana for each freshwater QMA will be allocated to the Iwi whose rohe is within that QMA;
 - (ii) where there is agreement between Iwi whose rohe is within the QMA, each Iwi will receive a share of the quota for that QMA proportionate to the catch history of commercial fishers within the Iwi's rohe, and
 - (iii) where agreement cannot be reached, each Iwi whose rohe is within the QMA will receive a share of the quota for that QMA proportionate to the population of that Iwi that lives within the QMA based on the 2001 Census.

188. In general terms Te Wai Maori Trust will operate in much the same way as Te Putea Whakatupu Trust but with different purposes. The Trust will be established by Te Ohu Kai Moana, as directed in Part 5, section 40, of the Draft Maori Fisheries Development Bill.

189. It will be important to ensure that there are clear roles and no duplication of resources or effect in relation to freshwater fisheries initiatives between the Trust and Te Ohu Kai Moana particularly during the transition and implementation period. To assist

the Trust it may be appropriate that a Commissioner be appointed as one of the initial Trustees.⁸⁷

190. There are three distinct elements to the Trust, namely, the purposes of the Trust, how the Trust is funded, and the constitution of the Corporate Trustee. Each of these elements is addressed below.⁸⁸

Purpose

191. The Commission considers that Te Wai Maori Trust is charitable. It intends to apply for charitable status for Te Wai Maori Trust.

192. The purpose of Te Wai Maori Trust is to receive and manage assets on behalf of beneficiaries under the Deed of Settlement so as to co-ordinate and fund initiatives that will assist the development of Maori freshwater fishing interests including:⁸⁹

- (a) to undertake or arrange for the undertaking of research, development and education for the benefit of Maori freshwater fishing interests;
- (b) to promote and enhance the habitat and nourishment of freshwater fisheries in lakes and rivers, and more particularly those which have traditionally supported Iwi and been the location for marae of those Iwi, and
- (c) to use its resources, to directly or indirectly, benefit Maori freshwater fishing interests,

but not in any manner that jeopardises its charitable status.

Funding

193. Te Wai Maori Trust will receive an initial capital sum of \$10 million payable from PRESA cash within five years of the commencement of the new Maori Fisheries Development Act.

194. Te Wai Maori Trust will subsequently be increased up to a total fund of \$20 million through minimum payments by Te Ohu Kai Moana of \$1 million per

⁸⁴ See section 40 of the Draft Maori Fisheries Development Bill.

⁸⁵ See section 43 of the Draft Maori Fisheries Development Bill.

⁸⁶ See sections 41 and 42 of the Draft Maori Fisheries Development Bill.

⁸⁷ See section 42(4) of the Draft Maori Fisheries Development Bill.

⁸⁸ See Part 5 of the Draft Maori Fisheries Development Bill.

⁸⁹ See section 41 of the Draft Maori Fisheries Development Bill.

year from the end of the transition period. This money will be paid out of any additional reserves held by Te Ohu Kai Moana including from distributions to Te Ohu Kai Moana on its Income Shares. When establishing its projects and budgets, Te Ohu Kai Moana will use its best endeavours to increase the minimum payment to Te Wai Maori Trust to \$2 million per year.

195. After Te Wai Maori Trust is fully capitalised to \$20 million, Te Ohu Kai Moana has the discretion to increase the capital that is in Te Wai Maori Trust beyond \$20 million if funding permits and deserving priority projects are identified.⁹⁰
196. All Iwi recognised by Te Ohu Kai Moana and listed in Schedule 4 to the Draft Maori Fisheries Development Bill will have the right to apply to Te Wai Maori Trust for assistance.
197. The operation of Te Wai Maori Trust, including Trustees' direct costs, and any grants of assistance made by the Trust will be funded from the income derived through the investment of Te Wai Maori Trust capital fund once it has been capitalised to \$10 million. The management of the Trust capital may be carried out by AFL on a contractual basis if the trustees so decide. It is efficient to share resources within the overall Te Ohu Kai Moana Group where that cooperation adds value by reducing administration costs.

Constitution, structure and appointments

198. Te Wai Maori Trust will have one corporate trustee, Te Wai Maori Corporate Trustee Limited, which will in turn have three directors ("the Trustees"). Te Ohu Kai Moana will be the sole shareholder in the corporate Trustee.⁹¹
199. The Trustees of Te Wai Maori Trust will be appointed by Te Ohu Kai Moana having regard to the importance of representation of those Iwi with a special interest in freshwater fisheries including the interests of Te Arawa and Tuwharetoa. The criteria for appointment of Trustees will be set out in the trust deed of Te Wai Maori Trust and/or the constitution of Te Wai Maori Corporate Trustee

Limited to provide a mix of Maori that are well-versed in matters of tikanga Maori, are experienced in fisheries investment, enhancement and development, and have expertise relating to freshwater fisheries. One of the Trustees may be a Commissioner of Te Ohu Kai Moana.⁹²

Accountability

200. Te Wai Maori Trust must act independently pursuant to the requirements of Te Wai Maori Corporate Trustee Limited's constitution, the Te Wai Maori Trust deed and the general law. The requirements set out above will be specified in the deed of Te Wai Maori Trust. The Trust deed will address conflicts of interest (that is, situations where the Trust has to deal with distributions to Iwi where a Trustee has an interest).
201. Te Ohu Kai Moana will have the power to remove any trustee in accordance with the constitution.
202. Trustees will be appointed for a period of up to four (4) years and will be able to be re-appointed at the end of their term for one further term. The Trustees will retire after four years. To maintain some continuity there will be a transitional arrangement where one trustee will retire after two years, one more trustee will retire after three years, and the last trustee will retire after four years.
203. Te Wai Maori Trustee will prepare an annual plan setting out its key priority programmes for the forthcoming year, and seek Te Ohu Kai Moana's approval of the plan. It will report annually and provide opportunity for discussion of its programmes at Te Ohu Kai Moana's hui-a-tau.

Review and wind-up of Te Wai Maori Trust

204. The performance of Te Wai Maori Trust will be initially reviewed after six years and thereafter to coincide with the Te Ohu Kai Moana review discussed later in this Report.

⁹⁰ See section 43 of the Draft Maori Fisheries Development Bill.

⁹¹ See sections 40 and 42 of the Draft Maori Fisheries Development Bill.

⁹² See section 42 of the Draft Maori Fisheries Development Bill.

205. Should Te Wai Maori Trust be wound up the trustees will, in respect of each Iwi that Te Ohu Kai Moana recognises, distribute surplus assets to a charitable entity nominated by their Mandated Iwi Organisations in proportion to the Iwi population as set out in the Draft Maori Fisheries Development Bill.⁹³
206. The Recognised Iwi Organisations that have not yet reached Mandated Iwi Organisation status or fail to nominate a charitable entity will have their share of the assets of Te Wai Maori Trust transferred to a new charitable trust with similar purposes. That Trust shall only relate to those Iwi that did not receive assets on winding up of Te Wai Maori Trust.⁹⁴
209. The proposals contained in *Ahu Whakamua* placed a prohibition on the sale of quota outside Te Ohu Kai Moana (including AFL and its subsidiaries) and Iwi, although value for value quota swaps were possible. *Ahu Whakamua* also proposed a right of first refusal in favour of Te Ohu Kai Moana should an Iwi wish to sell their quota. Before finalising any sale of quota to other interested Iwi, an Iwi seller would therefore have to first offer the assets to Te Ohu Kai Moana. Provided that Te Ohu Kai Moana matched or bettered the price agreed with the Iwi purchaser, it could purchase the quota.⁹⁷
210. In light of the responses received on *Ahu Whakamua*, the Commission has further considered the question of a right of first refusal and determined that such a right should extend not only to Te Ohu Kai Moana, but also to those Iwi that have a tribal coastline in the QMA of the Allocated Quota that is being sold. On this basis, the Commission has decided that when selling Inshore Quota, both Te Ohu Kai Moana and those Iwi who have received an allocation of the Inshore Quota in question will have an equal right of first refusal in the event of a proposed sale of such Inshore Quota by an Iwi. This will ensure that, in the event of quota sales, Iwi have an opportunity to consolidate and develop their quota holdings in Inshore Quota fishstocks that correspond with their rohe. In relation to Deepwater Quota, Te Ohu Kai Moana and all Iwi shall have an equal right to bid on the Allocated Quota that is proposed to be sold. This reflects the fact that all Iwi will receive an allocation of quota for each Deepwater fishstock under *He Kawai Amokura*.

QUOTA AND INCOME SHARES SALES PROCESS⁹⁵

207. *Ahu Whakamua* recognised that the Settlement is a "full and final" settlement of Maori commercial fisheries claims. The Commission has therefore sought to ensure that the Settlement assets are protected in terms of their continued ownership by Maori. The protection mechanism used within *He Kawai Amokura* is based upon a caveat being registered over all Allocated Quota. The Commission has always advocated that the protection of the Settlement is fundamentally important if the Settlement is to be durable for both the Crown and Maori. If the Settlement is to endure, protections are required to ensure that the ongoing control of those assets remain in Maori hands. At the same time, however, the Commission has been conscious that such measures should not overly restrain the development of Maori fishing.
208. The Privy Council confirmed that the Commission has an obligation to ensure that the Settlement is "ultimately for the benefit of all Maori".⁹⁶ Consistent with this, where Maori choose to sell assets, the Commission believes that these assets should be retained within Maori hands. The Commission therefore considers that, in a post-allocation environment, Te Ohu Kai Moana has a continuing responsibility to act ultimately for the benefit of all Maori. Iwi, in turn, have a continuing obligation to ensure that the benefits of the Settlement endure for future generations.
211. The right of first refusal in favour of the Commission and applicable Iwi is designed to ensure, not only that Iwi with an interest in the QMA have a preference for the purchase of quota, but also that quota sales proceed on a competitive basis thereby

⁹³ See section 44(1)(m) and Schedule 4 of the Draft Maori Fisheries Development Bill.

⁹⁴ See section 44(1)(m) of the Draft Maori Fisheries Development Bill.

⁹⁵ See Part 84 of the Draft Maori Fisheries Development Bill.

⁹⁶ *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17.

⁹⁷ See Part 8 of the Draft Maori Fisheries Development Bill.

precluding, so far as possible, private transactions at little or no value. This mechanism operates to ensure that quota transactions by an Iwi do not unduly diminish the value of the fisheries assets allocated by the Commission, thereby enhancing the prospect of ongoing benefits from those assets to the future. Consistent with this, the Commission has decided that quota for quota exchanges on an equal value basis may occur both between Iwi and Iwi and between Iwi and non-Maori parties. Provided that the transacting Iwi retain a quota package of equivalent value after the exchange, the Commission considers that the durability of the Settlement and the benefits flowing from it are maintained.

212. The Commission has also been cognisant of the fact that Iwi differ in size, both in terms of population and coastline, and consequently will receive differing sizes of Allocated Quota parcels on allocation. Furthermore, Iwi differ in the extent to which they already operate fishing businesses and/or have their own quota holdings or other significant assets. The Commission therefore considers that there should be a settling-in period provided as part of the allocation model, to enable Iwi to carefully consider their options in terms of dealing with the Allocated Quota. For this reason, the Commission has decided there will be a moratorium on Allocated Quota sales for the 2 year period immediately following each Iwi's receipt of Allocated Quota from the Commission. The two year moratorium shall begin to elapse upon the receipt by the Mandated Iwi Organisation of any parcel of Allocated Quota.

General conditions on the sale of Inshore and Deepwater Quota

213. Under the allocation model, the following general conditions apply in respect of any Mandated Iwi Organisation that wishes to sell or purchase Allocated Quota:

- (a) The Iwi organisation must be approved as a Mandated Iwi Organisation by Te Ohu Kai Moana (namely, it must have met the mandate, constitution, Iwi register and structure requirements set out in the new Maori Fisheries Act).⁹⁸
- (b) Allocated Quota can only be sold to other Mandated Iwi Organisations or Te Ohu Kai Moana.⁹⁹
- (c) No Allocated Quota may be sold or otherwise disposed of by a Mandated Iwi Organisation within a period of 2 years after the first transfer of the Allocated Quota parcel from Te Ohu Kai Moana to that Iwi. However, Allocated Quota can be exchanged, value for value, with other quota during the 2 year moratorium period.¹⁰⁰
- (d) Any sale of Allocated Quota requires the approval of 75% of all votes cast by Iwi members at a properly constituted special meeting or an annual general meeting where the potential sale is notified in the agenda.¹⁰¹
- (e) For the purpose of the restrictions on the sale of Allocated Quota and consequent rights of first refusal under the allocation model, a sale is deemed to include every form of disposition of Allocated Quota or of any legal or equitable interest in Allocated Quota, whether divided or undivided, including the making or grant of any lease, mortgage or charge over the Allocated Quota or annual catch entitlements (ACE) for a period of more than 5 years (including any rights of renewal, options or other rights), provided however that the right of first refusal shall not arise in respect of the mortgaging of Allocated Quota by Mandated Iwi Organisation.
- (f) Allocated Quota may only be sold in compliance with the general conditions outlined above and as set out in the Draft Maori Fisheries Development Bill.¹⁰²

214. The restrictions in relation to Allocated Quota sales will be effected by a caveat that will be placed on all Allocated Quota by Te Ohu Kai Moana. The caveat will be registered in favour of Te Ohu Kai Moana such that Te Ohu Kai Moana's consent will be

⁹⁸ See section 47 of the Draft Maori Fisheries Development Bill.

⁹⁹ See section 63(1) of the Draft Maori Fisheries Development Bill.

¹⁰⁰ See section 65 of the Draft Maori Fisheries Development Bill.

¹⁰¹ See section 63 of the Draft Maori Fisheries Development Bill.

¹⁰² See section 47(5) and Part 8 of the Draft Maori Fisheries Development Bill.

required before any Allocated Quota transaction can occur. This will provide the necessary opportunity for Te Ohu Kai Moana to ascertain, before any Allocated Quota transaction is effected, whether:

- (a) the two year moratorium period has elapsed;
- (b) the 75% Iwi majority has been obtained, and
- (c) the right of first refusal procedures have been complied with by the Iwi concerned.

215. While Te Ohu Kai Moana shall pay, out of the transitional funding provided for in *He Kawai Amokura*, the costs of placing caveats on all Allocated Quota, the costs of removing and/or replacing caveats on any Allocated Quota that is to be sold by Iwi will be met by the Iwi involved in the transaction.¹⁰³ However, where Iwi exchange Allocated Quota, as discussed later in this section, the cost involved in the transaction will be carried by the parties involved.¹⁰⁴
216. In the event that Allocated Quota is purchased by Te Ohu Kai Moana and/or another Iwi, the Allocated Quota shall remain subject to the caveat notwithstanding the transfer of that Allocated Quota. Accordingly, both Te Ohu Kai Moana and any Iwi purchaser will remain subject to the same Allocated Quota sale and/or exchange restrictions in the event that they have purchased Allocated Quota from another Iwi or Te Ohu Kai Moana.

Sale process for Allocated Quota

217. As noted above, the Commission has enhanced the sale procedure proposed in *Ahu Whakamua* in respect of Allocated Quota. In the case of Inshore Quota both Te Ohu Kai Moana and Iwi who have coastline and a coastline agreement in the particular Quota Management Area of the Inshore Quota that is to be sold, hold a right of first refusal to purchase the Allocated Quota. If neither Te Ohu Kai Moana nor the Iwi within the QMA wish to purchase the Allocated Quota, then it may be sold to the highest tenderer outside of the QMA. In the case of Deepwater Quota all Iwi and Te Ohu Kai Moana hold an equal priority. This modification allows Iwi a greater role in the sale process, while still providing for ongoing protection.

218. A right of first refusal, depending on the type of Allocated Quota to be sold, will be held:

- (a) In relation to the sale of Inshore Quota, both Te Ohu Kai Moana Group (including companies within Te Ohu Kai Moana Group post-allocation) and the Mandated Iwi Organisations of those Iwi that have a coastline within the QMA and have a coastline agreement for that QMA will have an equal right of first refusal in the sale process. Mandated Iwi Organisations can therefore purchase from the time that they become mandated by Te Ohu Kai Moana, but they only have a preferential right of first refusal when they have a coastline agreement for the QMA of the fishstock being sold.
- (b) In relation to Deepwater Quota, by both Te Ohu Kai Moana Group and all Mandated Iwi Organisations equally. This is because all Iwi will be allocated quota in each Deepwater fishstock.

219. Having regard to the Iwi that may have a preferential right of first refusal, the following procedure must be followed when a Mandated Iwi Organisation wishes to sell or otherwise dispose of any Inshore or Deepwater Quota:

- (a) Mandated Iwi Organisations who wish to sell Allocated Quota must first obtain the approval of 75% of Iwi members at a specially constituted meeting of its members at its hui-a-tau such an approval shall have a term of 15 months before expiry;¹⁰⁵
- (b) Mandated Iwi Organisations who wish to sell Allocated Quota will be subject to a right of first refusal to the Te Ohu Kai Moana Group and to all other Mandated Iwi Organisations within the QMA for that Allocated Quota where they have coastline agreements for that QMA;

¹⁰³ See section 65 of the Draft Maori Fisheries Development Bill.

¹⁰⁴ See section 66(f) of the Draft Maori Fisheries Development Bill.

¹⁰⁵ See section 63 of the Draft Maori Fisheries Development Bill.

- (c) The process for the sale of Allocated Quota by a Mandated Iwi Organisation will be as follows:
- (i) The vendor will set a strike price either by a negotiated conditional sale with a Mandated Iwi Organisation or Te Ohu Kai Moana Group or tender the Allocated Quota package among all Mandated Iwi Organisations including the Te Ohu Kai Moana Group and indicate an acceptance of the highest bid;
 - (ii) The highest bid will then be brought back to those eligible Mandated Iwi Organisations within the relevant QMA (including Te Ohu Kai Moana) for consideration;
 - (iii) If the bid is matched by one of the Mandated Iwi Organisation from within the QMA or by Te Ohu Kai Moana Group then that Mandated Iwi Organisation or Te Ohu Kai Moana Group will be successful;
 - (iv) If the highest bid is matched by more than one Mandated Iwi Organisation and/or Te Ohu Kai Moana Group then the vendor may either:
 - negotiate with the Mandated Iwi Organisations or Te Ohu Kai Moana; or
 - run a second tender between the matching highest bids;
 - (v) Te Ohu Kai Moana Group holds a position akin to a Mandated Iwi Organisation in the relevant QMA. Where Te Ohu Kai Moana Group successfully bids for Allocated Quota, the economic use of that Allocated Quota will be taken up by Te Ohu Kai Moana Group;
- (d) Where Te Ohu Kai Moana Group proposes to sell any Allocated Quota purchased through the process above, it will follow the same process for the sale of that allocated quota and any subsequent sale of a fishstock will always be deemed to be of any Allocated Quota first;
- (e) Quota swaps value for value and sales to companies or entities that are wholly owned and controlled by the Mandated Iwi Organisation are not constrained. With Te Ohu Kai Moana Group holding a position akin to a Mandated Iwi Organisation, quota sales within Te Ohu Kai Moana Group are similarly not constrained.

Where quota currently owned by Te Ohu Kai Moana Group (including any joint venture operations) is proposed to be sold outside Te Ohu Kai Moana Group, Te Ohu Kai Moana Group will use its best endeavours (subject to existing obligations, contractual arrangements and the agreement of its business partners) to have its joint venture and subsidiary companies adopt a policy where Mandated Iwi Organisations would have a right of first refusal under a process similar to that outlined above.

220. For the avoidance of doubt, the sale process in relation to any quota in FMA 6, FMA 10 and that portion of FMA 4 that is outside the Chatham Zone shall be the same as the sale process identified above for Deepwater Quota.

Sales of Allocated Quota "Bundles"

221. The Commission has decided in relation to the possible bundling for sale of different fishstocks that Mandated Iwi Organisations may, where they choose, bundle different Allocated Quota fishstocks together for administrative purposes. However, the sale process must remain separate for each fishstock and the bundle cannot be sold as an entire unit. In other words, each fishstock must be sold separately.
222. If the sale of Allocated Quota bundles were allowed, the inclusion of more than one fishstock in a sale is likely to negate or diminish the value of the preferential right of first refusal that is proposed for Iwi, particularly in Inshore species.

Exchanges of Allocated Quota

223. The protection mechanism that is contained within Part 8 of the Draft Maori Fisheries Development Bill contains one exception to the general intent that Allocated Quota cannot be transferred outside of Iwi. Mandated Iwi Organisations may exchange Allocated Quota with any party provided that the quota parcels being exchanged are of equivalent market value.
224. In the case of exchanges of non-Settlement quota with Allocated Quota, upon receipt by the Mandated Iwi Organisation of the non-Settlement quota that quota will, pursuant to the Draft Maori Fisheries

Development Bill, become Allocated Quota and Te Ohu Kai Moana will register a caveat over the new Allocated Quota. In the case of Allocated Quota that is exchanged for other Allocated Quota the caveats registered by Te Ohu Kai Moana will be lifted to allow the exchange to take place and the change in ownership will be recorded on the caveat registered over the Allocated Quota parcels.

225. Providing Iwi with the opportunity to exchange quota is important because it allows Iwi to rationalise their quota shareholdings. As there is no commercial loss from the exchange, because the exchanges are at equal market value, the Commission is of the opinion that the normal 75 percent approval contained in Part 8 of the Draft Maori Fisheries Development Bill should not apply. However, Mandated Iwi Organisations must advise their members at their hui-a-tau of any proposals to rationalise their fisheries assets, what the policy is for exchanges of Allocated Quota, whether there have been any changes to that policy from the previous year and provide a report detailing all exchanges of Allocated Quota.¹⁰⁶

Allocated Quota

226. There are three ways that quota may be defined as Allocated Quota under the Draft Maori Fisheries Development Act. Allocated Quota is any quota that the Commission allocates to Mandated Iwi Organisations or, any non-Settlement quota that is exchanged for Allocated Quota. The Bill also allows Iwi the option of choosing to have any non-Settlement quota that they may own covered by the protective regime contained within Part 8 of the Bill. This enhancement was made in response to requests from various Iwi that they would like the option of protecting the taonga which they see embodied within the quota for future generations by utilising the regime contained within the Bill.
227. Any Iwi that wishes to apply for their non-Settlement quota to be treated as Allocated Quota must hold a properly constituted hui-a-iwi and obtain the approval of 75 percent of the adult members of the Iwi who vote at the hui-a-tau. The Mandated Iwi Organisation may then request that

Te Ohu Kai Moana treat any quota owned by the Mandated Iwi Organisation as Allocated Quota. Upon approval of the request by the Commission, Part 8 of the Draft Maori Fisheries Development Bill will apply and the Commission will register a caveat over the new Allocated Quota. The Commission would expect that any such decision by an Iwi would not be made lightly as once the quota is designated as Allocated Quota that status cannot be reversed. The transaction costs associated with registering the caveat over the Allocated Quota will be borne by the requesting Iwi.

RFR for the sale of income shares in AFL¹⁰⁷

228. All Iwi will receive a proportion of Income Shares in AFL based upon the population of their Iwi. Through the Income Shares, the Commission and Te Ohu Kai Moana will provide opportunities for all Maori, via their Mandated Iwi Organisations, to receive ongoing benefits from the assets of the Settlement contained within the AFL structure. However, Iwi will be able to sell their Income Shares subject to a right of first refusal to other Mandated Iwi Organisations.
229. The Commission has refined the sale process in the allocation model from the proposal set out in *Ahu Whakamua* by providing Te Ohu Kai Moana and Iwi equal priority on the sale of Income Shares, defining with greater precision the sale process for Income Shares and allowing for that process to be centrally administered by either Te Ohu Kai Moana or an independent administrator. These modifications allow for increased opportunity for wealth generation, if an Iwi chooses to sell, by allowing as many parties as possible to purchase the Income Shares within the parameters of the allocation model overall. Also, in recognition of the importance of allowing all Maori to receive ongoing benefits from the Settlement, the modifications do not exclude Iwi from purchasing Income Shares if they have previously alienated all their Income Shares.

¹⁰⁶ See Schedule 7, Kaupapa 7 of the Draft Maori Fisheries Development Bill.

¹⁰⁷ See sections 33 and 34 of the Draft Maori Fisheries Development Bill.

Sale process for income shares

230. No Income Shares in AFL may be sold by or to any Mandated Iwi Organisation or Te Ohu Kai Moana until the expiry of two years after those shares were first transferred by Te Ohu Kai Moana to the recipient Iwi. Under this proposal Te Ohu Kai Moana Group and Iwi have equal rights to sell and buy any Income Shares. Consequently Iwi will have the same opportunity as Te Ohu Kai Moana to participate in the tender process.
231. A Mandated Iwi Organisation may only sell Income Shares to other Mandated Iwi Organisations or Te Ohu Kai Moana Group in accordance with the following procedure, which shall be contained in the constitution of AFL. That procedure may include:
- (a) The Mandated Iwi Organisation must first obtain the approval of Iwi members to dispose of the Income Shares by a 75% vote in favour of the sale at a special meeting, Annual General Meeting or a hui-a-tau;
 - (b) The Mandated Iwi Organisation must notify the AFL company secretariat that it wishes to sell and it has a conditional agreement to sell its Income Shares to another Mandated Iwi Organisation or Te Ohu Kai Moana Group for a specified price;
 - (c) The AFL company secretariat notifies all Mandated Iwi Organisations and Te Ohu Kai Moana of; the number of Income Shares proposed to be sold, the price of the shares, and a date by which bids must be received by the AFL company secretariat for those shares. Where Te Ohu Kai Moana Group also wishes to bid, an independent administrator will be engaged to manage the sale process;
 - (d) If any Mandated Iwi Organisation or Te Ohu Kai Moana Group wish to purchase the Income Shares, they must notify the AFL company secretariat (or independent administrator) of the number of shares the Iwi organisation or Te Ohu Kai Moana Group wishes to purchase and the price the Iwi organisation or Te Ohu Kai Moana will pay for those shares;
 - (e) After the close of the bidding period referred to in (c) above, where two or more of the highest bids in (d) above are equal or better than the notified bid in (c), the administrator (either the AFL company secretary or the independent administrator) shall inform the selling Mandated Iwi Organisation. The Mandated Iwi Organisation may then decide to either sell the shares to any one of the highest bidders or auction the shares between those two or more highest bidders, and
 - (f) The selling Mandated Iwi Organisation shall inform the administrator of the decision that it has made. Following the close of bidding either in (d) above (where a single bidder has the highest bid) or through the mechanisms in (e), the administrator will inform the Mandated Iwi Organisation or Te Ohu Kai Moana Group that it has submitted the highest bid and that its bid for the Income Shares has been successful. Upon receipt of the necessary funds from the successful Mandated Iwi Organisation or Te Ohu Kai Moana Group, the vendor Iwi Organisation will transfer the Income Shares to the successful bidder.
232. The same process set out above must be followed by Te Ohu Kai Moana Group if it proposes to sell Income Shares.

REVIEW OF POST-ALLOCATION ENTITIES¹⁰⁸

233. The Commission believes that *He Kawai Amokura* provides a durable and commercially viable post-allocation structure that will protect and enhance Maori interests in fishing in the post-allocation environment. However, notwithstanding the Commission's view as to the current appropriateness of the post-allocation structure, it is acknowledged that the fishing industry and the wider fisheries environment are subject to change and that therefore the imperatives which guide us today may not necessarily be those that guide us in the future. For this reason, the proposed post-allocation structure must continue to facilitate Iwi growth and remain responsive to the challenges of the future.

¹⁰⁸ See Part 6 of the Draft Maori Fisheries Development Bill.

234. While there is now almost unanimous support for the Commission to present this Report to the Minister, certain aspects of *He Kawai Amokura* relating to the role and level of control of both Te Ohu Kai Moana and Iwi within the proposed post-allocation structure have been keenly debated. One issue raised by several parties was provision for a future review of the post-allocation structure in order to ensure that the structure continues to best meet the fishing interests of Iwi and Maori generally. In this regard, it was noted that it is standard business practice for corporate entities to evaluate regularly the performance of their assets against expected returns and to consider whether and, if so, where and how improvements should be made.
235. Having regard to these matters, the Commission has determined to modify the allocation proposal that was contained in *Ahu Whakamua* by including provision for a review of the post-allocation structure. The first review will take place 12 years after the enactment of the new Maori Fisheries Development Act.¹⁰⁹ In the course of the initial review, a decision will be made as to the timing of the next review provided that any subsequent review is held no less than 5 and no longer than 10 years after the initial review.¹¹⁰
236. The mechanism for the review will be set out in two places. First, the general provisions will be set out in Schedule 9 of the Maori Fisheries Development Bill.¹¹¹ Second, those aspects of the review that are particular to the post-allocation companies and trusts will be addressed in the relevant constitutions of those bodies.¹¹²
237. The purpose of the review is to ascertain whether the post-allocation structure, including the governance arrangements relating to Te Ohu Kai Moana and AFL, are continuing to serve the best interests of Iwi and ultimately all Maori as beneficiaries of the Settlement. The review should consider the rationale for the initial post-allocation structure and examine whether the issues that drove its design remain pertinent. In particular, the review should examine the purposes and functions of each entity within the post-allocation structure and consider whether those objectives have been achieved. The review will consider whether changes are warranted to the Te Kawai Taumata, Te Ohu Kai Moana, AFL and/or the two trusts Te Wai Maori and Te Putea Whakatupu, including the manner in which those entities interrelate and are controlled, and whether any changes will enhance the performance of the overall post-allocation system and thereby better provide for the interests of all parties.¹¹³
238. The initial review and any subsequent reviews must address all matters that are pertinent to and/or could substantively affect the performance of the post-allocation entities and consequently the interests of Iwi and ultimately all Maori as beneficiaries of the Settlement.¹¹⁴
239. Furthermore, from the responses received on *Ahu Whakamua* the Commission saw that Iwi supported a single corporate body that held the various share holdings of the Commission subsidiaries. If any review proposes to transfer Voting Shares to Iwi, whether in one step or several steps, and this is subsequently adopted by Te Ohu Kai Moana, the transfer of Voting Shares shall occur in proportion to the level of Income Shares held by each Iwi at the time of adoption.¹¹⁵
240. It should also be acknowledged that the current ability of all Iwi to successfully operate commercial fishing enterprises differs. This is due largely to the level of assets and benefits received by Iwi through Treaty Settlements. Those Iwi who have received substantive Settlements will have already established comprehensive structures and management systems. Also, to support those systems, these Iwi are likely to have strong balance sheets and financial capabilities unlike the majority of Iwi. The Commission expects that the commercial capability of Iwi will grow following allocation. However, until the majority of

¹⁰⁹ See section 45(1) of the Draft Maori Fisheries Development Bill.

¹¹⁰ See section 45(2) of the Draft Maori Fisheries Development Bill.

¹¹¹ See Part 6 and Schedule 9 of the Draft Maori Fisheries Development Bill.

¹¹² The constitutions for the post-allocation companies and trusts will be developed by a Working Group in liaison with Iwi prior to enactment of the new Maori Fisheries Act.

¹¹³ See section 45(4) and Schedule 9 of the Draft Maori Fisheries Development Bill.

¹¹⁴ See section 45(4) and Schedule 9 of the Draft Maori Fisheries Development Bill.

¹¹⁵ See section 46 of the Draft Maori Fisheries Development Bill.

Iwi attain similar levels of commercial competency, some Iwi could easily dominate others. The Commission therefore saw value in allowing for a reasonable settling in and development period prior to the first review.

241. The Commission has established a set of minimum terms of reference for the review. These terms of reference are contained in Schedule 9 to the Draft Maori Fisheries Development Bill. In establishing these minimum requirements the Commission has been mindful of governance issues, financial outcomes from AFL and Iwi and the outcomes from allocation for Te Ohu Kai Moana, AFL and Iwi. In order to assess the success or otherwise of allocation any review must look not only at the post allocation structures created by the Commission and Te Ohu Kai Moana but also the Mandated Iwi Organisations that received allocation. Reviews should consider the whole post allocation environment.
242. Any review will be required to consider the following terms of reference as set out in Schedule 9 of the Draft Maori Fisheries Development Bill:
- (a) The governance structure of Te Ohu Kai Moana and AFL including but not limited to:
- (i) Te Kawai Taumata and its associated processes and costs;
 - (ii) the appointment criteria for Commissioners and directors of AFL;
 - (iii) the level of commercial interaction between Aotearoa Fisheries Limited and representative Iwi organisations;
 - (iv) the accountability of AFL to representative Iwi organisations, including the quality of information provided and quality of reporting to representative Iwi organisations, and
 - (v) the effectiveness of the relationship between Te Ohu Kai Moana and AFL.
- (b) The performance of AFL, including but not limited to:
- (i) increase shareholder value, and
 - (ii) dividend performance;
- compared against the performance of other participants in the fishing industry and/or other similar entities.

- (c) A review of the outcomes of the allocation process, including:
- (i) shareholder participation and concentration;
 - (ii) Iwi interaction with AFL, eg joint ventures or management contracts in relation to quota or aquaculture;
 - (iii) AFL position within and relationships with the (wider or Maori) fishing industry, and
 - (iv) the effectiveness of relationships of Te Ohu Kai Moana and AFL with Government.

243. A further aspect of the review will consider the performance of Mandated Iwi Organisations and their respective governance and commercial capabilities. This component of the review will compare and contrast the Mandated Iwi Organisations against the performance of other participants in the fishing industry and/or other similar entities. This will enable a comparative review of how well Iwi are performing in respect of governance, financial returns, annual audited financial statements, and accountability to their members in a post-allocation environment compared to AFL.

244. Mandated Iwi Organisations must provide certain information to their members, such as strategic plans and annual reports. The reviewer will have access to these publicly available documents for the purposes of the review.

245. The review will also address the outcomes for Mandated Iwi Organisations from the allocation process, including:

- (a) effectiveness of the process of recognition of representative Iwi organisations, and
- (b) Mandated Iwi Organisation interactions such as contractual arrangements within the Iwi fishing industry and with the fishing industry generally.

246. Recommendations from the initial review may be made on:

- (a) the appointment criteria for Te Kawai Taumata members, the Commissioners of Te Ohu Kai Moana and the directors of AFL;
- (b) the governance of Te Kawai Taumata, Te Ohu Kai Moana and AFL;

- (c) the relationships between, and processes relating to, Iwi organisations, Te Kawai Taumata, Te Ohu Kai Moana and AFL, and
 - (d) the process and timing for any future reviews.
247. Any resolution that is promoted by Te Ohu Kai Moana in relation to any of the matters that may be considered as part of the review must be passed by a hui-a-tau that has the support of at least 75 percent of Mandated Iwi Organisations representing more than 50 percent of Maori by affiliation on the basis of those Iwi populations as set out in Schedule 4 of the Draft Maori Fisheries Development Bill. Te Ohu Kai Moana will then be obliged to implement that resolution.¹¹⁶
248. The procedure for conducting the initial review will be as follows:¹¹⁷
- (a) Te Ohu Kai Moana will draft proposed Terms of Reference and circulate that to Iwi for comment;
 - (b) Iwi provide comment on the initial Terms of Reference; Te Ohu Kai Moana has regard to these comments and finalises the Terms of Reference for the review;
 - (c) Te Ohu Kai Moana invites expressions of interest for qualified personnel or groups to undertake the review. Iwi are requested to propose who they consider might best undertake the role;
 - (d) Te Ohu Kai Moana will have regard to the Iwi propositions when selecting an independent reviewer (or group of reviewers);
 - (e) The reviewer will hold discussions with the various parties, collate the necessary data, draft their report, and make preliminary recommendations to Te Ohu Kai Moana;
 - (f) Te Ohu Kai Moana will discuss that initial draft with the reviewer. The reviewer will then complete the report;
 - (g) Te Ohu Kai Moana will prepare its response to the reviewer's report and recommendations and provide Iwi organisations with an opportunity to comment on the reviewer's report and Te Ohu Kai Moana's response, and
 - (h) Te Ohu Kai Moana will consider the responses from Iwi organisations and draft a report setting out the proposals for change along with an appropriate implementation plan including appropriate resolutions for each change for the next hui-a-tau. Where concurrent changes are needed to give effect to any proposal these shall be put as a block. Te Ohu Kai Moana will provide that report to Iwi allowing appropriate time for consideration before the issue is put to a hui-a-tau.
249. Should an independent review recommend that the restriction on the sale of quota is impacting negatively on structures, accountability or performance of Te Ohu Kai Moana or AFL, beyond that accepted as a necessary corollary of ensuring benefits for all Maori and future generations, the review may then recommend that the sale restriction itself be reviewed at the next review. That subsequent review shall include (but is not limited to) consideration of the impact of the restriction on sales and the underlying economic value, and whether the risk to economic value and the durability of the Settlement can be addressed by other more appropriate measures. Pivotal to that assessment is determining what can be gained and lost through the permanent alienation of Iwi interests in commercial fishing.

DISPUTE RESOLUTION¹¹⁸

250. Annexure A and clause 4.5.4.2 of the Deed of Settlement (to which the Commission must have regard in its POSA proposals) require the Commission to develop proposals that include a transparent and independent dispute resolution process, including a procedure by which beneficiaries can be heard on benefit issues. While the Commission's obligations in terms of developing a dispute resolution process relate expressly to POSA, the Commission considered in *Ahu Whakamua* that any dispute resolution

¹¹⁶ See Schedule 9 of the Draft Maori Fisheries Development Bill.

¹¹⁷ See Schedule 9 of the Draft Maori Fisheries Development Bill.

¹¹⁸ See Part 9 and Schedule 10 of the Draft Maori Fisheries Development Bill.

process should properly cover both PRESA and POSA issues.¹¹⁹

251. The Commission considers that dispute resolution mechanisms are essential to the successful implementation of the allocation model and the overarching obligation that the Settlement is ultimately for the benefit of all Maori. The Commission requires Mandated Iwi Organisations to meet a range of criteria that promote representative capacity and accountability. These policies and consequent obligations are ongoing. They are not simply a one-off threshold requirement to be achieved on paper and then neglected in implementation. Proper dispute resolution procedures will therefore provide the opportunity for Iwi members, where appropriate, to pursue issues or disputes relating to the performance of Mandated or Recognised Iwi Organisations, including benefit issues.
252. The implementation of the allocation model and the ongoing relationship between both Mandated and Recognised Iwi Organisations and Te Ohu Kai Moana, and, those organisations and their Iwi members will require effective dispute resolution mechanisms. To this end it is proposed that:¹²⁰
- (a) Iwi constitutions will need to contain express provision for alternative dispute resolution (eg mediation);
 - (b) The Maori Land Court will have an expanded jurisdiction to address through mediation and/or adjudication a number of specified disputes relating to allocation, and
 - (c) Where the Maori Land Court does not have jurisdiction, Te Ohu Kai Moana, Te Wai Maori Trust and Te Putea Whakatupu Trust will be accountable, as appropriate, to Iwi as the final beneficiaries through the ordinary legal principles and procedures relating to trusts and judicial review.

Maori Land Court

253. In the Commission's view, the Maori Land Court is the most appropriate legal forum to assist parties with post-allocation disputes. Some informal feedback on *Ahu Whakamua* was critical of the Maori Land Court because of its involvement in the

historical alienation of Maori land. The Commission acknowledges these concerns. However, the Commission considers that the Maori Land Court is best able to fulfil this role

254. The Commission acknowledges the importance of ensuring that any post-allocation dispute resolution procedure is consistent with tikanga Maori. The Maori Land Court has expertise in dealing with Maori issues. Many of its Judges are Maori. There is presently no other legal forum that is better able to fulfil this role. The Commission gave consideration to referring such disputes to the High Court, but determined that it was not a viable option given issues of expense, delay, expertise and jurisdiction.¹²¹
255. The Commission also considered the establishment of an entirely new body to adjudicate on fisheries allocation issues, but determined that the establishment costs and ongoing administration costs together with the expertise required for persons appointed to any such body would to a great extent see a duplication and/or competition of resources with the Maori Land Court.
256. The Law Commission also supported the establishment of dispute resolution procedures to deal with post-settlement issues through the Maori Land Court. It considered that *"a mechanism to resolve disputes between members of the settlement group, and between members and those responsible for stewardship, is essential, and should be in place well in advance of any dispute"*.¹²² Furthermore, it

¹¹⁹ In *Ahu Whakamua*, the Commission noted that very similar issues were the subject of consideration by the Law Commission as part of the preparation of the preparation of its *Treaty of Waitangi Claims: Addressing the Post-Settlement Phase* study paper that was intended to address the questions of ongoing compliance, representation and accountability following the settlement of Treaty claims between Maori and the Crown. The Commission anticipated that its proposals for a statutory amendment in this area would be progressed in close liaison with the Law Commission's initiatives.

The Law Commission has since released its study paper entitled *Treaty of Waitangi Claims: Addressing the Post-Settlement Phase*. The terms of reference for this paper were to enquire into and report on any changes needed to address problems relating to the post-settlement phase of the Treaty claims process. A major issue was the need for a suitable dispute resolution process because of the inevitable increase in kin-group discussion over issues such as governance capacity, succession/membership, leadership accountability, beneficiary participation and benefit distribution and utilisation. A number of the Law Commission's observations are relevant to the Commission's dispute resolution proposals.

¹²⁰ See Section 9(3)(a), and Schedule 7 - Kaupapa 8 and Part 9 of the Draft Maori Fisheries Development Bill.

¹²¹ It is still proposed, however, that the High Court would retain jurisdiction for disputes that are not able to be referred to the Maori Land Court under the Draft Maori Fisheries Development Bill.

considered that, in this regard, the Maori Land Court offered skills and expertise on Maori issues that were hard, if not impossible, to find elsewhere.¹²³

257. Recent amendments to Te Ture Whenua Maori Act 1993 have extended the Maori Land Court's jurisdiction to enable the Court to both facilitate mediation and make binding determinations in relation to representation issues. To a significant extent therefore, the further amendment of the Act required in order to enable the Maori Land Court to deal with the full range of disputes that may arise in relation to allocation as identified above will be complementary to the Court's recently expanded jurisdiction.

258. In relation to any proposed amendments to the Maori Land Court's jurisdiction, the Commission also considered that many disputes may benefit from the involvement of Pukenga or individuals with knowledge of relevant tikanga alongside a Judge of the Maori Land Court in order to add value to the judicial decision-making process. In the Commission's view such an initiative would enhance the legitimacy and confidence of the parties in the Maori Land Court's processes.¹²⁴

259. The Law Commission also agreed with the Commission's proposals regarding the use of both the Maori Land Court with the assistance of Pukenga in the process. The paper suggested the use of both

*"a neutral arbiter (that is, a judicial officer) with knowledge of tikanga along with those who are part of the settlement group, or who have specific knowledge of the tikanga of the group (that is, one or more Pukenga)".*¹²⁵

260. The Commission has therefore identified a number of areas in which disputes should only be referred to the Maori Land Court in the first instance. The disputes that may arise in relation to the ongoing management and delivery by Mandated Iwi Organisations of the benefits of allocation include:

- mandate challenges;¹²⁶
- Iwi elections;¹²⁷
- Iwi benefit distribution policies,¹²⁸ and
- Iwi constitutional matters.¹²⁹

In addition, disputes may arise in relation to the implementation of the allocation model, which the Commission considers should be decided by the Maori Land Court, in the following areas:

- the identification and agreement of coastline boundaries needed to establish entitlements for Inshore and Deepwater Quota;¹³⁰
- appointment and removal of representatives to Te Kawai Taumata;¹³¹
- agreements by Iwi for allocation of quota within harbours,¹³² and
- agreements by Iwi for allocation of Freshwater Quota.¹³³

Power of review

261. Some consideration of the power of other bodies to resolve Maori fisheries disputes is necessary. The Law Commission's *Treaty of Waitangi Claims: Addressing the Post-Settlement Phase* paper suggested that Maori Land Court decisions in respect of post-settlement disputes should be final subject only to judicial review. Otherwise, the Law Commission considered that the Maori Land Court was best able to judge such matters because of its experience with tikanga, Maori social dynamics and public support.

¹²² Law Commission (2002), at p 20.

¹²³ Ibid, at p 22.

¹²⁴ This is now reflected in the amendments to Te Ture Whenua Maori Act 1993 set out in Schedule 10 to the Draft Maori Fisheries Development Bill.

¹²⁵ Law Commission (2002), at p 21.

¹²⁶ See sections 9, 68(d) and 69 of the Maori Fisheries Development Bill.

¹²⁷ The constitutions of all Mandated Iwi organisations must have a dispute resolution procedure that deals with this issue. See sections 9(3), 68(d) and 69 of the Draft Maori Fisheries Development Bill.

¹²⁸ The constitutions of all Mandated Iwi organisations must have a dispute resolution procedure that deals with this issue. See also sections 68(m) and 69 of the Draft Maori Fisheries Development Bill.

¹²⁹ The constitutions of all Mandated Iwi organisations must have a dispute resolution procedure that deals with this issue. See also sections 68(m) and 69 of the Draft Maori Fisheries Development Bill.

¹³⁰ See sections 7, 8, 68(b), 68(c), 68(g), 68(l) and 69 of the Maori Fisheries Development Bill.

¹³¹ See sections 23–26, 68(h) and 69 of the Draft Maori Fisheries Development Bill.

¹³² See sections 54, 68(j), 69 and Schedule 3 of the Draft Maori Fisheries Development Bill.

¹³³ See sections 58, 68(k) and 69 of the Draft Maori Fisheries Development Bill.

262. The Law Commission stated that:

"[O]ne reason would be that there are few judges of the High Court with sufficient experience in issues of tikanga, or in the social dynamics of a kin group, to engender public confidence in the outcome of any such review. The Commission considers that decisions made by a forum created by the constitution of a settlement entity should only be reviewable against the principles of natural justice, for non-compliance with the powers conferred by the constitution, and to prevent irrationality."¹³⁴

263. The Commission endorses this approach because it is more consistent with tikanga Maori. Disputes involving Maori parties are more appropriately handled by a body with the requisite understanding of Maori issues. The Commission also considers that its model should be responsive to social and economic needs. Maori parties in dispute need a resolution procedure that responds to their cultural needs. An adjudicative body that understands those needs is essential to a socially responsive dispute resolution procedure. The Commission considers that the Maori Land Court is the most appropriate legal forum at present for undertaking this responsibility. The Maori Land Court's decision, will be subject to a right of appeal to the Maori Appellate Court.

264. The Commission is also of the view that the jurisdiction of the Maori Land Court in relation to the scope of disputes that it may determine should not be unduly limited. In its response to *Ahu Whakamua*, the Iwi Forum submitted that the jurisdiction of the Maori Land Court should not extend to reviewing any decision regarding the recognition of a Mandated Iwi Organisation for the receipt of fisheries settlement assets. The Commission is of the view that there is insufficient reason to exclude the Maori Land Court's jurisdiction in relation to a dispute of that nature only. The Commission is concerned to ensure consistency in the way in which any dispute resolution procedure would be applied. The Maori Land Court should be entitled to enquire into a dispute of that nature, particularly given the potential for such disputes, if unresolved, to delay allocation.

265. Finally, the Commission was conscious that disputes between and within Iwi had the potential to delay the flow of benefits to Iwi and ultimately to all Maori. The Commission considered it unacceptable that one Iwi may be frustrated in receiving its settlement assets in a timely manner where it had made strenuous efforts to gain agreement and resolve disputes, but was faced with unreasonable objections by other Iwi or from within. The purpose of the dispute resolution procedures was to facilitate the expeditious resolution of such disputes. Transitional provisions proposed by the Commission also identified certain other effects that may flow from ongoing disputes and suggested mechanisms that may provide some incentive for the resolution of such disputes in a timely manner (eg, the effect of disputes on the Commission's ACE rounds).

Statutory amendments

266. The proposed dispute resolution process will necessarily require changes to the Maori Land Court's jurisdiction and amendments to the Te Ture Whenua Maori Act 1993. The direct amendments to the Te Ture Whenua Maori Act 1993 that give effect to the proposed extension of the Maori Land Court's jurisdiction to deal with post-allocation dispute resolution have been incorporated into Part 9 (sections 68–72) and Schedule 10 of the Draft Maori Fisheries Development Bill.

MANDATED IWI ORGANISATIONS

267. It has been authoritatively stated that while the Settlement is for the ultimate benefit of all Maori, allocation itself must be to Iwi. The Commission must therefore allocate to Iwi through Iwi organisations. Te Ohu Kai Moana shall have two levels of status in respect of Iwi organisations that it will recognise for allocation purposes. Mandated Iwi Organisations are the ultimate Iwi organisations that Te Ohu Kai Moana will recognise for allocation and they:

- (a) may represent their Iwi at any meeting to appoint a member of Te Kawai Taumata;

¹³⁴ Law Commission, *Treaty of Waitangi Claims: Addressing the Post-Settlement Phase* (2002), at p 23.

- (b) will be entitled to acquire and hold income shares in Aotearoa Fisheries Limited;
- (c) will be entitled to receive and hold on behalf of its Iwi, any Allocated Quota and other assets allocated to that Iwi by Te Ohu Kai Moana, and
- (d) can receive distributions from Te Putea Whakatupu Trust and Te Wai Maori Trust.¹³⁵
268. The second type of Iwi organisation to be recognised by Te Ohu Kai Moana for allocation purposes are those described as Recognised Iwi Organisations. They are Iwi organisations that have yet to complete all the Commission's allocation requirements, but are likely to progress towards becoming the Mandated Iwi Organisations. Appendix 5 comprises a list of the Iwi organisations that the Commission presently deals with in relation to fisheries issues.
269. The Commission has however limited the scope to which a Recognised Iwi Organisation can make binding decisions over the future Mandated Iwi Organisation because the Recognised Iwi Organisation will not in every instance become the Mandated Iwi Organisation. Upon this basis the Commission has also limited the ability of Recognised Iwi Organisations to make binding decisions that detrimentally effect the entitlements of Iwi under the allocation model, *He Kawai Amokura*. Recognised Iwi Organisations can act for certain purposes on behalf of their Iwi such as participation in Te Kawai Taumata, receiving distributions from Te Putea Whakatupu or Te Wai Maori Trust, and receiving financial assistance from the Commission.¹³⁶ Importantly, Recognised Iwi Organisations cannot act for the following purposes under the allocation model detailed in this Report:
- (a) to receive PRESA and POSA;
- (b) to receive money from the Commission or Te Ohu Kai Moana;
- (c) to purchase Allocated Quota;
- (d) to receive or purchase Income Shares and receive distributions relating to Income Shares;
- (e) to enter into agreements over the coastline of the Iwi, although the Recognised Iwi Organisation will be able to enter into discussions on this point with other Recognised Iwi Organisations or Mandated Iwi Organisations;
- (f) to make representations to the Commission on the length of Iwi coastlines in situations where the Recognised Iwi Organisation believes that there are no other Iwi who would be affected by their assertion of coastline;
- (g) to enter into agreements for freshwater quota or harbour quota, and
- (h) to nominate an entity with charitable status to receive distributions on the winding up of Te Ohu Kai Moana, Aotearoa Fisheries Limited, Te Putea Whakatupu Trust or Te Wai Maori Trust.
270. Before a Recognised Iwi Organisation is able to be recognised as the Mandated Iwi Organisation, it must demonstrate that it has met the Commission's constitutional requirements and can demonstrate that it has the confidence of the majority of Iwi adult members attending a notified Iwi hui. The constitutional requirements of the Commission are minimum standards that must be met before any Recognised Iwi Organisation can become the Mandated Iwi Organisation and consequently eligible to receive their share of the assets and benefits of the Settlement.
271. The Commission's requirements, which are contained in Schedule 7 to the Draft Maori Fisheries Development Bill, include:
- Legal Personality – the Mandated Iwi Organisation must be a legal entity (eg, a trust, or a company);
 - Mandate – the Mandated Iwi Organisation must demonstrate that it has the confidence of the majority of adult Iwi members to act on their behalf;
 - Compliance – the Mandated Iwi Organisation must continue to act in accordance with its obligations under the Maori Fisheries Development Bill;
 - Constitution – a constitution for the Mandated Iwi Organisation must include participation processes, ensure that the organisation is accountable to Iwi members (including people

¹³⁵ See section 9 of the Draft Maori Fisheries Development Bill.

¹³⁶ See section 10 of the Draft Maori Fisheries Development Bill.

living outside their tribal rohe) and allow the organisation to benefit other Maori if appropriate;

- Electoral Process – the constitution of the Mandated Iwi Organisation must provide for full participation by Iwi members in a regular process to select representatives;
- Accountability – registration, planning and reporting systems must be in place to allow for a minimum number of registered members on the register who can monitor and sanction the performance of their representatives and asset managers, and
- Dispute Resolution – the constitution of the Mandated Iwi Organisation must include reasonable dispute resolution procedures to resolve internal Iwi disputes.

272. Most of these measures comprise safeguards and processes to ensure that members can participate. In themselves they do not guarantee outcomes, however, a failure by a Mandated Iwi Organisation to meet the above standards could result in Te Ohu Kai Moana determining to apply to the Maori Land Court for an order revoking its status as a Mandated Iwi Organisation.¹³⁷

Structures

273. Iwi organisations will need to meet the Commission's requirements regarding appropriate structures for receiving and managing assets and benefits from the Settlement. These requirements are to protect the asset base and promote efficient and accountable management. They include keeping separate the functions relating to:

- Iwi governance;
- the management of assets received via allocation;
- Iwi fishing operations;
- the distribution of assets and benefits to Iwi members, and
- dispute resolution procedures.

274. The structural policies require that elected representatives for a Mandated Iwi Organisation make up no more than 40% of the directors on the asset management body.

275. Allowing some elected representatives to sit on the board of directors of the asset management body can enhance the flow of information from the asset management body to the representative body. However, this must be limited to ensure monitoring of business activities on behalf of Iwi members is carried out in a rigorous and detached manner. If an elected representative has a conflict between his or her two roles – as director or owner, the Iwi organisation may not be able to properly perform its monitoring role. These policies are detailed in full in Schedule 7 of the Draft Maori Fisheries Development Bill. These requirements are a refinement of the requirements published by the Commission in September 2001 in *He Tohu Arahi*.

Constitutional requirements

276. The publication by the Commission of *He Tohu Arahi*, *He Anga Mua* and *Ahu Whakamua* reiterated the requirements that Iwi prepare for and be in position to receive their share of the Settlement assets. These are confirmed in *He Kawai Amokura*.¹³⁸

277. The Commission shall continue to work with Iwi to develop and/or enhance their constitutional arrangements to meet the Commission's allocation requirements. Greater assistance will be required to ensure Iwi can meet the threshold required regarding constitutional requirements and transparent representation of elected members. This will require the Commission to have two vital roles.

278. First, the Commission will have a facilitation role where the Commission (or Te Ohu Kai Moana) will work with Iwi so that they gain an in-depth understanding of the Commission's policies in relation to constitutional requirements and representation. Second, the Commission will have a quality review role to assess and assist Iwi in ensuring that their constitutions, or the development of their constitutions, meet the Commission's criteria. In this area the Commission can assist by providing model clauses that address the particular

¹³⁷ See section 71 of the Draft Maori Fisheries Development Bill.

¹³⁸ See Schedule 7 of the Draft Maori Fisheries Development Bill.

policy issues of concern, however, it is acknowledged that different Iwi may have differing requirements and therefore the Commission's assistance will be tailored to suit.

Governance developments

279. *He Anga Mua* set out the structural requirements that the Commission then expected of Iwi. These requirements have remained largely the same under *He Kawai Amokura*.¹³⁹ The Mandated Iwi Organisation and its asset management body must establish appropriate structures so that they are accountable to Iwi members. These comprehensive structures must ensure separation of the key functions of governance and asset management.

280. Mandated Iwi Organisations are required to meet the following criteria prior to receiving allocation:

- (a) establish a discrete legal entity to manage Fisheries Settlement assets – an asset management body;
- (b) ensure elected representatives to the Mandated Iwi Organisation (or its staff) comprise no more than forty percent of directors (40%) on the asset management body, and
- (c) have the power to amend the constitution of the asset management body but this will require a threshold of 75% of votes cast at a general meeting as set out in the representation policy.

281. The asset management body's constitution must contain provisions requiring that the body:

- (a) reports annually to the Mandated Iwi Organisation;
- (b) has approved and presented to the Mandated Iwi Organisation an annual statement of corporate intent, and
- (c) has its annual accounts audited and presented to an annual general meeting of the Mandated Iwi Organisation.

282. A separation must exist between the asset management entity and the entity responsible for the distribution of benefits to members. A separation

must also exist between the asset management entity and any operational entity.

283. *He Tohu Arahi* provided under Aratohu 1 that the setting up or maintaining of a separate legal asset management body by the Iwi organisation is central to the Commission's policy on appropriate legal structures. This could be achieved by adopting either one or a combination of the following:

- The Commission will develop a ready-made limited liability company which could be "bolted on" to the Iwi organisation; or
- Iwi could set up their own separate asset management body, or
- Some Iwi that already have an existing asset management body could make changes to make it consistent with the Commission's policy.

Iwi will need to choose which of these options is most appropriate for them and the Commission will provide a subsidy of up to \$12,500 dollar for dollar for the actual expense of the Iwi's professional advisors for this work.

284. Iwi organisations will be encouraged to develop their governance structures and capabilities to reflect best practice models for their type of organisation. Such structures will have strategic planning, transparency and accountability as key elements. The development process that should be undertaken by the Iwi organisation should include:

- An investment strategy for that Iwi that guides the Iwi organisation and its asset management body in assessing its "best economic fit" based on its fisheries assets;
- The identification of core competencies for directors;
- Development of the tools required to assess current and potential directors against the core competencies;
- The identification of skill development needs of directors;
- Generic governance training for directors of representative Iwi organisations focusing on good governance;

¹³⁹ See Schedule 7 of the Draft Maori Fisheries Development Bill.

- Specialised governance training for directors of the asset management body that relates to fisheries specific governance issues, and
- Strategic direction setting and planning.

Iwi registers

285. The Commission's representation policy, as presently set out in *He Tohu Arahi*, imposes the mandatory requirement that each Mandated Iwi Organisation have a member register in place before that Mandated Iwi Organisation would be eligible to receive allocation. Membership registers are a critical requirement for Mandated Iwi Organisations in order that they are able to demonstrate their ability to communicate with their members and provide for full participation by members in Iwi decision-making processes, which in turn assists to ensure that the benefits of the Settlement will ultimately be for the benefit of all Maori.¹⁴⁰
286. The Commission has determined that Mandated Iwi Organisations must have met a minimum threshold of registrations on their registers before allocation can take place. Mandated Iwi Organisations will have an ongoing duty to use their best endeavours to encourage enrolment of members and report on enrolment progress at each hui-a-tau of the Mandated Iwi Organisation. This development enhances the overall allocation model and in particular the mandate and accountability of Mandated Iwi Organisations to their members.
287. The sliding scale set out below establishes an achievable minimum registration benchmark that Mandated Iwi Organisations must attain to ensure that Mandated Iwi Organisations have sufficient Iwi support to receive Settlement assets prior to allocation. The Iwi affiliation figures used in the sliding scale below are derived from the New Zealand Census 2001 and the registration level required for each Mandated Iwi Organisation is specified in Column 4 of Schedule 4 to the Draft Maori Fisheries Development Bill.¹⁴¹

Iwi Affiliations in 2001 Census	Percentage	Minimum Registration Requirement
0 – 1000	50	0 – 500
1001 – 5000	50 – 30	500 – 1500
5001 – 20000	30 – 20	1500 – 4000
20001 – 110000	20 – 10	4000 – 11000

288. It is acknowledged that for most Mandated and Recognised Iwi Organisations it will take some time before a comprehensive Iwi register is in place. It is for this reason that a minimum requirement has been set, a requirement for reporting and a programme of assistance. The Commission proposes to provide assistance to Mandated and Recognised Iwi Organisations to initiate and maintain their registers. This assistance is likely to include:
- "How to" tips on drafting registration forms and administering a register in a cost effective manner;
 - Provision of appropriate PC software and training for register staff, and
 - Support for the development of the MRS.
289. Registers are a mechanism to assist participation in the affairs of the Iwi. They will assist Mandated and Recognised Iwi Organisations to communicate with their members. The achievement of the minimum threshold is not, however, an end in itself. It is a signal that there is a level of positive engagement between the members of the Iwi and the Mandated or Recognised Iwi Organisation. The Commission considers that this relationship is as much about quality as quantity and it has therefore decided that Mandated Iwi Organisations should have an ongoing responsibility to add members to their registers, however no one can be compelled to become a member. The Commission has therefore decided that where a Mandated Iwi Organisation has a register whose membership numbers are close to, but still below, the minimum threshold and the Mandated Iwi Organisation has been making and is continuing to make reasonable efforts to recruit members consistent with its programme of development, Te Ohu Kai Moana will have a discretion to allocate PRESA and POSA to that Iwi.¹⁴²

¹⁴⁰ See Schedule 7 of the Draft Maori Fisheries Development Bill.

¹⁴¹ See Schedule 4 column 4 of the Draft Maori Fisheries Development Bill.

¹⁴² See section 47(6) of the Draft Maori Fisheries Development Bill.

Strategic planning

290. Allocation will transfer significant resources to Mandated Iwi Organisations. It is therefore critical that Mandated Iwi Organisations are well prepared and have appropriate skills available for managing the assets. The Commission does not intend to dictate the individual strategies that Iwi should use for managing the allocated assets. Rather, each Mandated Iwi Organisation will determine its preferred strategy that best uses their assets to advance its aspirations.

291. The Commission and Te Ohu Kai Moana have a responsibility to ensure that Iwi implement safeguards now to preserve the assets that they receive on allocation for present and future generations of Maori. The Commission has proposed general requirements on Mandated Iwi Organisations to ensure that they undertake adequate strategic planning for their fisheries assets. This involves the requirement that Mandated Iwi Organisations provide their members with an annual plan, including objectives for the use of its fisheries assets, and an annual report that sets out the performance against the previous plan. Mandated Iwi Organisations are required to set out their proposed fisheries strategies in the event that they are seeking approval from their members to sell or exchange either Allocated Quota or Income Shares.

ONGOING PERFORMANCE

292. The Commission requires Iwi to adopt policies and structures for both representation and asset management. These are intended to create a durable operating environment for the Iwi.¹⁴³

293. The policies that Mandated Iwi Organisations are required to establish are obligations for ongoing practice – they are not simply a one-off threshold that is to be achieved on paper and then neglected in implementation. The policies provide ongoing processes for Iwi members to be part of the overview of the Iwi's business and activity of fishing. The Commission believes that effective ongoing compliance with these requirements is critical in order to ensure that the Settlement is ultimately for the benefit of all Maori.

294. The Commission does not intend to police these policies on an ongoing basis. It will be for Iwi members using the provided political opportunities and legal remedies to ensure that their Mandated Iwi Organisation continues to constructively implement the policies in accordance with the tikanga of that Iwi. As noted, Iwi constitutions must include dispute resolution provisions, and there is also provision in the Draft Maori Fisheries Development Bill for disputes to be referred to the Maori Land Court if alternative dispute resolution is unsuccessful.¹⁴⁴

295. If there is a situation where a Mandated Iwi organisation is not complying with the Commission's policies, then:

- any aggrieved Iwi member may utilise the disputes procedure in the Iwi constitution;
- if the issue cannot be resolved through the dispute resolution process in the Iwi's constitution, the matter may be referred to Te Ohu Kai Moana, and
- Te Ohu Kai Moana may decide the matter (in which case its decision may be challenged in the Maori Land Court) or alternatively may refer the issue to the Maori Land Court for decision.

296. The Maori Land Court will ultimately determine whether the Mandated Iwi Organisation is, or is not, fulfilling its requirements and, if not, what actions are appropriate to ensure that those requirements are met.

297. From the time that the matter is referred to the Maori Land Court until that Court indicates that the Mandated Iwi Organisation is satisfactorily meeting the requirements, the Court may order the suspension of the payment of dividends through Income Shares to that Mandated Iwi Organisation.¹⁴⁵ In that event, Te Ohu Kai Moana will hold the income from that Iwi's Income Shares in AFL on trust for that Iwi until the organisation shows that it satisfies the Commission's representation requirements.¹⁴⁶

¹⁴³ See Schedule 7 of the Draft Maori Fisheries Development Bill.

¹⁴⁴ See sections 68 and 69 of the Draft Maori Fisheries Development Bill.

¹⁴⁵ See Part 2 of Schedule 10 to the Draft Maori Fisheries Development Bill.

¹⁴⁶ See sections 9, 27, Part 9 and Schedules 7 and 10 of the Draft Maori Fisheries Development Bill.

the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in health care has increased from 2.5 million to 3.5 million (Department of Health 2000).

There are a number of reasons for this increase in the number of people employed in the public sector. One reason is that the public sector has become a more important part of the economy. Another reason is that the public sector has become a more attractive place to work. A third reason is that the public sector has become a more important part of the welfare state.

The public sector has become a more important part of the economy because it has become a more important part of the welfare state. The welfare state is a system of social security that provides a safety net for people who are unable to support themselves. The public sector is the main provider of social security in the UK.

The public sector has become a more attractive place to work because it offers a number of advantages. One advantage is that it offers a secure job. Another advantage is that it offers a good pension. A third advantage is that it offers a good work-life balance.

The public sector has become a more important part of the welfare state because it has become a more important part of the economy. The economy is the total amount of goods and services produced in a country. The public sector is a major part of the economy in the UK.

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Implementation Plan

PART F

1. A well-managed and timely implementation of *He Kawai Amokura* and transition to the post-allocation entities is of paramount importance. This is required so that there is no loss of opportunity or value to either the Te Ohu Kai Moana Group or Iwi during the implementation process.
2. There are a number of interdependent activities that must be coordinated and carefully managed in implementation. Figure 10 provides an indicative implementation timeline that shows the key elements for each of the various entities involved in allocation.
3. Both the principal fishing year and the Commission's financial year run from 1 October to 30 September. It is proposed under *He Kawai Amokura* that allocation will commence from 1 October 2003, premised necessarily on the enactment of the proposed Maori Fisheries Development Bill. In the period up to the commencement of allocation, a number of important tasks must be completed in order to implement the key aspects of the allocation model, including the transition from the Treaty of Waitangi Fisheries Commission to Te Ohu Kai Moana. Implementation will also occur progressively as Iwi fulfil the Commission's requirements for allocation.
4. There is much to be done during the implementation and transition period and the Commission has therefore given the issue of implementation and transition considerable thought. The matters set out in this Part of the Report detail the steps that the Commission proposes to complete during the implementation and transition period.

Report to the Minister of Fisheries

5. The Commission is required to report to the Minister of Fisheries on both PRESA and POSA under section 6(e)(iv) of the Maori Fisheries Act 1989. That is the purpose of this Report. In relation to those parts of this Report that relate to PRESA, the Minister has 30 days within which to consider this Report and, if he has concerns regarding any aspect of the allocation model, to request that the Commission reconsider that aspect of the model. Subject to any required reconsideration, the Commission is then empowered under section 9(2)(c) of the Maori Fisheries Act 1989 to give effect to the model for

PRESA allocation, although in *He Kawai Amokura* the allocation of PRESA also currently envisages the enactment of the proposed Maori Fisheries Development Bill. In relation to POSA, after receiving the Commission's Report, it is for the Minister to introduce the proposed new Maori Fisheries Development Bill into Parliament.

Draft Maori Fisheries Development Bill

6. This Report includes, as Appendix 1, a proposed new Maori Fisheries Development Bill, which is designed to implement the allocation model in this Report. The draft Bill will necessarily also deal with aspects of PRESA for the purposes of consistency and continuity. *He Kawai Amokura* envisages that the proposed Maori Fisheries Development Bill will be introduced and passed through Parliament by the earliest date possible in order to allow allocation to commence on 1 October 2003.

Litigation

7. In accordance with the Commission's undertaking to the High Court, in early April 2003 the Commission issued its Full Particulars Report, which provided the parties involved in the High Court litigation over the 1998 PRESA allocation model (and Iwi and other interested persons) with notice of the full particulars of the scheme for allocation that are now included in this Report to the Minister.
8. It remains possible that, despite the best efforts of the Commission to address all the allegations made against the 1998 PRESA allocation model in *He Kawai Amokura*, some parties might still attempt to restrain the Commission from reporting to the Minister. This would be most unfortunate as the restraining order granted in 1999 ultimately had a deleterious effect on the then levels of support for the 1998 PRESA allocation model. The conflicting and often competing tensions within the allocation debate have required compromise on the part of all parties. The Commission hopes that, given the 93.1% support of Iwi for the Commission to report to the Minister, any dissenting minority will exercise restraint and allow the next stage of the allocation process to proceed, namely, the Minister's consideration of this Report and the introduction of the Draft Maori Fisheries Development Bill to Parliament.

FIGURE 10

Implementation Timeline for Allocation

(assumes no delays to programme due to litigation or Parliamentary processes)

ALLOCATION	DATES						
	01/10/02 - 30/09/03	01/10/03 - 30/09/04	01/10/04 - 30/09/05	01/10/05 - 30/09/06	01/10/06 - 30/09/07	01/10/07 - 30/09/08	01/10/08 - 30/09/09
Year	1	2	3	4	5	6	
Preparation							
Full Particulars Report	April 03						
Report to Minister	May 03						
Legislation	pre Oct 03						
Allocation Begins	01/10/03						
TE OHU KAI MOANA							
Established	July 03						
Working Capital	as per budget	as per budget	as per budget	as per budget	\$5 M Working Capital	built to \$10 M over years	
Sale of Quota and Income Shares	moratorium	moratorium	commence for some moratorium for those just picking up quota	commence for some moratorium for those just picking up quota	commence for some moratorium for those just picking up quota		
IWI							
Working with Te Ohu Kai Moana on requirements for Iwi Allocation	yes	yes	yes	yes	yes	yes	yes
PRESA Cash required for Iwi Allocation	medium	medium-high	medium-high	medium-high	medium	small	small
Cash available to Iwi	sufficient to meet demands as normal but subject to Allocation formula where possible	sufficient to meet demands as normal but subject to Allocation formula where possible	sufficient to meet demands as normal but subject to Allocation formula where possible	sufficient to meet demands as normal but subject to Allocation formula where possible	sufficient to meet demands as normal but subject to Allocation formula where possible	sufficient to meet demands as normal but subject to Allocation formula where possible	sufficient to meet demands as normal but subject to Allocation formula where possible
ACE Rounds							
AOTEAROA FISHERIES LIMITED							
AFL begins full operations	01/10/03						
PRESA cash placed with AFL at year start	maximum	75%	50%	25%	repaid		
Dividends	suspended	suspended	suspended	suspended	commence		
TE WAI MAORI TRUST							
Annual Funding	commence 01/10/03						
Capital Injection - \$10M in year 5, then \$1M per annum until get to \$20M	as per budget	as per budget	as per budget	as per budget	\$10M	Further \$1M minimum \$2M if possible	
TE PUTEA WHAKATUPU TRUST							
Established	01/10/03						
up to \$1M/annum	yes	yes	yes	yes			
\$20M Capital Injection						\$20 M	

9. The Commission believes that the Waitangi Tribunal in 1992 and the Privy Council in 2001 were both correct when they stated in relation to allocation that *"Treaty matters are more for statesmen than lawyers"*. The Commission therefore remains hopeful that *He Kawai Amokura* can be implemented without further delay and that any further issues are addressed, not before the Court, but in Parliament and the Select Committee.

Appointment of Commissioners

10. The Draft Maori Fisheries Development Bill empowers Te Ohu Kai Moana (the new central trust) to deal with the POSA assets and allocate the PRESA assets in place of the present Commission. Both the Commission and Te Ohu Kai Moana may need to exist concurrently for a short period to allow sufficient time for the Commission to cease operating and Te Ohu Kai Moana to prepare for its activities.
11. To maintain continuity and understanding of *He Kawai Amokura* it is proposed that all present Commissioners should continue as Commissioners of the Treaty of Waitangi Fisheries Commission until the commencement of the proposed Maori Fisheries Development Act. Upon enactment the Minister of Maori Affairs shall appoint the seven initial Commissioners to Te Ohu Kai Moana from the existing Treaty of Waitangi Fisheries Commissioners.¹
12. Any Commissioner appointed as an initial Commissioner of Te Ohu Kai Moana will hold a dual warrant that includes the Treaty of Waitangi Fisheries Commission. Those Commissioners who are not also appointed to Te Ohu Kai Moana shall no longer remain Commissioners of the Treaty of Waitangi Fisheries Commission. In relation to the initial Commissioners, three (3) will retire after a term of two years with the remaining four (4) retiring after a term of four years in order to provide continuity. Commissioners can be appointed for a maximum of 2 consecutive terms after which they must stand down for a minimum of 2 years.²

Constitutions of POSA entities

13. In the time between this Report to the Minister and the enactment and commencement of the new Maori Fisheries Development Act, the Commission intends to develop and seek comment from Iwi and other stakeholders on the trust deeds and/or constitutions of:
- (i) Te Ohu Kai Moana;
 - (ii) Aotearoa Fisheries Limited;
 - (iii) Te Wai Maori Trust, and
 - (iv) Te Putea Whakatupu Trust.
14. There will be no separate constitution for Te Kawai Taumata as the Draft Maori Fisheries Development Bill attached as Appendix 1 of this Report sets out in sufficient detail how Te Kawai Taumata will operate. The Constitution of Te Ohu Kai Moana shall also include provisions relating to Te Kawai Taumata as necessary.
15. The deeds and constitutions are fundamental to all operational and administrative aspects of the above entities. However, because all substantive allocation issues have been dealt with in the allocation model contained in this Report, the Commission and Te Ohu Kai Moana will be debarred from debating substantive allocation issues when drawing up the deeds and constitutions of the various post-allocation entities.

Establishment and appointments

16. It is anticipated that Te Ohu Kai Moana will be established prior to 1 October 2003. Te Ohu Kai Moana's initial tasks will therefore include:
- (a) confirming the constitutions and deeds for the post allocation entities,
 - (b) appointing directors to Aotearoa Fisheries Limited;
 - (c) appointing trustees to Te Putea Whakatupu Corporate Trustee Limited;
 - (d) appointing trustees to Te Wai Maori Trust Corporate Trustee Limited, and
 - (e) developing a draft budget for Te Ohu Kai Moana for the 2003/2004 year and circulating this to Iwi for comment.

¹ See section 20(1) of the Draft Maori Fisheries Development Bill.

² Section 20(4) of the Draft Maori Fisheries Development Bill.

Allocation to Iwi

17. Allocation is anticipated to commence from 1 October 2003. From that date Aotearoa Fisheries Limited will take responsibility for the assets transferred to it. Te Putea Whakatupu Trust will take responsibility for the management of programmes to develop Maori human resources and Te Wai Maori Trust will establish, in conjunction with Te Ohu Kai Moana and Iwi, its key priorities for action.
18. The Commission proposes that active trading for PRESA quota will cease on 30 June 2003 and that, prior to allocation commencing, Charisma Developments Limited (the company used by the Commission to purchase quota where there were shortfalls in the initial Crown transfers of PRESA quota) will transfer its assets to Te Ohu Kai Moana.
19. Before any existing Iwi organisation may be approved by Te Ohu Kai Moana as the Mandated Iwi Organisation that can receive allocation, the Iwi organisation must:
 - (a) have a constitution that meets the standards set out in the Draft Maori Fisheries Development Bill³ and is approved by Te Ohu Kai Moana;
 - (b) have met all the structural requirements as set out in the Draft Maori Fisheries Development Bill⁴ and received the approval of Te Ohu Kai Moana;
 - (c) have a register of members that is equal to, or, exceeds the number of members required of that respective Iwi as set in the Draft Maori Fisheries Development Bill⁵ and which is approved by Te Ohu Kai Moana, and
 - (d) have obtained coastline agreements⁶ and where appropriate harbour and freshwater agreements with all affected Iwi which have been approved by Te Ohu Kai Moana in accordance with the Draft Maori Fisheries Development Bill.
20. Mandated Iwi Organisations that meet all the Commission's requirements will be eligible to uplift their allocation of PRESA cash, cash for any quota shortfalls, AFL income shares and quota from 1 October 2003. Allocation will only happen on 1 October or 1 April in every year to coincide with the start of each fishing year and Te Ohu Kai Moana's financial year. The timing of allocation to Mandated Iwi Organisations must happen in an orderly manner that allows Te Ohu Kai Moana the ability to maintain administrative control. Allocation of quota to Iwi will coincide with the relevant fishing year of each species.
21. While the Commission or Te Ohu Kai Moana can assist Iwi during the fishing year to complete the requirements expected of them, legal transfer of the ownership to an Iwi of their Allocated Quota will not occur until the start of the fishing year so that the obligations for any year are clear and known to all parties.
22. Each eligible Iwi will have the ability to uplift their entitled quota in any portion it desires but will be required to identify its intention to Te Ohu Kai Moana at least six months before the start of the fishing year. For example an Iwi could decide to initially uplift only Rock Lobster and Paua and build local capability in directly managing that prior to expanding to other inshore or deepwater operations.
23. Dividends from AFL will commence once Te Putea Whakatupu Trust and Te Wai Maori Trust have been initially capitalised to \$20 million and \$10 million respectively – this is expected to be in the year commencing 1 October 2007, subject to Te Ohu Kai Moana Group achieving a debt to asset ratio of 25%.

Annual ACE rounds

24. The Commission considers that the assistance provided by ACE rounds helps prepare Iwi organisations for some of the roles they will undertake after allocation.

³ See section 9 and Schedule 7 of the Draft Maori Fisheries Development Bill.

⁴ See section 9 and Schedule 7 of the Draft Maori Fisheries Development Bill.

⁵ See sections 9 and 47(1)(c) and column 4 of Schedule 4 of the Draft Maori Fisheries Development Bill.

⁶ See sections 7, 8 and 47(1)(b) of the Draft Maori Fisheries Development Bill.

25. The Commission maintains that the provision of assistance through ACE rounds is a separate and distinct statutory function to allocation. The annual ACE assistance will continue to be provided without prejudice to final allocation.
26. Obviously where an Iwi has uplifted all its quota (after meeting all the requirements including coastline agreements) that quota will no longer form any part of the assistance offered by the Commission through future annual ACE rounds and that Iwi will no longer participate in the ACE rounds assistance programme. Any ACE that is derived from quota that has not yet been allocated, or has not been uplifted by an Iwi to whom the quota has been allocated, will continue to be used in the annual ACE assistance rounds.
27. The Commission has determined that for practical reasons it will progressively implement the allocation model during the annual ACE assistance rounds.
28. It is not expected that all coastal length agreements will be completed before the October 2003 ACE round commences. Accordingly, the Commission proposes that, for the ACE round relating to the fishing year commencing on 1 October 2003, the following will apply:
- In calculating the coastline components of ACE available to Iwi in each FMA actual FMA coastline lengths will be used for both Inshore and Deepwater fishstocks. These coastline measures will include the measurements for Great Barrier Island and Stewart Island for the appropriate FMAs;
 - In the Panui for the ACE round, the portion of ACE corresponding to any Harbour Quota held by Te Ohu Kai Moana for any inshore PRESA species will be identified;⁷
 - For deepwater ACE, the 75% population and 25% coastline formula will apply. The population calculations will use Iwi population figures based on the 2001 Census that are set out in Schedule 4 to the Draft Maori Fisheries Development Bill;⁸
 - The separate Chatham Islands fishery calculations will be applied for all fishstocks introduced into the QMS prior to 1 October 1999,⁹ and
 - The Freshwater fishstocks will be separately identified.¹⁰
29. It will still be the decision of Iwi with rohe in each FMA (freshwater or marine) to decide amongst themselves how the available ACE for the FMA or Freshwater QMA will be divided. That decision will also need to address how PRESA Inshore ACE associated with harbours in the FMA is to be distributed.
30. Where Mandated Iwi Organisations are eligible to receive allocation but have not uplifted some or all of their quota, the ACE from the quota not uplifted will continue to be part of the ACE rounds, except that the ACE for those Mandated Iwi Organisations will be identified by Te Ohu Kai Moana in terms of their entitlement under the allocation model. The available ACE for such Mandated Iwi Organisations will be separated from the ACE relating to the 'unallocated' quota and will not need to be included in the normal ACE distribution round.
31. Throughout the implementation period there will be a requirement for the quota that has not been allocated to be actively managed. The costs and charges associated with the ongoing management of these assets will principally include Government levies, SeaFIC and stakeholder company levies and general Te Ohu Kai Moana administration costs. Where Mandated Iwi Organisations have not met the Commission's requirements for allocation, Te Ohu Kai Moana will recover the costs of administering the residual quota assets through annual ACE rounds until such time as all the quota has been transferred to Iwi.
32. More recently, ongoing access to annual ACE rounds has been dependent on the provision by Iwi organisations of Annual Reports and Accounts to the Commission and their Iwi members. This documentation is needed to demonstrate that the Iwi organisation is acting on behalf of all of its members by providing them with adequate information on the Iwi's fishing activities, opportunities to participate in

⁷ See section 54 of the Draft Maori Fisheries Development Bill.

⁸ Deepwater ACE assistance will be offered using actual lengths shall be provided on the same basis as has occurred with previous ACE rounds. Iwi within the FMA will need to decide how to divide the ACE amongst them, unless coastline length agreements have been executed and approved by the Commission. Also see section 52 of the Draft Maori Fisheries Development Bill.

⁹ See section 53 of the Draft Maori Fisheries Development Bill.

¹⁰ See section 58 of the Draft Maori Fisheries Development Bill.

discussions on fisheries issues and appropriate transparency in the operations to show fiduciary responsibilities. This condition will continue to apply during the implementation of the allocation model in this Report.

33. The Commission has also decided that, if sufficient progress is not being made by Mandated or Recognised Iwi Organisations toward meeting the established requirements for allocation, restrictions will apply to the participation by those Iwi in ACE rounds. The Commission will continue to work with Mandated and Recognised Iwi Organisations to prepare them for their role as quota owners. The ACE rounds will continue as normal but Iwi must use their best endeavours to progress their constitutions and structures in order to meet Commission requirements. A failure to do so may result in the Commission having to provide some form of incentive to recalcitrant Mandated or Recognised Iwi Organisations, such as a reduction to the level of assistance provided to those particular Iwi during the ACE rounds.

Funding for Te Ohu Kai Moana

34. To meet the costs associated with implementation, it has been decided that the expected deficit between what is received from the ACE rounds and the overall costs of implementation will be met from PRESA cash. It is estimated that across the expected five years taken for implementation this deficit will be \$18 million.¹¹
35. Te Ohu Kai Moana will also receive a separate \$5 million capital payment from PRESA cash at the time of allocation.¹² This fund is held on behalf of Iwi and therefore Te Ohu Kai Moana may only expend the interest earned on this capital reserve fund. Te Ohu Kai Moana may not dispose of the capital of the fund other than through the distribution to all Iwi (on the basis of Iwi population) or transfer to Te Putea Whakatupu Trust and/or Te Wai Maori Trust. If it is transferred to either of these Trusts they are subject to the same restrictions and on their wind-up the capital reserve fund will be distributed to Iwi on the basis of Iwi population.

36. Initially the PRESA cash will also be placed with AFL until required to meet the funding and allocation needs of Te Ohu Kai Moana. This will ensure AFL is adequately capitalised and able to maintain a conservative balance sheet to sustain the volatilities that can be experienced within the fishing industry. AFL will repay the funds progressively to Te Ohu Kai Moana over a 4 year period allowing Te Ohu Kai Moana to meet its requirements for the allocation of cash to Iwi.
37. The funds placed with AFL will be in the form of a shareholder loan from Te Ohu Kai Moana repayable on demand. During the period that AFL holds the PRESA cash, interest will be paid to Te Ohu Kai Moana on the outstanding balance each year. This interest will form part of the operational funding required by Te Ohu Kai Moana during the period prior to the commencement of dividends being paid by AFL.
38. As the annual strategic plan for AFL requires approval from the shareholder, Te Ohu Kai Moana, suitable controls will be maintained to ensure that AFL is able to meet the repayment schedule required for Te Ohu Kai Moana to maintain the allocation of cash to Iwi. A forecast has been prepared using annual plans from the Te Ohu Kai Moana Group as it is now structured, demonstrating that AFL is able to repay the cash advances over the 4 year period required. The interest element to be paid by AFL will also contribute to the additional funding required for the Te Wai Maori Trust.
39. On the repayment of the PRESA cash to Te Ohu Kai Moana, the payment of annual dividends from AFL to Iwi and Te Ohu Kai Moana will commence. This is expected to occur in the year beginning 1 October 2007 subject to the Te Ohu Kai Moana group attaining a debt to asset ratio of 25%.

¹¹ At the end of the transition at 30/09/2008, the cash held shall be used to provide the capital required for Te Putea Whakatupu Trust and Te Wai Maori Trust, the working capital for Te Ohu Kai Moana and the cash entitlement for any Iwi that have not uplifted their assets. Any residual surplus that remains shall then be distributed across all Iwi in proportion to their 2001 Census populations unless, at the preceding Te Ohu Kai Moana hui-a-tau, 75% of representative Iwi organisations representing more than 50% of Iwi affiliated Maori have voted in favour of Te Ohu Kai Moana retaining those surplus funds for use in further transition programmes.

¹² See sections 48(1)(c) and 48(2) of the Draft Maori Fisheries Development Bill.

40. The progressive repayment of the investment noted above will allow payment to Iwi of their cash entitlement as they become eligible for it. Those Iwi eligible for a top-up (due to their base allocation package being less than \$1 million) will receive the amount of cash set aside for them as part of their allocation.¹³

Capitalisation – Te Putea Whakatupu Trust and Te Wai Maori Trust

41. For the transition period of 5 years an annual payment of up to \$1 million into Te Putea Whakatupu Trust will be made until the capital of \$20 million is placed with Te Putea Whakatupu Trust. This funding (which is derived from the funds held for transition referred to earlier) will allow the continuation of the scholarship programmes currently underway. The repayment of PRESA cash by AFL will allow the capitalisation of Te Putea Whakatupu Trust – this is expected in year five (ie by 30 September 2008) if allocation commences on 1 October 2003. With the allocation of assets to Iwi it is expected that a substantial part of the scholarship and training programmes will be taken up directly by Iwi or there will be a greater number of joint programmes.¹⁴
42. Repayment of the PRESA cash by AFL will also allow the establishment of Te Wai Maori Trust at \$10 million in the year ending 30 September 2008. Te Ohu Kai Moana will subsequently increase the capital of that fund by up to \$1M per year and use its best endeavours to increase the capital by a further \$1M per annum until the total capital for Te Wai Maori Trust is \$20M. In the transition period, a payment shall be made from the transition funding – this is expected to start at \$150,000 per annum and rise to \$500,000 per annum at year 5. The actual funding level will however, be provided by Te Ohu Kai Moana and set as part of Te Ohu Kai Moana's budget process. This will follow comment from the Trustees of Te Wai Maori Trust and comment from Iwi.¹⁵
43. Repayment of the PRESA cash by AFL will also allow the establishment of working capital for Te Ohu Kai Moana. This will be the last payment of the AFL investment. This working capital will be able to be

increased above the \$10 million base. The mechanism to generate this working capital will be the aggregation of any surplus income over expenditure received by way of dividends on the Income Shares in AFL and returns on the investment of the working capital.

INTERIM ENDEAVOURS TO SUPPORT IWI

44. While the Commission has set out standard criteria that each Mandated Iwi Organisation must comply with to receive allocation the assistance to be provided to Iwi will need to be tailored to the individual Iwi requirements. The Commission has developed programmes to assist Iwi progress towards compliance with its requirements but the ultimate responsibility for achieving compliance is with each Iwi organisation.
45. The Commission and Te Ohu Kai Moana will continue to develop programmes. Budgeting for these programmes will be part of the new Te Ohu Kai Moana annual programme that will be circulated to Iwi for comment prior to the start of any financial year. The programmes will include training and assistance as assessed to:
- (a) assist Iwi to develop Iwi registers, the Maori Registration Service and Iwi helpline;
 - (b) develop constitutional and governance requirements;¹⁶
 - (c) assist with the development of asset management body policy and functions;
 - (d) human resource development, and
 - (e) individualised assistance via the scholarship programme.

¹³ See section 60 of the Draft Maori Fisheries Development Bill.

¹⁴ See Part 4 of the Draft Maori Fisheries Development Bill.

¹⁵ See Part 5 of the Draft Maori Fisheries Development Bill.

¹⁶ See Schedule 7 of the Draft Maori Fisheries Development Bill.

Lwi registers

46. Mandated Lwi Organisations are required to have an Lwi register. This requirement is aimed at improving accountability of and Lwi member participation in, their Mandated Lwi Organisations. The Commission and Te Ohu Kai Moana will offer support and assistance to Lwi initially by providing software and training on how to establish Lwi registers.¹⁷

Maori Registration Service

47. The Maori Registration Service (MRS) is a scheme to complement Lwi registers and has two potential advantages for Lwi organisations.
48. First, it will help Lwi organisations to download initial lists of their members. The cost of establishing and maintaining Lwi registers is high, and the opportunity for all Lwi to immediately download a substantial initial Lwi roll from MRS could save, collectively, hundreds of thousands of dollars.
49. Second, it will assist in tracking changes in postal addresses that should greatly reduce problems with updating the addresses of Lwi members. Lwi organisations will be able to link to the MRS database at cost, and obtain updated information for all their members before any mail outs. Maintenance costs would be greatly reduced as Lwi organisations can download from the database each time they had a significant mail-out.
50. Written permission will be required from each individual Maori on the Electoral Roll before their information will be recorded on the MRS database and shared with Lwi organisations. This is a requirement of the Privacy Act. Those individual Maori who do not give their consent will not be included in MRS. However, Mandated Lwi Organisations will still need to show they have made efforts to encourage such members to agree to be part of MRS and they will need to provide other arrangements to maintain the accuracy of their database for such members or otherwise detail how they expect to keep their register up to date.
51. At present the Commission intends to continue working to ensure the MRS can provide a viable service to Lwi organisations. A pre-condition of the Commission's participation is that the recognised Lwi used by the MRS are those recognised by the Commission.
52. The Commission is proposing to provide some capital funding to establish MRS as it considers this will result in significant cost savings to Lwi nationwide compared with the costs of each Lwi trying to gather data from members living around the country. This is a capital injection and the Commission will not provide any ongoing resources for ongoing operations. These will be met by charging organisations using the service.
53. The financial viability of the MRS depends, among other things, on:
- The committed rate of uptake of the service by Lwi organisations (which is partly dependent on cost) – if many Lwi organisations choose to stand outside of the project, the MRS will not remain viable, and
 - The number of Maori individuals who give permission for inclusion of their personal data from the Electoral Roll onto the MRS data base – the Commission must decide what is the minimum acceptable level of participation from the approximately 360,000 individual Maori who will receive the MRS panui if it proceeds to that stage. The Commission considers that a minimum of at least 20% is initially needed. The ongoing financial support of the MRS is dependent on attaining this threshold.
54. If there is insufficient support from either dimension, it is likely that the Commission will withdraw its support (and funding) for the MRS programme. The Commission proposes to panui Lwi and further gauge support for the programme shortly. A key factor for Lwi support is likely to be the need for the agency involved in providing the service to demonstrate its ability to work in a manner that both respects the tikanga of each Lwi while providing services in a fair and balanced manner without any bias to any Lwi.

¹⁷ See Part E of this Report which discusses the issue of Lwi registers in more detail. See also sections 16(1)(c)(iv) and (v) and Schedule 7 of the Draft Maori Fisheries Development Bill.

55. The Commission will also encourage Maori voter registration with the MRS and support Iwi organisations to set up registers that can use the service.

Iwi helpline

56. In 1996, the Commission established an Iwi helpline to assist Maori to identify their Iwi links (toll-free number 0800-119-722). The helpline links individual Maori with their most likely Iwi organisations. Iwi are expected to have mechanisms in place to assist an applicant with Iwi identification where possible.
57. The Commission has decided to continue to provide the Iwi helpline. The service has been successful and provides an important first port of call for those Maori who want to discover their Iwi links. Concerns have been expressed during the operation of the helpline that some Iwi organisations could be more helpful in dealing with helpline referrals. The Commission is of the firm view that every Iwi organisation has an obligation to assist individual Maori who use this helpline.

Develop constitutional and governance requirements

58. The Commission and Te Ohu Kai Moana will continue to assist Iwi organisations to meet the requirements for allocation through financial assistance and the provision of appropriate support.¹⁸
59. The Draft Maori Fisheries Development Bill at Schedule 7 sets out the governance criteria that recognised Iwi organisations must meet in order to be mandated.
60. At any stage, either before or after mandating the Iwi organisation Te Ohu Kai Moana can, where reasonable, further develop the constitutional and governance obligations expected of mandated Iwi organisations by way of notice in the Gazette.¹⁹ The process allows Te Ohu Kai Moana the flexibility to ensure that Mandated Iwi Organisations continue to meet the minimum company and fiduciary obligations expected of Mandated Iwi Organisations that own and control Treaty settlements.

Development of asset management body policy and functions

61. This component of assistance will concentrate specifically on the Asset Management Body based on the business functions it will undertake. While these functions may vary from entity to entity, there are core generic functions that will be required of all asset management bodies. The Commission will focus its attention on developing enhancement opportunities associated with these core generic functions.
62. The core generic functions of an asset management body for fisheries may include:
- Strategic planning;
 - The development of a strategic analytical framework or tool kit that will guide the Iwi organisation and asset management body in assessing its "best economic fit" based on the its fisheries asset;
 - Fisheries Management including fisheries management plans;
 - Financial Management of fisheries assets;
 - Commercial Development;
 - Quota Management and Brokerage;
 - Office Management and administration;
 - Risk Management associated with compliance and regulatory control;
 - Human Resource Development for fisheries;
 - Iwi representation in stock assessment groups, research planning, quota owner multi sector fisheries management groups, legislative and regulatory reform; training and education for fisheries, and
 - Input into the business and strategic planning cycles of key organisations that impact on the development of Maori fisheries. For example, Department of Conservation, Ministry of Fisheries, Seafood Industry Council and Te Ohu Kai Moana.²⁰

¹⁸ See Part E of this Report below and sections 16 and 18 of the Draft Maori Fisheries Development Bill.

¹⁹ See section 9(3)(d) of the Draft Maori Fisheries Development Bill and Part E of this Report which discusses this aspect of the allocation model.

²⁰ See Schedule 7 of the Draft Maori Fisheries Development Bill.

Human resource development

63. The Commission recognises that the success of any Mandated Iwi Organisation will depend largely on the available pool of human resource upon which it can draw. This element of Commission assistance focuses on developing the skills of staff that work in the asset management body/Mandated Iwi Organisation. The process will include:

- The development of core competencies for generic positions;
- Assessment tools to assess staff against core competencies;
- Needs identification tools for upskilling;
- Procedures for ascertaining the best intervention for skill enhancement;
- Effective performance management systems to gauge and enhance individual performance towards business outcomes, and
- Staff development plans to monitor skill enhancement.

64. Where possible a skill enhancement or acquisition should be matched to real qualifications either gained through a tertiary provider or through some form of structured industry based training that can be delivered in the workplace.

65. Te Ohu Kai Moana will assist Mandated Iwi Organisations and their asset management bodies in identifying and strategising the best process for educating and training their staff.

ASSISTANCE THROUGH THE SCHOLARSHIP PROGRAMME

66. The current Te Ohu Kai Moana Charitable Trust Scholarship Programme concentrates on three streams of training, namely, tertiary applied science and technology, management skills and training, and technical training. This training covers a wide range of skills for the fishing industry and has provided many Maori with the opportunity to undertake studies that may have never been available to them in the past.

67. This component will be similar to the current scholarship programme and it will focus on being able to facilitate Maori through financially assisted Training and Development opportunities into the business and activity of fishing. It will need to retain the disciplines that are currently supported (tertiary applied sciences and technology etc), however, greater emphasis will be placed on co-sponsorship arrangements with Iwi to ensure that the training or study is meeting the needs of their fisheries development.

68. This role that the Commission currently carries out will become the responsibility of Te Putea Whakatupu Trust under *He Kawai Amokura*.

69. It is acknowledged that with the allocation of assets a significant responsibility for ensuring benefit to their members rests with Iwi. Accordingly, it is expected that the development of the human capital of Iwi members will be substantially funded by the Iwi concerned. If not fully funded by Iwi, the Commission expects that where joint programmes are proposed the majority of the funding should come from Iwi.

INCENTIVES TO PERFORM/SANCTIONS FOR NON-PERFORMANCE

70. The Commission considers that there should be incentives for genuine effort to achieve implementation and penalties for those Iwi organisations that are not making progress – particularly if their lack of progress impedes other Iwi from being able to receive their full allocation due to, for example, a lack of other approved Iwi organisations with which coastline agreements can be reached.

71. In situations where an Iwi has met all the tests required, but cannot gain agreement to coastlines because adjacent Iwi do not have Mandated Iwi Organisations that they can reach agreements with, the Commission has proposed that, two years after recognition of the Mandated Iwi Organisation, Te Ohu Kai Moana may provide the Mandated Iwi

Organisation with its cash entitlement and Income Shares, provided it can show that it has approached coastline agreements on a good faith basis.²¹

72. While agreement on allocation was being forged, annual access to quota (now represented by ACE) has been made available to Iwi to assist them in gaining experience in the business and activity of fishing. Estimates are that the annual allocation to Iwi has had a value of \$15-20 million dollars per annum. More recently, ongoing access to annual ACE rounds has been dependent on the provision of Annual Fisheries Reports to both the Commission and the Iwi members.
73. For the 1 October 2002 ACE round the Commission made access conditional on Iwi organisations demonstrating that progress was being made toward getting representation and structural policies written into their constitutions and underway in practice. These requirements are needed to demonstrate that the Iwi is acting on behalf of all its members by providing them with adequate information on the Iwi's fishing activities, opportunities to participate in discussions on those issues and appropriate transparency in the operations to show fiduciary responsibilities.
74. This condition will continue to apply during implementation and transition. The Commission has decided that if sufficient progress is not being made, there may be restrictions on ACE distribution.
75. For the 1 October 2003 ACE and subsequent rounds, where an Iwi cannot provide proof that substantial progress has been made towards meeting the Commission's allocation requirements over the previous twelve months, Te Ohu Kai Moana may withhold the ACE for that Iwi and sell it to AFL at commercial rates. The funds received from the sale of that ACE will be held in trust for the Iwi and only made available when the Mandated or Recognised Iwi Organisation can provide proof of progress.

²¹ See section 47(3) of the Draft Maori Fisheries Development Bill.



G

Appendices

PART 5

APPENDIX 1

**MAORI FISHERIES DEVELOPMENT BILL
PROPOSAL FOR LEGISLATION BY THE TREATY OF
WAITANGI FISHERIES COMMISSION UNDER
SECTION 6(e)(ii) MAORI FISHERIES ACT 1989**



TREATY OF WAITANGI
FISHERIES COMMISSION
www.tokm.co.nz

Maori Fisheries Development Bill 2003

EXPLANATORY NOTE

General Policy Statement

This Bill represents the Parliamentary stage of a long process directed towards achieving permanent and acceptable settlement of Maori claims in respect of commercial fisheries.

It follows a long process of consultation and litigation, described in general terms below in this note.

It is both necessary and appropriate that legislation be the next step in the process. As the Privy Council has stated in endorsing a comment from the Waitangi Tribunal “Treaty matters are more for statesmen than lawyers”.¹

General Background

The Treaty of Waitangi Fisheries Commission is a statutory body that is required by section 6(e) of the Maori Fisheries Act 1989, to develop in consultation with Maori proposals for the allocation of the various assets and benefits that are derived from the 1989 interim and 1992 final settlement of Maori claims in respect of commercial fisheries. This Bill embodies the proposals that the Commission is required by that statute to report to the Minister of Fisheries.

The Commission delivered its report *He Kawai Amokura* on 9 May 2003. That report represented the culmination of years of discussion and debate that progressed to provide a robust and fair model that can provide a durable and thriving presence for Maori in New Zealand’s fishing sector. *He Kawai Amokura* provides the necessary background and policy detail to be able to appreciate the various dimensions and perspectives of the

¹ *Manukau Urban Maori Authority & Ors v Treaty of Waitangi Fisheries Commission & Ors* [2002] 2 NZLR 17.

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debate that have resulted in the intersecting and finely balanced set of compromises that is the allocation model in this Bill.

Maori customary fishing rights were secured and guaranteed by the Treaty of Waitangi in 1840. Maori had claimed for many years that the Crown breached Treaty fishing rights through a series of actions up to and including the introduction of the Quota Management System (QMS) in 1986.

Claims to the Waitangi Tribunal and in the Courts prompted the Crown to negotiate with Maori on Treaty fishing rights. These negotiations led to a two-stage settlement of claims over Maori commercial fisheries.

The first stage was an interim arrangement given effect by the Maori Fisheries Act 1989. This created a Maori Fisheries Commission to receive quota assets and to hold and manage them on behalf of Maori. The Maori Fisheries Commission was to promote Maori involvement in the business and activity of fishing.

Over four years, the interim settlement transferred to the Commission approximately 10% of quota of the total allowable commercial catch for each species then being managed under the QMS. In some cases, quota itself was not immediately available, so cash was transferred in lieu of quota.

Commercial fishing claims were finally settled with the signing of the Deed of Settlement (the Deed) in September 1992. This was given effect by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act).

In the Settlement, the Crown:

- (a) gave Maori funds to buy a 50% ownership stake in Sealord Products Limited, a major quota holder and fishing business;
- (b) undertook to provide Maori with 20% of the quota for all new species brought within the QMS;
- (c) gave Maori positions on statutory fisheries management bodies;

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- (d) restructured the Maori Fisheries Commission to enhance its accountability to Maori, and
- (e) agreed to make regulations to allow self-management of Maori fishing for subsistence and cultural purposes (called customary fishing).

In return, Maori agreed:

- (a) that the Settlement settled all Maori commercial fishing rights and interests;
- (b) to accept regulations for customary fishing;
- (c) to stop litigation (including any Tribunal claims) relating to Maori commercial fisheries;
- (d) to support legislation to give effect to the Settlement, and
- (e) to endorse the QMS.

In 1992, the Maori Fisheries Commission was restructured into the Treaty of Waitangi Fisheries Commission, known informally as Te Ohu Kai Moana. The initial board of the new Commission was appointed in June 1993. The board was replaced by a board of new Commissioners in August 2000. The principal focus of the Commission has been on allocation issues. For PRESA, the Commission had to act upon the resolutions passed at the 1992 hui-a-tau of the Maori Fisheries Commission. For POSA, the Commission had to develop a procedure to identify the beneficiaries and their interests under the Settlement, and a procedure for distributing benefits to them. In both cases, the Commission was required to report its proposals to the Minister of Fisheries, and this it has done.

Assets that make up the Settlement

The Settlement is made up of two sets of assets; the pre-settlement assets (PRESA) and the post-settlement assets (POSA). Together, PRESA and POSA represent a substantial set of Maori economic assets.

PRESA are those assets secured in the 1989 interim settlement that was effected by the enactment of the Maori Fisheries Act on

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20 December 1989. PRESA are those assets held by the Commission as at 6 January 1993 (or final settlements relating to those assets) and consist of quota, shares in Moana Pacific Fisheries Limited, and cash.

PRESA initially comprised approximately 10% of the quota for each of the species then in the QMS and \$10 million paid to the Commission by the Crown.² As a result of commercial development and investment by the Commission, PRESA currently comprise:

- (a) 1,751,982,275 quota shares;
- (b) all the shares in Te Ohu Kai Moana Limited, which owns 83.74% of Moana Pacific Fisheries Limited;
- (c) an 18.6% share in Te Kupenga Limited, which owns 16.26% of Moana Pacific Fisheries Limited, and
- (d) approximately \$36 million in cash (prior to the proposed exchange of the shares in Moana Pacific Limited for more cash).

It is extremely difficult to provide any accurate market value of PRESA due to constant fluctuations in the value of quota and the variability in the value of the Moana Pacific Fisheries Limited shares. However, the Commission estimates the market value of PRESA to be approximately \$350 million.

POSA are those assets that resulted from the Deed of Settlement signed on 23 September 1992 that finally settled Maori commercial fisheries claims. The Settlement formed the cornerstone of the Settlement Act that was enacted on 14 December 1992. The Settlement Act clarified, by way of

² In some cases, the Commission received quota from the Crown that was less than 10% of the quota for the species. The Commission received cash in lieu and has attempted to increase its quota holdings to the 10% target in all PRESA species. This has not been possible in all cases and therefore the Commission's allocation model includes provision, where the PRESA quota held by the Commission is less than 10% of a fishstock, for a top-up of cash to be provided to affected Iwi in lieu of quota (see clause 59 and Schedule 1).

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amendment to the Maori Fisheries Act 1989, the Commission's role in relation to the development of a scheme of allocation for PRESA and the distribution of the benefits of POSA. POSA consists of quota, shares in a number of fisheries companies, and cash.

POSA currently comprises:

- (a) a 50% shareholding in Sealord Group Limited held via a shareholding in Kura Limited, a company jointly owned with Nippon Suisan Kaisha, Limited;
- (b) interests in various companies including a 50% shareholding in Prepared Foods Limited, and 100% shareholdings in Prepared Foods Processing Limited, Chatham Processing Limited, and Pacific Marine Farms Limited and control of Pupuri Taonga Trust;
- (c) 20% of the quota for species that have been introduced to the QMS since 1992 (currently 3,320,000,000 quota shares), and
- (d) approximately \$39 million cash (prior to the proposed exchange of cash for the shares in Moana Pacific Limited).

It is important to note that POSA also includes entitlement to 20% of the quota for any further species introduced into the QMS. The Commission estimates that the market value of the POSA assets (excluding provision for the 20% of any further QMS species) is approximately \$350 million.

The Process

Issues relevant to the allocation of PRESA have been the subject of extensive discussion and consultation by the Commission over the last 10 years. Since 1994 the process towards allocation has been delayed by a series of claims before the Waitangi Tribunal and in the Courts. The Courts have made several decisions that have clarified several important allocation issues.

By November 1998, the Commission had developed what it then considered to be the optimum method for PRESA allocation (the 1998 PRESA allocation model). Although the Commission

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considered it had secured sufficient agreement to report to the Minister on the 1998 PRESA allocation model, a High Court order in March 1999 prevented it from reporting. This Court order was lifted in 2002 subject to the Commission undertaking to give the litigant parties at least 20 working days notice of the full particulars of any scheme for the allocation of PRESA that the Commission proposed to include in its report to the Minister of Fisheries. That has been done.

Following the appointment of the current Commissioners in August 2000, the Commission revisited and considered further the 1998 PRESA allocation model and its underlying principles. The Commission looked at:

- (a) the extensive work and consultation that had taken place since 1992;
- (b) all the discussion documents and reports on PRESA allocation produced by the Commission;
- (c) issues raised in legal challenges to decisions of the Commission on PRESA allocation and other matters;
- (d) decisions of the Waitangi Tribunal, High Court, Court of Appeal and Privy Council relevant to allocation, and
- (e) the views expressed by iwi, Maori organisations and other interested Maori for and against the allocation proposals.

The Commission also undertook several further initiatives, including:

- (a) dispute resolution hui with the groups involved in litigation over PRESA allocation;
- (b) the development of proposals for dealing with PRESA and POSA together, and
- (c) consultation with interested Maori and iwi to develop options for allocating PRESA and distributing the benefits of POSA.

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The Commission saw benefit in considering both PRESA and POSA together in light of the delays that the Commission had experienced in relation to PRESA allocation. The Commission felt that this would also allow iwi, Maori and other interested parties to consider the effect and benefits of the settlement, and the allocation model, as a whole.

The proposals in *Ahu Whakamua* and *He Kawai Amokura*, and now embodied in this Bill were not advanced in isolation. They reflect ideas and approaches that have resulted from a long process of development and which have been honed by discussion around the country. Over the last 10 years a number of discussion documents have been produced by the Commission. Extensive consultation has taken place and various working groups established including Taumata Paepae. In 1998/99 the Commission developed and sought agreement to what it thought at that time to be the preferred method of allocation of PRESA. Litigation relating to allocation has also seen Maori journey twice to the Privy Council and generally receive important guidance from the Courts.

Since 2000, the current Commissioners have revisited the Commission's past work and considered a range of options for both PRESA and POSA. Dispute resolution hui have been held. The Commission's work in late 2000 and through 2001 resulted in the release in December 2001 of *He Anga Mua*, which set out a range of possible allocation models for both PRESA and POSA. Consultation hui were subsequently held and submissions received on the options and principles contained in *He Anga Mua*.

After considering the submissions received in response to *He Anga Mua* from iwi, Maori organisations and other interested parties and individuals, the Commission proceeded to develop a single preferred model for PRESA and POSA allocation. This proposal was released as *Ahu Whakamua* in August 2002 and the Commission sought the agreement of iwi and Maori to the proposals contained in *Ahu Whakamua*.

There also remained unresolved issues regarding litigation. The Commission was hopeful that the combined proposal for PRESA and POSA in *Ahu Whakamua* would alleviate concerns

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and facilitate further agreement. The Commission believes the level of agreement it has now secured endorses this approach.

Since releasing *Ahu Whakamua*, the Commission has considered carefully the responses received from iwi and Maori. The Commission has also had discussions with iwi, Maori, maori organisations and other interested parties to hear and better understand their views and comments on *Ahu Whakamua*. The responses received to both *He Anga Mua* and *Ahu Whakamua*, the various hui and other discussions that have been held have assisted the Commission in reaching the allocation model contained in *He Kawai Amokura* and embodied in this Bill.

This Bill and the explanatory note should be read in conjunction with the Report to the Minister - ***He Kawai Amokura***. The Report sets out in more depth the key policies and their intent that underpin this allocation model.

As noted, the allocation model deals with both PRESA and POSA.

The Commission already has the power to implement any proposal for PRESA allocation.

The Bill provides the necessary statutory authority to implement that part of the allocation model relating to POSA. To the extent that several of the conditions applying to POSA are the same as those applying to PRESA, the Bill confirms existing mechanisms for PRESA. For the avoidance of doubt it ensures these provisions apply to both PRESA and POSA.

*Maori Fisheries Development Bill 2003***Clause by clause analysis**

The Preamble describes the background to the Bill.

Clause 1 is the title clause.

Clause 2 is the commencement clause. The Bill comes into force on 1 August 2003.

Part 1**Preliminary provisions**

Clause 3 states the purpose of the Bill.

Clause 4 defines terms used in the Bill. Key definitions in this clause include the following:

- **allocated quota** means quota allocated by the Commission or Te Ohu Kai Moana to a mandated iwi organisation or acquired under an exchange of quota. It also includes quota that an iwi chooses to give allocated quota status. **Part 8** deals with sales and exchanges of allocated quota
- **Aotearoa Fisheries Limited** is the holding company for Maori commercial fisheries assets. **Part 3** describes the special shareholding and directorship provisions for Aotearoa Fisheries Limited and the requirements for distribution of its income
- **coastline relating to an iwi** means the coastline that is agreed or determined under this Act for the purpose of calculating the allocation of quota to that iwi. Detailed provisions are in **clauses 7 and 8**
- **income share** means an income share in Aotearoa Fisheries Limited referred to in **clause 27(1)(b)**
- **iwi** means an iwi described in **Schedule 4** and includes all members of that iwi; and where **Schedule 4** provides for iwi in Hauraki and Te Arawa to be regarded as combined, means the combined iwi
- **mandated iwi organisation**, in relation to an iwi, means an organisation recognised by Te Ohu Kai

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Moana under **clause 9** as the representative organisation of that iwi

- **POSA** means post-Settlement assets being those assets held by the Commission or Te Ohu Kai Moana on behalf of Maori on or after the commencement date that are not PRESA; and includes the 20 percent of quota for any new stock brought under the quota management system (as agreed in clause 3.2 of the Deed of Settlement and given effect to by section 44 of the Fisheries Act 1996)
- **PRESA** means pre-Settlement assets being those assets held by the Commission or Te Ohu Kai Moana on behalf of Maori on or after the commencement date that are described as PRESA in **Schedule 2**
- **recognised iwi organisation** means an organisation recognised under **clause 10**. These organisations have some, but not all, the rights and powers of a mandated iwi organisation and will in time become or be replaced by the appropriate mandated iwi organisation for the relevant iwi
- **representative Maori organisation** means any one of the seven organisations specified in **Schedule 5**
- **Te Kawai Taumata** is the electoral college whose function is to appoint the Commissioners for Te Ohu Kai Moana. Technically, these Commissioners will be the directors of Te Ohu Kai Moana Corporate Trustee Limited which is the Trustee of Te Ohu Kai Moana
- **Te Ohu Kai Moana** means the trust to be established by the Commission under **clause 12**. It is the successor body to the Treaty of Waitangi Fisheries Commission
- **Te Putea Whakatupu Trust** means the trust to be established by Te Ohu Kai Moana under **clause 35**
- **Te Wai Maori Trust** means the trust to be established by Te Ohu Kai Moana under **clause 40**

Clause 5 classifies quota for the purpose of the ownership and management regime created by the Bill. Existing quota are classified in **Schedule 1**. Where new fish stocks are made subject to the quota management system Te Ohu Kai

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Moana is required to classify the stock as deepwater, inshore, or freshwater according to the available evidence.

Clause 6 defines **population of an iwi** for the purposes of the Bill. The population of each iwi is based on the 2001 census and applies even though there may be some double counting arising from Maori identifying with more than one iwi. The population of each iwi is fixed as at that point in time and is described both numerically and in percentage terms in **Schedule 4**. The definition applies only for the purposes of this Bill and does not operate as a precedent or disturb or affect customary rights or claims in respect of any matter not arising under the Bill.

Clause 7 provides a mechanism for the determination of coastline for the purposes of the Bill. As with the determination of the population of an iwi this is for the purposes of this legislation only. Coastlines are critical to the allocation of quota, as inshore quota is allocated 100 percent by coastline and deepwater quota is allocated 25 percent on the basis of coastline; see **clauses 51 and 52**. **Schedule 6** sets out the basis on which Te Ohu Kai Moana is to define lengths of coastline.

Using this data, affected mandated iwi organisations will then work to agree on specified lengths of coastline or specified percentages between defined points applicable to them.

Clause 8 sets out the process for consultation and agreement between iwi and also allows for the situation where a mandated iwi organisation asserts no other iwi has coastline in a particular fishery management area or quota management area.

If the attributions of coastline for the purpose of the Bill cannot be achieved by agreement then the matter can be addressed under the dispute resolution provisions in **Part 9** which may involve Te Ohu Kai Moana and the Maori Land Court.

Clause 9 sets out the functions of mandated iwi organisations and provides a mechanism for their recognition by Te Ohu Kai Moana. To obtain and retain recognition, a mandated iwi organisation must have a

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corporate, trust, or incorporated society structure and be able to demonstrate that it continues to hold the confidence of the majority of the adult members of the iwi who vote at hui or meetings. The corporate structure can be a company under the Companies Act 1993 or a body corporate constituted under another Act eg Te Runanga o Ngai Tahu Act 1996. **Schedule 7** sets out the kaupapa that must be incorporated in the constitutional documents of the mandated iwi organisation.

Clause 10 sets out the functions of recognised iwi organisations and provides a mechanism for their recognition by Te Ohu Kai Moana. A recognised iwi organisation has some but not all of the roles of a mandated iwi organisation. Specifically, a recognised iwi organisation cannot receive PRESA and POSA, cannot receive or purchase income shares or allocated quota, and cannot agree or assert coastlines or enter into agreements for freshwater quota or harbour quota. Recognised iwi organisations can, however, participate in disputes relating to coastline determinations.

Clause 11 sets out the function of representative Maori organisations which is to elect a member of Te Kawai Taumata. The organisations are defined in **Schedule 5**.

Part 2**Te Ohu Kai Moana**

Clause 12 provides for the establishment of Te Ohu Kai Moana and the Corporate Trustee by the current Commission.

Clause 13 sets out the purpose of Te Ohu Kai Moana. The Bill does not confer charitable status on Te Ohu Kai Moana, but it is expected this will be sought. In common with Settlement legislation, the rule against perpetuities is abrogated. Distributions and grants by Te Ohu Kai Moana are also deemed not to affect its charitable status.

Clause 14 sets out requirements for the trust deed of Te Ohu Kai Moana. If Te Ohu Kai Moana has charitable status then no changes can be made that might jeopardise that status. All decisions of Te Ohu Kai Moana are to be made by Te

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Ohu Kai Moana Corporate Trustee Limited, whose directors are described as Commissioners in the Bill.

Clause 15 sets out requirements for the constitution of Te Ohu Kai Moana Corporate Trustee Limited. The role for the Corporate Trustee is to be limited to acting as Trustee of Te Ohu Kai Moana, controlling and managing Te Ohu Kai Moana's assets and performing Te Ohu Kai Moana's various functions.

The constitutions must also require that all Commissioners be Maori and collectively have commercial expertise, business skills, and be well versed in matters of tikanga Maori.

Clause 16 sets out permitted activities of Te Ohu Kai Moana.

Clause 17 sets out the capacity of Te Ohu Kai Moana. Generally, Te Ohu Kai Moana has full capacity to carry out any activity related to its functions.

Clause 18 sets out how Te Ohu Kai Moana may apply its funds. If Te Ohu Kai Moana maintains reserves then they must be separately described in detail in its Annual Report.

Clause 19 details the application of public law to Te Ohu Kai Moana. Te Ohu Kai Moana is not subject to judicial review when it makes decisions which can be referred or appealed to the Maori Land Court. Notice has been taken of the comments of the Law Commission in its Study Paper 13 of August 2002, *Treaty of Waitangi Claims: Addressing the Post-Settlement Phase* especially paragraphs 89 to 104 concerning dispute resolution.

Clause 20 provides for the appointment of Commissioners of the Corporate Trustee. The seven initial Commissioners are to be appointed by the Minister of Maori Affairs and they must be current members of the Commission. Once those appointments are made the appointments of the other members of the current Commission expire. This ensures continuity and consistency of decision making and is compatible with **clause 88**.

After the initial appointments, further appointments are made by Te Kawai Taumata. Commissioners have a maximum of two consecutive full four year terms (excluding

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appointments to fill a casual vacancy) and cannot also be members of Te Kawai Taumata. For the purpose of appointing members of Te Kawai Taumata, iwi are grouped into ten groups in **Schedule 4**. Each group of iwi appoints one member of Te Kawai Taumata and the representative Maori organisations specified in **Schedule 5** also collectively appoint one member of Te Kawai Taumata.

Clause 21 provides for the removal of Commissioners of the Corporate Trustee.

Clause 22 establishes Te Kawai Taumata as the electoral college responsible for appointing and removing Commissioners of the Corporate Trustee. It is to be serviced by Te Ohu Kai Moana. **Schedule 8** sets out the procedural requirements for Te Kawai Taumata.

Clause 23 sets out the membership of Te Kawai Taumata.

Clause 24 provides for alternate members of Te Kawai Taumata.

Clause 25 concerns eligibility for membership of Te Kawai Taumata. Members of Te Kawai Taumata must be Maori and are not entitled to hold office if they are a Commissioner, a director of Aotearoa Fisheries Limited or any Subcompany, or a trustee of Te Putea Whakatupu Trust or Te Wai Maori Trust.

Conversely, a person who is or has within the previous two years been a member of Te Kawai Taumata is not eligible to hold any of those offices.

Clause 26 states when and how members of Te Kawai Taumata may be removed.

Part 3

Aotearoa Fisheries Limited

Clause 27 relates to Aotearoa Fisheries Limited and its role to receive and commercially manage assets on behalf of beneficiaries under the Deed of Settlement. This will mean that Aotearoa Fisheries Limited is a Maori authority for the purposes of the Income Tax Act 1994. The clause establishes the number of income shares and voting shares and how they are to be held.

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There will initially be 125,000 voting shares. All voting shares must be controlled by Te Ohu Kai Moana unless a review under **clause 46** is implemented for the issue or transfer of voting shares to mandated iwi organisations.

Of the 125,000 income shares, Te Ohu Kai Moana must retain 20 percent and must hold the other 80 percent in trust for iwi to be allocated to them through their mandated iwi organisations under **Part 7**.

Clause 28 sets out the directorship restrictions concerning Aotearoa Fisheries Limited. There must be at least five Directors of Aotearoa Fisheries Limited but no more than two of them may be Commissioners or full-time employees of Te Ohu Kai Moana. Similar restrictions apply to the directorships of Subcompanies.

Clause 29 provides for POSA to be distributed to Aotearoa Fisheries Limited by Te Ohu Kai Moana, but with specified exceptions for some POSA that will continue to be held by Te Ohu Kai Moana. Distributions are to be tax neutral.

Clause 30 sets out how Aotearoa Fisheries Limited must distribute its income. Income may only be distributed to holders of income shares and Aotearoa Fisheries Limited must ensure that at least 40 percent of its consolidated group net profit after tax is distributed.

These provisions do not apply until the required payments to Te Putea Whakatupu Trust and some of the required payments to Te Wai Maori Trust have been completed.

Clause 31 places some restrictions on the functions and powers of Aotearoa Fisheries Limited and its Subcompanies, but clarifies that they are not restricted by any limitations applying to Te Ohu Kai Moana.

Clause 32 sets out various matters to be included in the constitution of Aotearoa Fisheries Limited. These include restrictions on the ability to affect the rights or dilute the entitlements of the holders of income shares and a requirement that on a winding up the distribution must be to the holders of income shares and not voting shares.

Clause 33 places constraints on the disposal of income shares. Income shares can only be held by Te Ohu Kai Moana and mandated iwi organisations. They may be sold

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by a mandated iwi organisation but only to another mandated iwi organisation or Te Ohu Kai Moana, and only if 75 percent of the adult members of the iwi voting at a hui-a-iwi or other constitutional mechanism have approved the sale. There cannot be any sale of income shares within two years after the date of allocation to the mandated iwi organisation.

Granting a security interest or other interest that contains a power of sale of Income Shares, or results in an iwi not being entitled to income from those income shares for a period of more than 5 years, requires consent of iwi members as if it were a sale. If the security holder exercises the power of sale, the sale of income shares can only be to mandated iwi organisations or Te Ohu Kai Moana.

Clause 34 exempts transfers of income shares to wholly controlled entities from the operation of *clause 33*.

Part 4

Te Putea Whakatupu Trust

Clause 35 requires Te Ohu Kai Moana to establish Te Putea Whakatupu Trust.

Clause 36 sets out the purpose of Te Putea Whakatupu Trust.

Clause 37 sets out requirements for the trustees of Te Putea Whakatupu Trust. They must be appointed by Te Ohu Kai Moana. They will be directors of Te Putea Whakatupu Trust Corporate Trustee Limited. The Trustees must be Maori with expertise relevant to the purpose of the trust and must be appointed having due regard to the particular role played by urban Maori organisations in providing assistance and services to urban Maori, including those who do not associate with their iwi.

No more than one Commissioner may be a Trustee of Te Putea Whakatupu Trust. Trustees of Te Putea Whakatupu Trust cannot also be directors of Aotearoa Fisheries Limited or any Subcompany, a member of Te Kawai Taumata, or a Trustee of Te Wai Maori Trust.

Clause 38 lays down the mechanism by which payments will be made from Te Ohu Kai Moana to Te Putea Whakatupu

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Trust. Te Ohu Kai Moana must pay the Trust up to \$1 million by 31 October of each calendar year. Te Ohu Kai Moana must also pay to the Trust \$20 million within a specified five year period and after that no more annual payments are required. However Te Ohu Kai Moana may continue to make payments to the Trust if it wishes.

Clause 39 sets out the matters to be included in the trust deed of Te Putea Whakatupu Trust. These include a requirement for an independent review after 6 years.

Part 5

Te Wai Maori Trust

Clause 40 requires Te Ohu Kai Moana to establish Te Wai Maori Trust.

Clause 41 sets out the purpose of Te Wai Maori Trust.

Clause 42 lays down certain requirements for the trustees of Te Wai Maori Trust. Generally the requirements are similar for those of Te Putea Whakatupu Trust except that the expertise required of the Trustees relates to expertise in freshwater fisheries and the importance of the representation of those iwi with a special interest in freshwater fisheries. This recognises the particular interests of certain Iwi.

Clause 43 provides a mechanism for payments from Te Ohu Kai Moana to Te Wai Maori Trust. Te Ohu Kai Moana must pay Te Wai Maori Trust \$10 million within a five year period. After that, Te Ohu Kai Moana must pay to the Trust a minimum of \$1 million each subsequent year until Te Wai Maori Trust has received a total of \$20 million from Te Ohu Kai Moana. Te Ohu Kai Moana may make further payments to Te Wai Maori Trust if it wishes.

Clause 44 sets out the matters to be included in the trust deed of Te Wai Maori Trust. These include a requirement for an independent review after 6 years.

Part 6

Reviews

Part 6 provides the mechanism by which Te Ohu Kai Moana must conduct reviews of various entities established under the Bill (*clauses 45 and 46*). The first review is to be

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conducted 12 years after the commencement of the Act and thereafter reviews must be carried on at intervals of between 5 and 10 years.

The purposes of the reviews is to determine whether the governance arrangements of Te Ohu Kai Moana and Aotearoa Fisheries Limited reasonably serve the interests of beneficiaries of the Deed of Settlement. In the case of the Te Putea Whakatupu and Te Wai Maori Trusts the reviews are to determine whether their purposes could be better achieved through other mechanisms. Detailed provisions relating to the matters that must be addressed in the reviews and the procedure for reviews are set out in **Schedule 9**.

If shortcomings are identified in the restrictions on the sale of allocated quota, then the review can recommend that the restrictions be reviewed a second time after a period of at least five years.

If a review recommends that voting shares in Aotearoa Fisheries Limited be transferred or issued to mandated iwi organisations then the transfer is to be based the proportion of income shares held at the date of the transfer or issue of the voting shares (not the proportion of income shares initially allocated).

Reviews cannot recommend that voting shares be transferred or issued to anyone other than the mandated iwi organisations, or that Aotearoa Fisheries Limited be wound up or liquidated.

Part 7

Allocation of quota and other assets

Clause 47 states the preconditions to allocation. Generally, PRESA and POSA can only be allocated to iwi once the iwi has a mandated organisation. The organisation must hold agreements for coastlines and have the specified number of members on its register (**Schedule 4**).

There are some exceptions to coastline and register requirements that Te Ohu Kai Moana can invoke where appropriate.

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Allocations of PRESA and POSA to mandated iwi organisations or the companies or trusts contemplated by the Bill are tax neutral.

Clause 48 sets out how PRESA money will be allocated. \$20 million is to be distributed to Te Putea Whakatupu Trust and \$10 million to Te Wai Maori Trust as described in **clause 38 and clause 43**.

\$5 million is provided to Te Ohu Kai Moana as capital and \$18 million is to be spent on funding Te Ohu Kai Moana to perform its functions and to assist iwi to meet their obligations and the additional payments to the two Trusts. PRESA cash also is to be applied to make up PRESA quota shortfalls as described in **clause 59** and specific cash allocations to seven small iwi as described in **clause 60**. Once those allocations have been made the remaining PRESA money is to be allocated in percentages specified for each iwi on a population basis (**Schedule 4**).

Clause 49 sets out how the income shares in Aotearoa Fisheries Limited will be allocated. This is on a population basis. Income shares are held by Te Ohu Kai Moana on trust for each iwi until the iwi complies with **clause 47**.

Clause 50 sets out some general requirements regarding the allocation of quota and makes provision for the sale of annual catch entitlements. This applies to current quota and quota later introduced into the quota management system. Pending transfer of ownership of allocated quota to mandated iwi organisations, Te Ohu Kai Moana may sell or grant annual catch entitlements to recognised iwi organisations or mandated iwi organisations as it considers appropriate.

Clause 51 provides a mechanism for the allocation of inshore quota. Inshore quota is allocated on a coastlines basis.

Clause 52 provides a mechanism for the allocation of deepwater quota. Deepwater quota is allocated 25 percent according to coastlines and 75 percent according to populations as specified in **Schedule 4**.

Clause 53 provides a mechanism for the allocation of quota falling within the Chatham Zone.

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The Chatham Zone is the 200 nautical miles surrounding the Chatham Islands. The overlap area is an area that is within the Chatham Zone and also within the 200 mile zone of the rest of New Zealand. The Bill prescribes a formula for determining the quota to be attributed to the Chatham Zone and the overlap area.

Inshore quota for the Chatham Zone must be allocated to the two named Chatham Islands iwi. Deepwater quota for quota management areas within the Chatham Zone must be allocated 50 percent between the two named Chatham Islands iwi on the basis of coastlines and 50 percent among all mandated iwi organisations (including the Chathams iwi) on a population basis.

Clause 54 provides a mechanism for the allocation of quota within harbours. Harbour quota are to be allocated to mandated iwi organisations with rohe abutting a specified harbour in accordance with an agreement made by those mandated iwi organisations. The mechanism for reaching such agreements are those that apply to agreements over coastlines.

PRESA harbour quota are specified in **schedule 3** and any POSA harbour quota can be specified by Te Ohu Kai Moana by notice in the Gazette.

Inshore quota is reduced by harbour quota.

Clause 55 provides a mechanism for the allocation of quota in FMA4. Special provision is required because FMA4 does not have any coastlines except those for the Chatham Islands. Allocation is on a population basis for all stocks.

Clause 56 provides a mechanism for the allocation of quota in FMA6. Special provision is required because FMA6 has no relevant coastlines. Allocation is on a population basis for all stocks.

Clause 57 provides a mechanism for the allocation of quota in FMA10. FMA10 is in the Kermadec area and there are no relevant commercial catches. Allocation will be on a population basis when Te Ohu Kai Moana is satisfied that there is a viable commercial catch for the relevant fishstock.

Clause 58 provides a mechanism for the allocation of freshwater quota. Freshwater quota is to be allocated by

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agreement between the mandated iwi organisations whose rohe is wholly or partly within the relevant quota management area for the quota being allocated. If there is no agreement then the allocation is to be done on a special population basis.

Clause 59 sets out a mechanism for additional monetary payments where there is a shortfall in PRESA quota.

Clause 60 lists seven iwi who will receive specified additional cash payments designed to ensure every iwi receives a minimum \$1 million of quota and payments under the Bill.

Part 8

Sales and exchanges of allocated quota

Clause 61 defines a number of additional terms relevant to this Part. In particular it defines “sell” to include grants of annual catch entitlements which could apply for more than five years.

Clause 62 empowers mandated iwi organisations, with membership approval, to declare ordinary quota to be allocated quota.

Clause 63 places restrictions on the disposal of allocated quota. This includes a restriction of the granting of security interests that could, if exercised, result in allocated quota ceasing to be owned by a mandated iwi organisation. This will not prevent the granting of security interests, but it will mean that the holder of the security interest will not be able to take possession itself unless it is also a mandated iwi organisation. The practical effect will be that a security holder that is not a mandated iwi organisation will be able to direct disposal of the quota taken by way of security but disposal will only be able to be to a mandated iwi organisation or Te Ohu Kai Moana.

A mandated iwi organisation can only create a security interest or other interest with a power of sale over allocated quota if it has first gone through the same approval process that is required for the approval of a sale of allocated quota.

Generally, allocated quota can only be sold to Te Ohu Kai Moana or another mandated iwi organisation and every

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mandated iwi organisation and Te Ohu Kai Moana must have an opportunity to bid for the allocated quota. There is a two year restriction on sales but it applies only from the point at which the iwi first held allocated quota of any kind.

The requirements for consent to the sale of quota are set out in **subclause (5)**.

In the case of inshore quota, Te Ohu Kai Moana and other mandated iwi organisations with coastlines in the relevant quota management area must have the opportunity to purchase at the highest price bid under the sale process.

A similar requirement applies to freshwater quota.

Clause 63 provides a mechanism requiring Te Ohu Kai Moana to place caveats over allocated quota.

Clause 64 empowers Te Ohu Kai Moana to set a procedure for the sale of quota.

Clause 65 creates an exception to the rules regarding quota sales, in the case of quota exchanges. Exchange must be for fair market value, and can be with any party, not necessarily another mandated iwi organisation or Te Ohu Kai Moana. The rules for iwi membership approval of sales do not apply.

Quota obtained in exchange for allocated quota will itself become allocated quota.

Clause 66 provides a mechanism for the setting of a procedure for quota sales and exchanges.

Clause 67 creates an exception to the rules regarding quota sales for quota sold to wholly controlled entities.

Part 9

Dispute resolution

Part 9 provides a mechanism for dispute resolution (*clauses 68 to 72*). Together with **Part 2 of Schedule 10**, this Part significantly expands the jurisdiction of the Maori Land Court.

Generally the process for dispute resolution first requires that parties engage in good faith in a dispute resolution process. If that process cannot be agreed upon, is not

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followed, or does not resolve the dispute then any party may refer it to Te Ohu Kai Moana.

Te Ohu Kai Moana can resolve the dispute but is not required to do so. If Te Ohu Kai Moana does not make a decision on the dispute it must refer the matter to the Maori Land Court. If Te Ohu Kai Moana does make a decision in respect of the dispute any party may refer the decision of Te Ohu Kai Moana to the Maori Land Court.

Clause 68 defines **specified issues**.

Clause 69 lays down a process for the resolution specified issues.

Clause 70 provides discretion to Te Ohu Kai Moana and the Maori Land Court in resolving coastline issues. Coastline can be attributed as a length or percentage basis, irrespective of the basis sought by any party.

Clause 71 provides an additional mechanism for the resolution of issues concerning the recognition of mandated iwi organisations.

Clause 72 provides that the dispute resolution process does not prevent Te Ohu Kai Moana from taking any action that is agreed with a recognised or mandated iwi organisation as a condition of a grant of assistance.

Part 10

Transfer from Commission to Te Ohu Kai Moana

Part 10 provides for various transitional matters (*clauses 73 to 87*).

Generally the objective is to achieve an orderly transfer of the undertaking (property, rights, and liabilities) of the Commission to Te Ohu Kai Moana.

Employees of the Commission become employees of either Te Ohu Kai Moana or Aotearoa Fisheries Limited and the new employment must be on terms and conditions no less favourable to the transferred employee than those applying to their employment with the Commission.

Generally, the provisions are common to many situations where a statute provides for one entity to replace another.

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For the purposes of the Inland Revenue Acts and binding rulings under them, the Commission and Te Ohu Kai Moana are to be regarded as the same person.

Part 11

Repeals, amendments and miscellaneous provisions

Part 11 provides for various repeals and amendments and also contains miscellaneous provisions (*clauses 88 to 91*).

In the period between the commencement date and the appointed day the Commission has all the functions, duties and powers of Te Ohu Kai Moana and any matter commenced before the appointed day by the Commission may be continued by Te Ohu Kai Moana as if they were the same entity (**clause 88**).

Clause 89 provides name protection for the entities created or required to be created under the Bill.

Schedules

The *Schedules*-

- list PRESA quota, POSA quota and FMA10 fishstocks (*Schedule 1*);
- define PRESA (*Schedule 2*);
- list harbours and harbour quota fishstocks (*Schedule 3*);
- list iwi, their populations and the number that each iwi must have on its register before allocation can occur (*Schedule 4*);
- list representative Maori organisations (*Schedule 5*);
- provide a mechanism for determining coastlines (*Schedule 6*);
- set out the criteria for recognition and continued recognition of mandated iwi organisations (*Schedule 7*);
- contain provisions relevant to Te Kawai Taumata (*Schedule 8*);
- contain provisions relevant to the reviews to be conducted under Part 6 (*Schedule 9*);
- contain amendments to other Acts (*Schedule 10*);

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Consultation

Government departments:

Crown Law Office

Department for Courts

Department of Inland Revenue

Department of Prime Minister and Cabinet

Ministry of Fisheries

Te Puni Kokiri

Other organisations:

Maori Land Court

There has also been extensive consultation with iwi on *He Anga Mua*, *Ahu Whakamua* and *He Kawai Amokura* as described earlier in this note. A detailed timeline setting out the consultation process conducted by the Treaty of Waitangi Fisheries Commission is set out in Appendix 2 of *He Kawai Amokura*.

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Government Bill

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Preamble

- A. **By the Treaty of Waitangi the Crown confirms and guarantees to the chiefs, tribes, and individual Maori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries; and**
- B. **Maori claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the quota management system introduced by the Fisheries**

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Amendment Act 1986 was unlawful and in breach of the principles of the Treaty of Waitangi, or had no application to Maori fisheries (including commercial fisheries), and obtained from the High Court and Court of Appeal, by way of interim relief, a declaration declaring that the Crown ought not take further steps to bring fisheries within the quota management system; and

- C. **The Maori Fisheries Act 1989, an Act to “make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi” (which came into force on 20 December 1989), provides for the transfer from the Crown to the Maori Fisheries Commission of quota totalling 10 percent of the total allowable commercial catches for all species then subject to the quota management system (which transfer was required to be effected in instalments over the period ending with the close of 31 October 1992); and**
- D. **A Deed of Settlement dated 23 September 1992 was entered into between the Crown and Sir Graham Latimer, the Honourable Matiu Rata, Richard Dargaville, Sir Tipene O'Regan, Cletus Maanu Paul, and Whatarangi Winiata, together with other persons who negotiated with the Crown on behalf of iwi, the New Zealand Maori Council, the National Maori Congress, and other representatives of iwi, whereby it was agreed between the parties that agreements in the Deed, the implementation of the Deed through legislation and the continuing relationship between the Crown and Maori would constitute a full and final settlement of all Maori claims to commercial fishing rights and would change the status of non-commercial fishing rights so that they no longer give rise to rights in Maori or obligations on the Crown having legal effect but would continue to be subject to the principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown; and**
- E. **The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, an Act “to give effect to the settlement of claims relating to Maori fishing rights” (which came into force on 23 December 1992), provides for the implementation of the Deed of Settlement including:**

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- (a) **payment by the Crown to Maori of a sum of \$150 million to be used for the development and involvement of Maori in the New Zealand fishing industry, including participation in a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company; and**
 - (b) **empowering the making of regulations recognising and providing for customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is not commercial in any way nor involves commercial gain or trade; and**
 - (c) **reconstituting the Maori Fisheries Commission as the Treaty of Waitangi Fisheries Commission; and**
 - (d) **empowering the Treaty of Waitangi Fisheries Commission, after considering how best to give effect to the resolutions adopted by the Annual General Meeting of the Commission on 25 July 1992 and reporting to the Minister, to allocate the assets held by the Commission at the settlement date specified in the Deed; and**
 - (e) **empowering the Treaty of Waitangi Fisheries Commission, after consultation with Maori, to devise and report to the Minister on a new Maori Fisheries Act to include a scheme for the allocation of the Commission's assets other than those referred to in paragraph E(d);**
- F. **Section 44 of the Fisheries Act 1996 (which came into force on 1 October 1997) provides, in accordance with clause 3.2 of the Deed of Settlement, for the Treaty of Waitangi Fisheries Commission on behalf of Maori to be allocated 20 percent of quota for each further fishstock brought within the quota management system; and**
- G. **The Treaty of Waitangi Fisheries Commission, having examined the alternative methods to allocate, produced discussion material, and consulted with iwi and Maori, has**

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developed and reported to the Minister of Fisheries on a scheme for the allocation of the assets held by the Commission at the settlement date specified in the Deed; and

- H. **The Treaty of Waitangi Fisheries Commission, having consulted with iwi and Maori, has developed and reported to the Minister of Fisheries on a new Maori Fisheries Act, (to be called the Maori Fisheries Development Act) which includes a scheme for the allocation of the Commission's assets other than those referred to in paragraph G; and**
- I. **The Treaty of Waitangi Fisheries Commission's scheme and proposed new Act, includes provision for:**
- (a) **the classification of assets, including quota, held by the Commission; and**
 - (b) **the allocation of quota, including quota for new species brought within the quota management system, to mandated iwi organisations; and**
 - (c) **the establishment of a trust, Te Ohu Kai Moana, to advance the interests of and to ultimately benefit Maori particularly in the development of fisheries and fishing in a manner that furthers the agreements expressed in the Deed of Settlement; and**
 - (d) **the establishment of an electoral college, Te Kawai Taumata, to represent iwi and certain Maori organisations in relation to appointments to Te Ohu Kai Moana; and**
 - (e) **the establishment of a company, Aotearoa Fisheries Limited, to hold and centrally manage the Commission's interests in various companies on behalf of iwi; and**
 - (f) **the establishment of a trust, Te Putea Whakatupu Trust, to assist all Maori; and**
 - (g) **the establishment of a trust, Te Wai Maori Trust, to assist freshwater fisheries initiatives; and**

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- (h) **the allocation of specified amounts of money to mandated iwi organisations, Te Putea Whakatupu Trust and Te Wai Maori Trust; and**
 - (i) **limitations on the sale and exchange of allocated quota and income shares in Aotearoa Fisheries Limited by Te Ohu Kai Moana and mandated iwi organisations; and**
 - (j) **minimum requirements for the accountability, representation and constitutions of mandated iwi organisations; and**
 - (k) **the periodic review of the structure and governance of the entities referred to in paragraphs I(c) to (g); and**
 - (l) **the recognition of iwi as the final beneficiaries of Te Ohu Kai Moana, Te Putea Whakatupu Trust and Te Wai Maori Trust; and**
 - (m) **the establishment of dispute resolution procedures, including provision for the involvement of the Maori Land Court;**
- J. **The Treaty of Waitangi Fisheries Commission’s scheme is to be implemented through a new Act, which is required to be developed by the Treaty of Waitangi Fisheries Commission under section 6(e)(ii) of the Maori Fisheries Act 1989 and this Act results from the Commission’s performance of that obligation.**

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maori Fisheries Development Act 2003.

2 Commencement

This Act comes into force on **1 August 2003**.

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**Part 1
Preliminary Provisions**

3 Purpose

The purpose of this Act is to provide an enduring framework to:

- (a) allocate some PRESA and POSA to iwi; and
- (b) enable control and management of other PRESA and POSA in common on behalf of iwi –

for the development of Maori interests in the business and activities of fishing and fisheries in a manner that is ultimately for the benefit of all Maori.

4 Interpretation

In this Act, unless the context otherwise requires-

adult member of an iwi means a person who is of or over the age of 18 years and who affiliates to the iwi by whakapapa and other persons who may have voting rights as contemplated by **Kaupapa 4 in Schedule 7**.

allocated quota means any quota allocated by the Commission or Te Ohu Kai Moana to a mandated iwi organisation and includes –

- (a) any such quota even though it may have been transferred to another mandated iwi organisation or purchased by Te Ohu Kai Moana or a member of its group; and
- (b) any quota that becomes allocated quota under **section 62 or section 65(2)(a)**.

appointed day means a day which is a day not later than **1 October 2003** specified by the Governor General by Order in Council made on the recommendation of the Minister after consulting the Commission

Aotearoa Fisheries Limited means the company of that name incorporated under the Companies Act 1993 by the Commission; and is not the company of the same name referred to in section 12 of the Maori Fisheries Act 1989

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coastline relating to an iwi means the coastline that is agreed or determined under this Act for the purpose of calculating the allocation of quota to that iwi

Commission means the Treaty of Waitangi Fisheries Commission established under section 4 of the Maori Fisheries Act 1989

Commissioner means a director of the Corporate Trustee

company in relation to the structure referred to in **section 9(3)(a)** of a mandated iwi organisation or **section 10(2)** in relation to the structure of a recognised iwi organisation includes any body corporate constituted under any enactment

Corporate Trustee means Te Ohu Kai Moana Corporate Trustee Limited established under **section 12** to be the trustee of Te Ohu Kai Moana

Deed of Settlement means the Deed of Settlement dated 23 September 1992 signed between the Crown and Maori and referred to in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and **Settlement** has a corresponding meaning.

deepwater quota means the quota classified as deepwater quota under **section 5**

freshwater quota means the quota classified as freshwater quota under **section 5**

group in relation to Te Ohu Kai Moana means any subsidiary, trust, or entity over which Te Ohu Kai Moana has effective control and includes any company or entity in which Te Ohu Kai Moana directly or indirectly controls 50 percent or more of the votes or directly or indirectly has the right to appoint half or more of the trustees or directors (however described).

harbour quota means quota referred to in **section 54**

income share means an income share in Aotearoa Fisheries Limited referred to in **section 27(2)(b)**

Inland Revenue Acts has the same meaning as in section 3(1) of the Tax Administration Act 1994

inshore quota means the quota classified as inshore quota under **section 5** and includes harbour quota

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iwi means an iwi described in **Schedule 4** and includes all members of that iwi; and where **Schedule 4** provides for iwi in Hauraki and Te Arawa to be regarded as combined, means the combined iwi

mandated iwi organisation, in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana under **section 9** as the representative organisation of that iwi

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

POSA means post-Settlement assets being those assets held by the Commission or Te Ohu Kai Moana on or after the commencement of this Part that are not PRESA; and includes the 20 percent of quota for any new stock brought under the quota management system (as agreed in clause 3.2 of the Deed of Settlement and given effect to by section 44 of the Fisheries Act 1996);

POSA quota means POSA quota described in **Part 2 and Part 3 of Schedule 1**; and includes the 20 percent of quota for any new stock brought under the quota management system (as agreed in clause 3.2 of the Deed of Settlement and given effect to by section 44 of the Fisheries Act 1996);

PRESA means pre-Settlement assets being those assets held by the Commission or Te Ohu Kai Moana on or after the commencement of this Part that are described as PRESA in **Schedule 2**.

PRESA money means the amount stated in **Schedule 2** as being PRESA money

quota means individual transferable quota, expressed as quota shares, (both as defined in the Fisheries Act 1996) that are PRESA that is quota as described in **Part 1 of Schedule 1** or POSA quota

recognised iwi organisation means an organisation recognised by Te Ohu Kai Moana under **section 10** as the recognised iwi organisation for an iwi;

representative Maori organisation means an organisation specified for the purpose in **Schedule 5**

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Subcompany means a company, trust, or entity over which Aotearoa Fisheries Limited has effective control, irrespective of whether or not it is a subsidiary of Aotearoa Fisheries Limited; and includes

- (a) a company that is a subsidiary of a Subcompany or a company, trust, or entity over which the Subcompany has effective control; and
- (b) a company, entity or trust in which Aotearoa Fisheries Limited directly or indirectly controls 50 percent or more of the votes or directly or indirectly has the right to appoint half or more of the directors, trustees, or office holders (however described) -

and **director of a Subcompany** means a director, trustee or officeholder (however described)

special resolution in respect of Te Ohu Kai Moana means a resolution approved by 75 percent or more of the Commissioners entitled to vote on the motion

stock and **quota management stock** have the same meaning as in section 2(1) of the Fisheries Act 1996

subsidiary has the same meaning as in the Companies Act 1993

Te Kawai Taumata means the electoral college established under **section 22**

Te Ohu Kai Moana means the trust established by the Commission under **section 12**

Te Putea Whakatupu Corporate Trustee means Te Putea Whakatupu Corporate Trustee Limited established under **section 35** to be the trustee of Te Putea Whakatupu Trust.

Te Putea Whakatupu Trust means the trust established by Te Ohu Kai Moana under **section 35**

Te Wai Maori Corporate Trustee means Te Wai Maori Corporate Trustee Limited established under **section 40** to be the trustee of Te Wai Maori Trust.

Te Wai Maori Trust means the trust established by Te Ohu Kai Moana under **section 40**

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voting share means a voting share in Aotearoa Fisheries Limited referred to in **section 27(2)(a)** that does not have any entitlement to distributions from Aotearoa Fisheries Limited.

5 Classification of quota

- (1) PRESA quota or POSA quota described as “DW” in **column 2 of Part 1 or column 2 of Part 2 of Schedule 1** is deepwater quota.
- (2) PRESA quota or POSA quota described as “IN” in **column 2 of Part 1 or column 2 of Part 2 of Schedule 1** is inshore quota.
- (3) POSA quota described as “FW” in **column 2 of Part 2 of Schedule 1** is freshwater quota.
- (4) Where the Minister responsible for the administration of the Fisheries Act 1996 declares under section 18 of that Act that a stock is subject to the quota management system Te Ohu Kai Moana must determine and publish in the *Gazette* the appropriate description for the stock in accordance with **subsections (5) and (6)** and **subsections (1) to (3)** apply as if **Schedule 1** had been amended accordingly.
- (5) For the purposes of **subsection (4)**:
 - (a) stock that Te Ohu Kai Moana determines, on the basis of biological or anecdotal evidence, is clearly deepwater stock must be described as “DW” as in **column 2 of Part 2 of Schedule 1**;
 - (b) stock that Te Ohu Kai Moana determines, on the basis of biological or anecdotal evidence, is clearly inshore stock must be described as “IN” as in **column 2 of Part 2 of Schedule 1**;
 - (c) stock that Te Ohu Kai Moana determines, on the basis of biological or anecdotal evidence, is clearly freshwater stock must be described as “FW” as in **column 2 of Part 2 of Schedule 1**.
- (6) For the purposes of **subsection (4)**, where Te Ohu Kai Moana is unable to make a determination under **subsection (5)**, or where biological or anecdotal evidence suggests that a particular stock

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may be taken between the depths of 200 metres and 400 metres, Te Ohu Kai Moana must consider the most recent 5 years of available commercial catch histories for that stock and –

- (a) where at least 75 percent of the stock is taken in depths greater than 300 metres, must determine that it is deepwater stock and describe it as “DW” as in **column 2 of Part 2 of Schedule 1**;
- (b) where at least 75 percent of the stock is taken in depths of 300 metres or less, must determine that it is inshore stock and describe it as “IN” as in **column 2 of Part 2 of Schedule 1**;
- (c) where neither **paragraph (a) or (b)** applies, must make a determination and describe it accordingly as in **column 2 of Part 2 of Schedule 1** based on:
 - (i) the fishing gear used to take the stock; and
 - (ii) the location where the stock was taken.

6 Definition of population of an iwi

- (1) For the purposes of this Act -
 - (a) the **population of an iwi** means the population of the iwi as stated in **column 2 of Schedule 4**;
 - (b) the percentage that the population of each iwi comprises of the total notional Maori population is as stated in **column 3 of Schedule 4**
- (2) The **population of an iwi** applies for the purposes of this Act irrespective of any multiple iwi affiliations and any census or other data.
- (3) The definition of the **population of an iwi**, for the purposes of this Act -
 - (a) does not bind the iwi to which it relates or any other iwi in any matter that is before the Waitangi Tribunal, the Maori Land Court or any other Court other than under this Act;
 - (b) does not bind, compromise, advantage or disadvantage or operate as a precedent for any other matter between iwi;

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- (c) is not intended to disturb or affect any customary rights, aboriginal title rights, or any rights arising from the Treaty of Waitangi in relation to any other matter.

7 Coastlines

- (1) Coastlines are determined in this Act for the purpose of calculating the allocations of quota to iwi and for no other purpose under this Act or any other Act unless the parties agree.
- (2) A determination of coastline for the purposes of this Act:
 - (a) does not bind the iwi to which it relates or any other iwi in any matter that is before the Waitangi Tribunal, the Maori Land Court or any other Court other than under this Act;
 - (b) does not bind, compromise, advantage or disadvantage or operate as a precedent for any other matter between iwi;
 - (c) is not intended to disturb or affect any customary rights, aboriginal title rights, or any rights arising from the Treaty of Waitangi in relation to any other matter.
- (3) The length or percentage of coastline to be attributed to iwi and the coastlines of quota management areas must be determined for the purposes of this Act in accordance with the formulae and otherwise as described in **Schedule 6**.
- (4) Mandated iwi organisations may agree on specified lengths of coastline or specified percentages of coastline (totalling 100 percent) between two defined points to be allocated to those iwi without applying the percentages to the physical coastline.
- (5) Iwi can have different coastlines or percentages of coastline attributed to them for different quota management stocks.

8 Agreements as to coastline

- (1) Each mandated iwi organisation that claims that any specified length or percentage of coastline properly relates to its iwi for the purposes of the allocation of quota for any fishstock must take all reasonable steps to consult and agree with the mandated iwi organisations of any affected iwi as to the extent of the coastlines relating to their respective iwi for that fishstock.
- (2) Where all the mandated iwi organisations of affected iwi reach agreement as to the attribution of coastlines within a quota management area relating to those iwi for a fishstock, those

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mandated iwi organisations must file the terms of the agreement with Te Ohu Kai Moana.

- (3) Where a mandated iwi organisation asserts that no other iwi is an affected iwi for a fishstock the mandated iwi organisation may file that assertion and supporting evidence with Te Ohu Kai Moana.
- (4) If Te Ohu Kai Moana is satisfied that the assertion is correct and, by special resolution, endorses the assertion of the mandated iwi organisation then the endorsed assertion has the status of a coastline agreement under this Act.
- (5) For the purposes of this Act an affected iwi for a fishstock is an iwi whose claimed coastline overlaps the claimed coastline of another iwi for that fishstock.

9 Mandated iwi organisations

- (1) Te Ohu Kai Moana may, by special resolution, recognise one mandated iwi organisation for each iwi if satisfied that the criteria for recognition are met.
- (2) A mandated iwi organisation-
 - (a) represents its iwi at any meeting to appoint a member of Te Kawai Taumata;
 - (b) is entitled to acquire and hold income shares in Aotearoa Fisheries Limited;
 - (c) is entitled to receive and hold on behalf of its iwi, any allocated quota and other assets allocated to that iwi by Te Ohu Kai Moana; and
 - (d) may receive distributions from Te Putea Whakatupu Trust and Te Wai Maori Trust.
 - (e) must perform the duties and may perform the functions conferred on it by this Act.
- (3) The criteria for recognition, and continued recognition, as a mandated iwi organisation for the purposes of this Act are-
 - (a) the organisation must be a company, a trust or incorporated society whose constitution, trust deed or rules complies with and implements the kaupapa contained in **Schedule 7**;

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- (b) in respect of matters relating to this Act and assets received under it, the directors or trustees of the organisation must be able to demonstrate that they continue to have the confidence of the majority of those adult members of the iwi who vote at a properly constituted hui or general or special meetings to act on their behalf;
- (c) the constitutional documents of the organisation must -
 - (i) permit, but not require, the organisation to benefit Maori other than members of the iwi, or the community generally, if the directors, trustees, or officeholders consider that to be appropriate; and
 - (ii) be approved by Te Ohu Kai Moana.
- (d) such other criteria and requirements in respect of the organisation or its constitutional documents prescribed by Te Ohu Kai Moana from time to time and published in the *Gazette* which may include:
 - (i) minimum notice of annual or special general meetings or hui for elections or to consider constitutional amendments;
 - (ii) minimum notice period for nomination of candidates,
 - (iii) use of alternates for iwi representatives,
 - (iv) notification of key meetings in areas containing significant concentrations of members, and
 - (v) availability of constitutional documents and annual reports to members.

10 Recognised iwi organisations

- (1) In this section, **specified purpose** means all the roles of a mandated iwi organisation under this Act, except –
 - (a) the right to receive PRESA and POSA;
 - (b) the right to receive money under **sections 59 and 60**;
 - (c) the right to purchase allocated quota;

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- (d) the right to receive or purchase income shares and receive distributions relating to income shares;
 - (e) the right to agree or assert coastlines;
 - (f) the right to enter into agreements for freshwater quota or harbour quota;
 - (g) the right to nominate an entity with charitable status to receive distributions on the winding up of Te Ohu Kai Moana, Aotearoa Fisheries Limited, Te Putea Whakatupu Trust or Te Wai Maori Trust.
- (2) To avoid doubt, the right to participate in a specified issue referred to in **section 68(b) or (c)** (which relate to coastline agreements and assertions as to coastline) is a specified purpose.
 - (3) If Te Ohu Kai Moana considers that an iwi that does not have a mandated iwi organisation should have a recognised iwi organisation, Te Ohu Kai Moana may recognise a company, trust, incorporated society or other entity as a recognised iwi organisation for all specified purposes for that iwi.
 - (4) A recognised iwi organisation has all the functions, duties, powers and rights of a mandated iwi organisation for all specified purposes and represents its iwi for all specified purposes as if it were a mandated iwi organisation.
 - (5) Te Ohu Kai Moana may, notwithstanding the constitutional documents of any recognised iwi organisation, require the directors, trustees or officeholders of a recognised iwi organisation to demonstrate that they have the confidence of the majority of those adult members of the iwi who vote at a properly constituted hui or general or special meetings to act on their behalf.
 - (6) Te Ohu Kai Moana, mandated iwi organisations and recognised iwi organisations must recognise and deal with recognised iwi organisations as the mandated iwi organisation for that iwi for all specified purposes (including representing that iwi in all consultation, negotiation and proceedings in respect of those matters) as if the recognised iwi organisation were a mandated iwi organisation until there is a mandated iwi organisation for the iwi.

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11 Representative Maori organisations

- (1) The organisations specified in **Schedule 5** are representative Maori organisations for the purposes of this Act.
- (2) A representative Maori organisation is entitled to participate in the appointment and removal of one member of Te Kawai Taumata as provided for in this Act.

**Part 2
Te Ohu Kai Moana**

12 Te Ohu Kai Moana and Corporate Trustee to be established

The Commission must establish a trust to be known as Te Ohu Kai Moana, and the Corporate Trustee, before the appointed day.

13 Purpose

- (1) The purpose of Te Ohu Kai Moana is to advance the interests of, and to ultimately benefit, Maori particularly in the development of fisheries and fishing in a manner that furthers the agreements expressed in the Deed of Settlement and to give effect to this Act; and Te Ohu Kai Moana is to apply its funds under **section 18** accordingly.
- (2) Te Ohu Kai Moana is not subject to any enactment or rule of law restricting the period for which a trust may run.
- (3) Distributions and grants of assistance by Te Ohu Kai Moana contemplated by this Act do not affect any charitable status of Te Ohu Kai Moana and are not subject to income tax, goods and services tax or gift duty.

14 Trust Deed of Te Ohu Kai Moana

The trust deed of Te Ohu Kai Moana must-

- (a) specify the purpose of Te Ohu Kai Moana as stated in **section 13**, and those of its permitted activities that are specified in **section 16**;
- (b) empower the Corporate Trustee to make all decisions of Te Ohu Kai Moana;

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- (c) provide for the amendment of the trust deed including the addition of further purposes and permitted activities, compatible with those stated in **sections 13 and 16** but in each case in a way that does not jeopardise any charitable status of the trust;
- (d) require Te Ohu Kai Moana to:
 - (i) develop an annual and 5 year strategic plan for the group and circulate that plan to mandated iwi organisations, recognised iwi organisations and representative Maori organisations for comment prior to its adoption by Te Ohu Kai Moana;
 - (ii) report annually within six months of the end of each financial year to mandated iwi organisations, representative Maori organisations and recognised iwi organisations (and notify public availability of the report), measuring performance against the strategic plan, describing any amendments referred to in **paragraph (c)** and the key activities undertaken by Te Ohu Kai Moana and its subsidiaries and trusts and including audited financial statements and the matters specified in **sections 18(2), 38(3) and 43(3)**;
 - (iii) hold a hui-a-tau within eight months of the end of financial year to discuss and address issues arising from that report.
- (e) empower Te Ohu Kai Moana to perform any functions or exercise any powers conferred on it by this Act or any other Act; and
- (f) provide for the dissolution of the trust and the distribution of the assets of the trust, including capital and accumulated income, on dissolution in the proportions specified in **column 3 of Schedule 4 for the relevant iwi**—
 - (i) to mandated iwi organisations if they have charitable status; or
 - (ii) by payment to an entity with charitable status nominated by the relevant mandated iwi organisation to benefit that iwi; or

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- (iii) where a nomination is not made, to an entity with charitable status nominated by the Corporate Trustee to benefit that iwi.

15 Te Ohu Kai Moana Corporate Trustee Limited

The Corporate Trustee must be a company formed under the Companies Act 1993 as Te Ohu Kai Moana Corporate Trustee Limited -

- (a) with only one share that has no voting or distribution rights and is to be held by the chairperson of the Corporate Trustee;
- (b) whose constitution provides that its only roles are to act as Trustee of Te Ohu Kai Moana and control and manage its assets, and to perform any other functions conferred by this Act or any other Act on it or on Te Ohu Kai Moana;
- (c) whose constitution provides for Te Kawai Taumata to appoint and remove 7 directors to be known as Commissioners as contemplated by this Act;
- (d) whose constitution requires that all Commissioners must be Maori and, having regard to the purposes of Te Ohu Kai Moana and the role of the Corporate Trustee, that the Commissioners collectively have commercial expertise and business skills and are well versed in matters of tikanga Maori;
- (e) whose constitution provides a mechanism for its amendment, and the dissolution of the Corporate Trustee.

16 Permitted activities

In furtherance of its purpose, Te Ohu Kai Moana may engage in but is not confined to -

- (a) fostering, promoting, commissioning and funding research and conservation of fisheries particularly where those activities are not the responsibility of other entities;
- (b) protecting and enhancing the interests of Maori, particularly in relation to fisheries and fishing, and related activities;

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- (c) administering PRESA and POSA under this Act, including -
 - (i) allocating PRESA and POSA
 - (ii) managing assets on behalf of iwi, on a transitional basis where there is no mandated iwi organisation;
 - (iii) maintaining an iwi register including details of the mandated iwi organisations for the purposes of this Act and recording, verifying, and implementing agreements between iwi as contemplated by this Act, or assertions under **section 8**, for the coastlines and distribution of quota and other assets;
 - (iv) assisting mandated iwi organisations to establish a register of those who affiliate to the iwi by whakapapa (including those living outside the rohc) and their addresses and dates of birth;
 - (v) funding projects that assist iwi and providing other assistance to facilitate and expedite implementation of this Act and compliance with the requirements of Te Ohu Kai Moana;
- (d) acquiring and disposing of income shares and quota and entering into annual catch entitlement agreements; and
- (e) any other activity contemplated for Te Ohu Kai Moana by this Act or any other Act.

17 Capacity of Te Ohu Kai Moana

- (1) For the purpose of performing its functions under this Act or any other Act, Te Ohu Kai Moana -
 - (a) has full capacity to carry out, undertake or fund, any business or activity, do any act, or enter into any transaction; and
 - (b) for the purposes of **paragraph (a)**, has full rights, powers, and privileges.
- (2) **Subsection (1)** applies subject to—
 - (a) the provisions of this Act and any other enactment;
 - (b) the trust deed of Te Ohu Kai Moana and the constitution of the Corporate Trustee; and

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(c) the general law.

18 Application of funds

- (1) Te Ohu Kai Moana may apply its funds only for the purpose of Te Ohu Kai Moana (including servicing of the Corporate Trustee in accordance with its constitution), or by way of distributions or grants of assistance to recognised iwi organisations, mandated iwi organisations, Te Putea Whakatupu Trust and Te Wai Maori Trust or otherwise as contemplated by this Act in a manner that is consistent with the purpose of Te Ohu Kai Moana.
- (2) Te Ohu Kai Moana may maintain reserve funds to the extent that it considers prudent. In each annual report, Te Ohu Kai Moana must separately describe each reserve, the reason why it is held, and any proposed applications of those reserves.

19 Application of public law to Te Ohu Kai Moana

- (1) Te Ohu Kai Moana and the Corporate Trustee are not public entities as defined in section 2(1) of the Public Finance Act 1989 or section 4 of the Public Audit Act 2001.
- (2) Te Ohu Kai Moana and the Corporate Trustee are not subject to the Official Information Act 1982.
- (3) For the purposes of the Judicature Amendment Act 1972 and the common law, none of Te Ohu Kai Moana, the Corporate Trustee, or any Commissioner is exercising a statutory power or public function when they make or decline to make any decision or take any action under or contemplated by this Act or the trust deed of Te Ohu Kai Moana where there is provision to refer or appeal the decision or action to the Maori Land Court.

20 Appointment of Commissioners of Corporate Trustee

- (1) The Minister of Maori Affairs must appoint the 7 initial Commissioners and those Commissioners must be current members of the Commission in order to ensure appropriate continuity.
- (2) On the day that the appointments of Commissioners are made under **subsection (1)**, the appointments of the other members of the Commission expire without any right to compensation for loss of office.

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- (3) In making the appointments the Minister may consult whomever he or she considers appropriate.
- (4) Commissioners hold office for terms of 4 years except that three initial Commissioners specified by the Minister hold office for a term of 2 years.
- (5) On the expiry of the term on any initial Commissioner, Te Kawai Taumata must appoint a replacement Commissioner under the constitution of the Corporate Trustee,
- (6) If Te Kawai Taumata cannot agree on replacements for all the retiring Commissioners, Te Kawai Taumata must determine which retiring Commissioners are those who are replaced by the appointed Commissioners.
- (7) Any Commissioner who has held office for two consecutive full terms (disregarding any appointment to fill a vacancy arising during the term of another Commissioner) is not eligible for reappointment as a Commissioner within 2 years after ceasing to hold office.
- (8) A Commissioner whose term of office referred to in **subsection (4)** has expired continues in office until his or her successor is appointed under the constitution of the Corporate Trustee.
- (9) Any term of office of a commissioner of the Commission is not to be treated as a term of office of a Commissioner of Te Ohu Kai Moana for the purposes of **subsections (4) and (7)**.
- (10) Any Commissioner who becomes a member of Te Kawai Taumata ceases to be eligible to be a Commissioner, and must be treated as having resigned.

21 Removal of Commissioners

- (1) Any Commissioner (except an initial Commissioner) may be removed from office at any time by Te Kawai Taumata acting in accordance with the constitution of the Corporate Trustee and **Schedule 8**.
- (2) Any initial Commissioner may be removed from office without compensation at any time by the Minister of Maori Affairs for inability to perform the functions of office, neglect of duty, or misconduct proved to the satisfaction of the Minister, and the successor to that Commissioner must be appointed under the constitution of the Corporate Trustee.

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- (3) Every Commissioner vacates office if disqualified under section 151(2) of the Companies Act 1993.

22 Te Kawai Taumata to be electoral college

- (1) Te Ohu Kai Moana must establish Te Kawai Taumata as an electoral college which is to have up to 11 members, each of whom must be Maori.
- (2) Te Ohu Kai Moana is responsible for the ongoing servicing of Te Kawai Taumata.
- (3) The sole function of Te Kawai Taumata is to appoint and remove Commissioners in accordance with the constitution of the Corporate Trustee.
- (4) **Schedule 8** applies to Te Kawai Taumata and its members.

23 Membership of Te Kawai Taumata

- (1) One member of Te Kawai Taumata, and an alternate for that member, may be appointed by each of the regional groupings of iwi set out in **Schedule 4**.
- (2) One member of Te Kawai Taumata, and an alternate for that member, may be appointed by representative Maori organisations acting jointly.
- (3) Each member of Te Kawai Taumata holds office for 4 years and is eligible for reappointment, but no member may hold office for more than 2 consecutive terms. A member holds office until his or her successor is appointed, except if removed from office.
- (4) For the purpose of appointing the initial members of Te Kawai Taumata, and subsequently as appointments fall due, the mandated iwi organisation of the first named iwi in each group set out in **Schedule 4** has the duty to:
 - (a) appoint a time and place for the holding of a meeting at which every iwi in the group is invited to be represented by its mandated iwi organisation; and
 - (b) give all mandated iwi organisations in the same group 10 working days notice of the meeting described in **paragraph (a)**, or such other period of notice as has previously been agreed between them.

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- (c) advise the Corporate Trustee of the name of the person, and the alternate, appointed by the group of iwi to Te Kawai Taumata.
- (5) For the purpose of appointing the initial members and alternate members of Te Kawai Taumata, and subsequently as appointments fall due, the first-named representative Maori organisation in **Schedule 5** has the duty to:
 - (a) appoint a time and place for the holding of a meeting at which each representative Maori organisation is invited to be represented by one representative; and
 - (b) give every other representative Maori organisation 10 working days notice of the meeting described in **paragraph (a)**, or such other period of notice as has previously been agreed between them;
 - (c) advise the Corporate Trustee of the name of the person, and the alternate, appointed by the representative Maori organisations to Te Kawai Taumata.
 - (6) The only purpose of and business at the meetings referred to in **subsections (4)(a) and (5)(a)** is the appointment of a member and alternate member of Te Kawai Taumata, except where **section 26(6)** applies.
 - (7) Notices under **subsections (4) and (5)** may be combined with notices under **section 26**.
 - (8) At the meetings referred to in **subsections (4)(a) and 5(a)**, each mandated iwi organisation or representative Maori organisation has one vote.

24 Alternate members of Te Kawai Taumata

- (1) An alternate member may act in place of the member if the member is unable by illness, absence or other reason to act as a member.
- (2) **Sections 23(3), 25 and 26** apply to and in respect of alternate members as if they were members.
- (3) The removal from office, death, or resignation of a member does not cause the removal from office of his or her alternate member.

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25 Eligibility for membership of Te Kawai Taumata

- (1) No person can be appointed to Te Kawai Taumata by mandated iwi organisations unless at least a majority of the mandated iwi organisations in the group have voted in favour of that person.
- (2) In the case of Ngapuhi, the person to be appointed to Te Kawai Taumata must have been voted for by at least a majority of the directors, trustees, or officeholders of the mandated iwi organisation.
- (3) No person can be appointed to Te Kawai Taumata by representative Maori organisations unless at least a majority of the representative Maori organisations have voted in favour of that person.
- (4) Any Maori is eligible for appointment to Te Kawai Taumata except if that person is a Commissioner, a director of Aotearoa Fisheries Limited or any Subcompany, or a trustee of Te Putea Whakatupu Trust or Te Wai Maori Trust.
- (5) No person who is, or has within the previous 2 years been, a member of Te Kawai Taumata is eligible to be a Commissioner, a director of Aotearoa Fisheries Limited or any Subcompany, or a trustee of Te Putea Whakatupu Trust or Te Wai Maori Trust.

26 Removal of members

- (1) A member may be removed from office at any time by a majority of the mandated iwi organisations or representative Maori organisations that are entitled to appoint that member.
- (2) Any mandated iwi organisation of an iwi that is entitled to participate under **section 23(4)(a)** in a meeting to appoint a member of Te Kawai Taumata may convene another meeting to decide whether that member should be removed from office.
- (3) Any mandated iwi organisation that convenes a meeting under **subsection (2)** must:
 - (a) appoint a time and place for the meeting; and
 - (b) give all mandated iwi organisations in the same group 14 days notice of the meeting described in **paragraph (a)**, or such other period of notice as has previously been agreed between the parties; and

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- (c) give the member concerned 10 working days notice of the meeting described in **paragraph (a)** and its purpose and a reasonable opportunity to be heard; and
 - (d) advise the Corporate Trustee of the outcome of the meeting described in **paragraph (a)**.
- (4) Any representative Maori organisation that is entitled to participate in a meeting to appoint a member of Te Kawai Taumata under **section 23(4)(a)** may convene another meeting to decide whether that member should be removed from office.
- (5) Any representative Maori organisation that convenes a meeting under **subsection (4)** must:
- (a) appoint a time and place for the meeting; and
 - (b) give every other representative Maori organisation 10 working days notice of the meeting described in **paragraph (a)**, or such other period of notice as has previously been agreed between the parties; and
 - (c) give the member concerned 10 working days notice of the meeting described in **paragraph (a)** and its purpose and a reasonable opportunity to be heard; and
 - (d) advise the Corporate Trustee of the outcome of the meeting described in **paragraph (a)**.
- (6) The only purposes of and business at the meetings referred to in **subsections (3) and (5)** are removal of a member of Te Kawai Taumata, and the appointment of a new member. Resolutions for removal and appointment of members must be voted on separately.
- (7) At the meetings referred to in **subsections (3) and (5)**, each mandated iwi organisation or representative Maori organisation has one vote.

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Part 3
Aotearoa Fisheries Limited

27 Shares in Aotearoa Fisheries Limited

- (1) Aotearoa Fisheries Limited is to receive and commercially manage assets on behalf of beneficiaries under the Deed of Settlement.
- (2) Aotearoa Fisheries Limited must have –
 - (a) 125,000 voting shares, or more if following a review under **Part 6** it is determined that voting shares be issued to mandated iwi organisations
 - (b) 125,000 income shares.
- (3) Te Ohu Kai Moana must be issued and retain control of all the voting shares in Aotearoa Fisheries Limited unless a review that complies with **section 46** for the transfer or issue of voting shares to mandated iwi organisations is implemented as contemplated by **Part 2(8) of Schedule 9**.
- (4) All income shares must be issued to Te Ohu Kai Moana in the name of the Corporate Trustee and Te Ohu Kai Moana must –
 - (a) retain 20 percent of income shares; and
 - (b) hold the other 80 percent of income shares in trust for iwi and allocate them to iwi in accordance with **Part 7**.

28 Directorship restrictions

- (1) The constitution of Aotearoa Fisheries Limited must provide for at least 5 directors and that no more than 2 directors of that company may be persons who are Commissioners or full time employees of Te Ohu Kai Moana.
- (2) Commissioners or full time employees of Te Ohu Kai Moana must not be more than 40 percent of the directors of any one Subcompany.
- (3) If a breach of **subsection (2)** occurs, the most recent Commissioner or full time employee of Te Ohu Kai Moana to be appointed as a director of the Subcompany must:
 - (a) resign the directorship; or

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- (b) resign as Commissioner or full time employee of Te Ohu Kai Moana -
but the breach does not invalidate any action or decision of the Subcompany.
- (4) **Subsection (3)** does not apply to a breach of **subsection (2)** arising from the occurrence of an extraordinary vacancy in the office of director of a Subcompany if the vacancy is filled in a timely manner.
- (5) Where a Subcompany is an entity other than a company the term **director** in **subsections (2) to (4)** means a trustee or other office holder of the entity.

29 Distributions of assets to Aotearoa Fisheries Limited

- (1) On the appointed day Te Ohu Kai Moana must distribute, without charge, to Aotearoa Fisheries Limited or to one or more Subcompanies, all POSA that has not already been distributed by the Commission to all or any of them; except -
 - (a) POSA quota; and
 - (b) quota described in **Part 3 of Schedule 1**; and
 - (c) any entities that hold that POSA quota; and
 - (d) shares in any other subsidiary of Te Ohu Kai Moana that owns quota; and
 - (e) shares in Te Kupenga Limited; and
 - (f) such other assets that continue to be held by Te Ohu Kai Moana including administrative and research assets and information that Te Ohu Kai Moana reasonably needs in order to perform its functions and exercise its powers.
- (2) Distributions of POSA by Te Ohu Kai Moana to Aotearoa Fisheries Limited or to a Subcompany are not subject to income tax, goods and services tax, gift duty or any tax, duty levy, or other charge imposed or provided for under the Inland Revenue Acts or any other enactment; and for the purposes of the Inland Revenue Acts the value of the POSA is included in the available subscribed capital of Aotearoa Fisheries Limited or the Subcompany.
- (3) Despite **subsection (2)**, distributions of POSA by Te Ohu Kai Moana to Aotearoa Fisheries Limited or a Subcompany are to be

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regarded as distributions to a company or trust (depending on the nature of the Subcompany) that, on behalf of beneficiaries under the Deed of Settlement receives and manages assets that are distributed to the company or trust by the Commission so long as there is no dilution of the entitlements of the holders of income shares.

30 Distributions of income by Aotearoa Fisheries Limited

- (1) Aotearoa Fisheries Limited can only make distributions to holders of its income shares.
- (2) Aotearoa Fisheries Limited must ensure that at least 40 percent of its consolidated group net profit after tax as determined in accordance with generally accepted accounting principles, is distributed to the holders of its income shares.
- (3) Aotearoa Fisheries Limited must use its best endeavours to-
 - (a) ensure that the constitution of every Subcompany requires distributions so that in total Aotearoa Fisheries Limited receives a sufficient amount to enable it to comply with **subsection (2)**; or
 - (b) ensure that the distribution is achieved by other means.
- (4) **Subsections (2) and (3)** do not apply to the extent that compliance would put Aotearoa Fisheries Limited, the Subcompany, or any directors of either in breach of any obligation imposed by the Companies Act 1993.
- (5) **Subsections (2) and (3)** do not apply until the payments under **section 38(2)** to Te Putea Whakatupu Trust and under **section 43(1)** to Te Wai Maori Trust have been made.
- (6) In **subsection (2)**, the term **consolidated group net profit after tax** does not include -
 - (a) asset revaluations:
 - (b) unrealised capital gains or losses:
 - (c) unrealised gains or losses from financial instruments arising from the recognition of instruments at commitment rather than settlement date.

*Maori Fisheries Development Bill 2003***31 Powers restricted**

- (1) Neither Aotearoa Fisheries Limited nor any Subcompany is limited in its functions or powers by any limitation in the purposes, permitted activities or powers of the Corporate Trustee or Te Ohu Kai Moana, but their functions and powers may be limited by their constitutions.
- (2) Aotearoa Fisheries Limited and any Subcompany that is under the effective control of Aotearoa Fisheries Limited may only engage in any significant activity that is not related to fishing with the authority of a special resolution of Aotearoa Fisheries Limited.

32 Additional requirements in constitution

The constitution of Aotearoa Fisheries Limited must provide that:

- (a) distributions on a winding up must only be to holders of income shares;
- (b) the constitution must not be amended in a way that affects the rights attached to or dilutes the entitlements of the holders income shares without the approval of the holders of at least 75% of those shares;
- (c) the company must provide formal unaudited half yearly financial statements and audited yearly financial statements and an accompanying report direct to the holders of income shares.

33 Constraints on disposal of income shares

- (1) Income shares may only be held by Te Ohu Kai Moana and mandated iwi organisations; and a mandated iwi organisation may sell the income shares held by it only to Te Ohu Kai Moana or another mandated iwi organisation.
- (2) A mandated iwi organisation may sell income shares only if the organisation selling the shares has
 - (a) notified the potential sale to adult members of the iwi; in accordance with the constitutional documents of the mandated iwi organisation and

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- (b) has obtained the prior approval of 75 percent of adult members of the iwi who vote at a hui-a-iwi or through other mechanisms required by the constitutional documents of the mandated iwi organisation.
- (3) Every notice of a potential sale of income shares must specify a reasonable estimate of the net present value or likely sale price of the shares and the number of shares for which approval to sell is sought.
- (4) Any approval for the sale of income shares is valid for a maximum period of 15 months from the date on which it is given.
- (5) Te Ohu Kai Moana may sell income shares acquired under this section to a mandated iwi organisation but only pursuant to a special resolution and only if the shares are offered to every mandated iwi organisation.
- (6) Te Ohu Kai Moana must not sell any income share held by it under **section 27(4)**.
- (7) Te Ohu Kai Moana must ensure that the constitution of Aotearoa Fisheries Limited specifies a process for the sale of income shares including notification of the proposed sale to adult members of the iwi in accordance with the constitutional documents of the mandated iwi organisation, and the requirement that all income shares for sale must be offered to Te Ohu Kai Moana and every other mandated iwi organisation.
- (8) No mandated iwi organisation may sell any income share allocated to it under **Part 7** within 2 years after the date on which it is allocated to that mandated iwi organisation by Te Ohu Kai Moana under **Part 7**.
- (9) Where any mandated iwi organisation proposes to enter into any transaction or series of transactions (whether by way of option, security, guarantee, gift, or otherwise) that could, if the rights under it or them were exercised, result in the sale of the income shares, or the iwi not being entitled to the income from the income shares for a period of more than 5 years, **subsections (2) and (3)** must be complied with by the mandated iwi organisation before the transaction or series of transactions are entered into as

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if they were a sale of the income shares, but the other provisions of this section do not apply at that time.

- (10) Where any party to a transaction or series of transactions referred to in **subsection (9)** exercises any right to sell or requires the sale of income shares, **subsections (1) and (5)** apply as if the seller were a mandated iwi organisation.
- (11) Any contract for the sale of income shares including any transaction or series of transactions referred to in **subsection (9)** that is in breach of this section is an illegal contract for the purposes of the Illegal Contracts Act 1970; and for the purposes of the granting of relief under section 7 of that Act every member of the mandated iwi organisation, every other mandated iwi organisation and Te Ohu Kai Moana must be treated as parties to the contract, transaction, or series of transactions.

34 Exception for income shares sold to wholly controlled entities

- (1) **Section 33** does not apply to the sale of any income share by a mandated iwi organisation to any entity that is and remains wholly owned and controlled by the mandated iwi organisation; but that section does apply to any sale by that entity except where –
 - (a) the sale is back to the mandated iwi organisation; or
 - (b) the sale is to another entity wholly owned and controlled by the mandated iwi organisation.
- (2) **Section 33** does not apply to the sale of any income share by Te Ohu Kai Moana to any entity that is and remains wholly owned and controlled by Te Ohu Kai Moana; but that section does apply to any sale by that entity except where –
 - (a) the sale is back to Te Ohu Kai Moana; or
 - (b) the sale is to another entity wholly owned and controlled by Te Ohu Kai Moana.

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Part 4

Te Putea Whakatupu Trust

35 Establishment

- (1) Te Ohu Kai Moana must establish a trust to be known as Te Putea Whakatupu Trust, and Te Putea Whakatupu Corporate Trustee Limited.
- (2) Te Putea Whakatupu Corporate Trustee Limited must have only one share which has no distribution rights and must be held by Te Ohu Kai Moana.
- (3) Te Putea Whakatupu Trust is not subject to any enactment or rule of law restricting the period for which a trust may run.

36 Purpose

The purpose of Te Putea Whakatupu Trust is to receive and manage assets on behalf of beneficiaries under the Deed of Settlement in order -

- (a) to promote educational and training programmes, courses and schemes within New Zealand for Maori with a view to providing educational and training opportunities for Maori with application to the fishing industry:
- (b) to fund skills development in the fishing industry, especially in relation to young Maori and Maori in need of reskilling:
- (c) to promote research into and the advancement generally of Maori with special emphasis on fisheries, and to-
 - (i) promote the expansion of educational opportunities of Maori by offering scholarships and grants or funding scholarships and grants to enable Maori students to meet the entry requirements of wananga, universities or other tertiary institutions in New Zealand or overseas; and
 - (ii) establish scholarships and grants, or fund scholarships and grants by wananga, universities or other tertiary institutions in New Zealand, with a view to encouraging Maori to develop and further their education and skills.

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- (d) to foster and promote research and development into matters affecting Maori fishing in wananga, universities or other tertiary institutions in New Zealand:
- (e) to promote and facilitate access to-
 - (i) education and training courses;
 - (ii) conferences; and
 - (iii) presentations and other learning experiences
 for Maori who are already working or wish to work in the fishing industry:
- (f) generally to do all acts, matters and things that promote the purposes set out in **paragraphs (a) to (e)**, with a commitment to ensure that benefits are made available as widely as possible to Maori after having regard to the extent to which iwi are promoting or are able to promote those purposes.

37 Trustees

- (1) Te Putea Whakatupu Corporate Trustee must be a company formed under the Companies Act 1993 and must have 3 directors, to be known as the Trustees of Te Putea Whakatupu Trust.
- (2) The Trustees of Te Putea Whakatupu Trust must be appointed by Te Ohu Kai Moana.
- (3) The criteria for appointment as a Trustee of Te Putea Whakatupu must be specified in the trust deed of Te Putea Whakatupu Trust, but must include:
 - (a) the need to have as trustees a mix of Maori who collectively are well versed in matters of tikanga Maori, experienced in working with Maori and Maori organisations, and with expertise and experience in human resource development, education and training;
 - (b) due regard to the particular role played by urban Maori organisations in providing assistance and services to urban Maori, including those who do not associate with their iwi.
- (4) No more than one Commissioner may be a Trustee of Te Putea Whakatupu Trust.

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- (5) Any Trustee of Te Putea Whakatupu Trustee who becomes a director of Aotearoa Fisheries Limited, or any Subcompany, or a member of the Te Kawai Taumata, or a trustee of Te Wai Maori Trust ceases to be eligible to hold office as a Trustee of Te Putea Whakatupu Trust, and must be treated as having resigned.
- (6) Te Putea Whakatupu Corporate Trustee must not have any function other than to be the trustee of the Te Putea Whakatupu Trust.

38 Payments from Te Ohu Kai Moana to Te Putea Whakatupu Trust

- (1) Te Ohu Kai Moana must pay to Te Putea Whakatupu Trust up to \$1 million by 31 October in each calendar year.
- (2) Te Ohu Kai Moana must pay Te Putea Whakatupu Trust \$20 million on a date to be determined by Te Ohu Kai Moana in its sole discretion but which must be no later than the **31 October** that occurs 5 years after the commencement of this Act; and after the date of that payment no further amounts are payable under **subsection (1)**.
- (3) Te Ohu Kai Moana may, but is not obliged to, distribute other money to Te Putea Whakatupu Trust. In each annual report Te Ohu Kai Moana must separately describe any such distribution.
- (4) No payment from Te Ohu Kai Moana to Te Putea Whakatupu Trust is subject to income tax, goods and services tax, gift duty or any tax, duty, levy or other charge imposed or provided for under the Inland Revenue Acts or any other enactment.
- (5) Te Putea Whakatupu Trust is not entitled to allocations of quota or income shares from Te Ohu Kai Moana.

39 Te Putea Whakatupu Trust Deed

- (1) For carrying out the purpose of Te Putea Whakatupu Trust in **section 36**, the trust deed for Te Putea Whakatupu Trust must-
 - (a) provide for the appointment, removal and rotation of the Trustees of Te Putea Whakatupu Trust:
 - (b) empower Te Putea Whakatupu Corporate Trustee to make all decisions of Te Putea Whakatupu Trust:
 - (c) prohibit Te Putea Whakatupu Trust from undertaking in its own right any business other than business that is

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absolutely necessary for the carrying out of the purposes of Te Putea Whakatupu Trust:

- (d) provide for the remuneration of the Trustees of Te Putea Whakatupu Trust:
- (e) require the Trustees of Te Putea Whakatupu Trust to obtain the approval of Te Ohu Kai Moana to the annual plan and assistance policy of Te Putea Whakatupu Trust:
- (f) prohibit the Trustees of Te Putea Whakatupu Trust from distributing capital;
- (g) require the Trustees of Te Putea Whakatupu Trust to report annually to Te Ohu Kai Moana:
 - (i) within 5 months after the end of each financial year;
 - (ii) measuring the performance of Te Putea Whakatupu Trust against its approved annual plan;
 - (iii) measuring payments of assistance funding by Te Putea Whakatupu Trust against its approved distribution policy;
 - (iv) including any other information required by Te Ohu Kai Moana in order to meet its reporting obligations, or otherwise:
- (h) require the Trustees of Te Putea Whakatupu Trust to keep separate accounts of their activities and payments of assistance and for the audit of those accounts:
- (i) specify the manner in which the trust deed may or must be varied and the restrictions on its variation which must include a prohibition on any variation that may jeopardise any charitable status it may have:
- (j) specify the powers of investment (and any prohibited investment) of the Trustees of Te Putea Whakatupu Trust:
- (k) empower the Trustees of Te Putea Whakatupu Trust to make grants of assistance to Maori, recognised iwi organisations, mandated iwi organisations and representative Maori organisations for the purposes of the trust, subject to any conditions stated in the trust deed or specified by the Trustees; but not so as to jeopardise any charitable status of Te Putea Whakatupu Trust and after

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having regard to the extent to which iwi are promoting or are able to promote those purposes:

- (l) contain such other matters as Te Ohu Kai Moana may require, but not so as to jeopardise any charitable status of Te Putea Whakatupu Trust;
 - (m) provide for the circumstances giving rise to termination and that on the termination of Te Putea Whakatupu Trust the assets must be distributed to or through mandated iwi organisations in the proportions specified in **column 3 of Schedule 4**, for the relevant iwi by payment to an entity with charitable status nominated by each of the relevant mandated iwi organisations or, where a nomination is not or cannot be made, to an entity or entities with charitable status and similar purposes nominated by the Trustees of Te Putea Whakatupu Trust to benefit that iwi alone or together with similar iwi;
 - (n) require the Trustees of Te Putea Whakatupu Trust to have the role and performance of Te Putea Whakatupu Trust independently reviewed after six years to determine whether its purposes could be better achieved through other mechanisms.
- (2) The trust deed of Te Putea Whakatupu Trust may provide that the Trustees of Te Putea Whakatupu Trust may act on any matter or class of matter only with the approval of Te Ohu Kai Moana; but the granting or withholding of any approval does not make Te Ohu Kai Moana or any Commissioner liable for any act or omission of the Trustees.
 - (3) Distributions and grants of assistance from Te Putea Whakatupu Trust to Maori or to recognised iwi organisations, mandated iwi organisations or representative Maori organisations do not affect the charitable status of Te Putea Whakatupu Trust irrespective of whether or not the recipient has charitable status.

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Part 5

Te Wai Maori Trust

40 Establishment

- (1) Te Ohu Kai Moana must establish a trust to be known as Te Wai Maori Trust, and Te Wai Maori Corporate Trustee Limited.
- (2) Te Wai Maori Corporate Trustee Limited must have only one share which has no distribution rights and must be held by Te Ohu Kai Moana.
- (3) Te Wai Maori Trust is not subject to any enactment or rule of law restricting the period for which a trust may run.

41 Purpose

The purpose of Te Wai Maori Trust is to receive and manage assets on behalf of beneficiaries under the Deed of Settlement so as to co-ordinate and fund initiatives that will assist the development of Maori freshwater fishing interests including:

- (a) to undertake or arrange for the undertaking of research, development and education for the benefit of Maori freshwater fishing interests;
- (b) to promote and enhance the habitat and nourishment of freshwater fisheries in lakes and rivers particularly those which have traditionally supported iwi and been the location for marae of those iwi;
- (c) to use its resources, to directly or indirectly benefit Maori freshwater fishing interests –

but not in any manner that jeopardises any charitable status it may have.

42 Trustees

- (1) Te Wai Maori Corporate Trustee must be a company formed under the Companies Act 1993 and must have three directors, to be known as the Trustees of Te Wai Maori Trust.

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- (2) The Trustees of Te Wai Maori Trust must be appointed by Te Ohu Kai Moana.
- (3) The criteria for appointment as a Trustee of Te Wai Maori Trust must be specified in the trust deed of Te Wai Maori Trust, but must include:
 - (a) the need to have as trustees a mix of Maori who collectively are well versed in matters of tikanga Maori, experienced in working with Maori, and Maori organisations, and with expertise in freshwater fisheries;
 - (b) due regard to the importance of representation of those iwi with a special interest in freshwater fisheries.
- (4) No more than one Commissioner may be a Trustee of Te Wai Maori Trust.
- (5) Any Trustee of Te Wai Maori Trust who becomes a director of Aotearoa Fisheries Limited, or any Subcompany, or a member of Te Kawai Taumata, or a trustee of Te Putea Whakatupu Trust ceases to be eligible to hold office as a Trustee of Te Wai Maori Trust, and must be treated as having resigned.
- (6) Te Wai Maori Corporate Trustee must not have any function other than to be the trustee of Te Wai Maori Trust.

43 Payments from Te Ohu Kai Moana to Te Wai Maori Trust

- (1) Te Ohu Kai Moana must pay Te Wai Maori Trust \$10 million on a date to be determined by Te Ohu Kai Moana in its sole discretion but which must be no later than the **31 October** that occurs 5 years after the commencement of this Act.
- (2) After the end of the 5 year period described in **subsection (1)** Te Ohu Kai Moana must pay to Te Wai Maori Trust a minimum of \$1 million each subsequent year until such time as Te Wai Maori Trust has received a total of \$20 million from Te Ohu Kai Moana.
- (3) Te Ohu Kai Moana may, but is not obliged to, distribute other money to Te Wai Maori Trust. In each annual report, Te Ohu Kai Moana must describe any such payment.
- (4) No payment from Te Ohu Kai Moana to Te Wai Maori Trust is subject to income tax, goods and services tax, gift duty or any tax, duty, levy or other charge imposed or provided for under the Inland Revenue Acts or any other enactment.

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- (5) Te Wai Maori Trust is not entitled to allocations of quota or income shares from Te Ohu Kai Moana.

44 Te Wai Maori Trust Deed

- (1) For carrying out the purposes of Te Wai Maori Trust in **section 41**, the trust deed for Te Wai Maori Trust must-
- (a) provide for the appointment, removal and rotation of Te Wai Maori Trustees;
 - (b) empower Te Wai Maori Corporate Trustee to make all decisions of Te Wai Maori Trust;
 - (c) prohibit Te Wai Maori Trust from undertaking in its own right any business other than business that is absolutely necessary for the carrying out of the purposes of Te Wai Maori Trust;
 - (d) provide for the remuneration of the Trustees of Te Wai Maori Trust;
 - (e) require the Trustees of Te Wai Maori Trust to obtain the approval of Te Ohu Kai Moana to the annual plan and assistance policy of Te Wai Maori Trust;
 - (f) prohibit the Trustees of the Te Wai Maori Trust from distributing capital;
 - (g) require the Trustees of Te Wai Maori Trust to report annually to Te Ohu Kai Moana:
 - (i) within 5 months after the end of each financial year;
 - (ii) measuring the performance of Te Wai Maori Trust against its approved annual plan;
 - (iii) measuring any assistance granted by Te Wai Maori Trust against its approved assistance policy;
 - (iv) including any other information required by Te Ohu Kai Moana;
 - (h) require the Trustees of Te Wai Maori Trust to keep separate accounts of their activities and grants of assistance and for the audit of those accounts;
 - (i) specify the manner in which the trust deed may or must be varied and the restrictions on its variation which must

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include a prohibition on any variation that may jeopardise any charitable status it may have:

- (j) specify the powers of investment (and any prohibited investment) of the Trustees of Te Wai Maori Trust:
 - (k) empower the Trustees of Te Wai Maori Trust to make grants of assistance to Maori, recognised iwi organisations and to mandated iwi organisations, for the purposes of the trust, subject to any conditions stated in the trust deed or specified by the Trustees of Te Wai Maori Trust; but not so as to jeopardise any charitable status of Te Wai Maori Trust, and after having regard to the extent to which iwi are promoting or are able to promote those purposes:
 - (l) contain such other matters as Te Ohu Kai Moana may require but not so as to jeopardise the charitable status of Te Wai Maori Trust:
 - (m) provide for the circumstances giving rise to termination and that on the termination of Te Wai Maori Trust the assets must be distributed to or through mandated iwi organisations in the proportions specified in **column 3 of Schedule 4**, by payment to an entity with charitable status nominated by each of the relevant mandated iwi organisations or, where a nomination is not or cannot be made, to an entity or entities with charitable status and similar purposes nominated by the Trustees of Te Wai Maori Trust to benefit that iwi alone or together with similar iwi:
 - (n) require the Trustees of Te Wai Maori Trust to have the role and performance of Te Wai Maori Trust independently reviewed after six years to determine whether its purposes could be better achieved through other mechanisms.
- (2) The trust deed of Te Wai Maori Trust may provide that the Trustees of Te Wai Maori Trust may act on any matter or class of matter only with the approval of Te Ohu Kai Moana; but the granting or withholding of any approval does not make Te Ohu Kai Moana or any Commissioner liable for any act or omission of the Trustees.
- (3) Distributions and grants of assistance from Te Wai Maori Trust to Maori, recognised iwi organisations, mandated iwi

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organisations or representative Maori organisations do not affect the charitable status of Te Wai Maori Trust irrespective of whether or not the recipient has charitable status.

Part 6
Reviews

45 Review of Te Ohu Kai Moana, Aotearoa Fisheries Limited, and Trusts

- (1) Te Ohu Kai Moana must conduct:
- (a) an initial review of the governance structure of Te Ohu Kai Moana and Aotearoa Fisheries Limited to ascertain whether the governance arrangements relating to Te Ohu Kai Moana (including Te Kawai Taumata) and Aotearoa Fisheries Limited reasonably serve the interests of beneficiaries of the Deed of Settlement; and
 - (b) a review of the role and performance of Te Putea Whakatupu Trust and Te Wai Maori Trust to determine whether their purposes have been achieved or could better be achieved through other mechanisms

as at and as soon as practicable after the date that is 12 years after the commencement of this Act.

- (2) Following the reviews in **subsection (1)**, Te Ohu Kai Moana must conduct further reviews at intervals of no less than 5 years and no more than 10 years as agreed at the reviews in **subsection (1)** or any subsequent review under this section.
- (3) Where appropriate a review under **subsection (1) or subsection (2)** may recommend amendments to this Act, the trust deed of Te Ohu Kai Moana, the constitution of Aotearoa Fisheries Limited, the trust deeds of Te Putea Whakatupu Trust or Te Wai Maori Trust and the constitutions of the corporate trustees of those Trusts.
- (4) The reviews must address the matters specified in **Part 1 of Schedule 9** and any other matters that Te Ohu Kai Moana believes should also be addressed.
- (5) The procedure for the conduct of reviews is specified in **Part 2 of Schedule 9**.

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- (6) If any review finds that the restrictions on the sale of allocated quota has a negative impact on the structures, accountability, values, or performance of Te Ohu Kai Moana or Aotearoa Fisheries Limited then in respect of the restrictions that review may only recommend that the restrictions be reviewed at a further review to be held no sooner than five years after the review that made that finding.
- (7) At that further review, consideration must include an analysis of the impact of the restrictions on sales, the underlying economic value and whether the risk to economic value and durability of the Settlement can more appropriately be addressed by other measures.

46 Restrictions on and outcomes from reviews

- (1) A review under **section 45** may consider whether voting shares in Aotearoa Fisheries Limited should be transferred or issued to mandated iwi organisations, but no review may consider or recommend that voting shares be transferred or issued to any other person or entity, or that Aotearoa Fisheries Limited be wound up or liquidated.
- (2) Where a review proposes that voting shares in Aotearoa Fisheries Limited be transferred or issued to mandated iwi organisations, the basis of transfer or issue of the voting shares must be the proportion of income shares held by mandated iwi organisations at the date of transfer or issue of the voting shares.
- (3) Without limiting the matters that may be considered in any review, recommendations from the review may address:
 - (a) the criteria for appointment of Commissioners, Te Kawai Taumata members, trustees of Te Putea Whakatupu Trust and Te Wai Maori Trust and directors of Aotearoa Fisheries Limited;
 - (b) the governance of Te Ohu Kai Moana, Te Kawai Taumata, Te Putea Whakatupu Trust, Te Wai Maori Trust and Aotearoa Fisheries Limited;
 - (c) the relationships between and processes relating to mandated iwi organisations, Te Ohu Kai Moana, Te Kawai Taumata, Te Putea Whakatupu Trust, Te Wai Maori Trust and Aotearoa Fisheries Limited;

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- (d) the role and performance of Te Putea Whakatupu Trust and Te Wai Maori Trust and the appropriate achievement of their purposes;
- (e) the timing of future reviews.

Part 7
Allocation of Quota and Other Assets

47 Allocations generally

- (1) Te Ohu Kai Moana must allocate PRESA and POSA to iwi only when -
 - (a) the iwi has a mandated iwi organisation;
 - (b) the organisation holds coastline agreements under **section 8** for all those fishstocks where the iwi has coastline within the relevant quota management area.;
 - (c) the mandated iwi organisation has satisfied Te Ohu Kai Moana that it has on its iwi register the number of members specified in **column 4 of Schedule 4**.
- (2) **Subsection (1)** does not apply to allocations in the form of financial assistance to iwi to meet their obligations under this Act as contemplated by **section 48(e)**, but Te Ohu Kai Moana may require demonstrated progress towards the matters described in **subsection (1)** before granting that assistance.
- (3) Te Ohu Kai Moana may disregard non compliance with **paragraph (b) of subsection (1)** for the purposes of allocating PRESA money under **section 48(f)** and income shares under **section 49(1)** at any time more than 2 years after the mandated iwi organisation has been recognised under **section 9**.
- (4) Te Ohu Kai Moana may disregard non compliance with **paragraph (b) of subsection (1)** for the purpose of allocating PRESA quota and POSA quota at any time more than 2 years after the mandated iwi organisation has been recognised under **section 9**; but
 - (a) so much of the allocation as is based on coastlines of the iwi may only be allocated to the extent that Te Ohu Kai Moana is satisfied that the coastline of the iwi is unlikely to be disputed; and

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- (b) so much of the allocation as is based on population of the iwi may not be allocated unless an allocation of quota will be made under **paragraph (a)** in respect of the same fishstock.
- (5) Any quota allocated under **subsection (4)** is allocated subject to the following conditions –
 - (a) that the mandated iwi organisation is not entitled to sell or swap that quota until the mandated iwi organisation holds an agreement for that coastline under **section 7** with all other affected iwi.
 - (b) that the mandated iwi organisation must (and is hereby empowered to) transfer the quota without compensation to another mandated iwi organisation if it is determined that the other mandated iwi organisation is entitled to that quota on the basis of the final agreements for coastlines for that quota management stock.
- (6) Te Ohu Kai Moana may treat a mandated iwi organisation as complying with **subsection (1)(c)**, subject to such conditions (if any) as Te Ohu Kai Moana considers appropriate, if it is satisfied that the organisation has made and is continuing to make reasonable efforts to comply with the requirement, and special circumstances exist that make it appropriate in the opinion of Te Ohu Kai Moana to allocate PRESA or POSA even though the requirement has not been fully met.
- (7) Allocated quota and income shares allocated to a mandated iwi organisation under this Act must be allocated to a company or trust as contemplated by **Kaupapa 9 of Schedule 7** and all references in this Act or any other Act to a mandated iwi organisation in respect of allocated quota or income shares include that company or trust. For the purposes of the Inland Revenue Acts, the value of the allocated quota or income shares held in a company is included in the available subscribed capital of the company.
- (8) Allocations of PRESA and POSA by Te Ohu Kai Moana to mandated iwi organisations, companies or trusts contemplated by **Kaupapa 9 of Schedule 7**, Te Putea Whakatupu Trust or Te Wai Maori Trust are not subject to income tax, goods and services tax, gift duty, or any tax duty levy, or other charge

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imposed or provided for under the Inland Revenue Acts or any other enactment.

48 PRESA money allocations

- (1) PRESA money received by Te Ohu Kai Moana must be allocated by Te Ohu Kai Moana in the following manner: -
 - (a) \$20 million under **section 38(2)** to Te Putea Whakatupu Trust without addition of earnings;
 - (b) \$10 million under **section 43(1)** to Te Wai Maori Trust without addition of earnings;
 - (c) \$5 million plus earnings to Te Ohu Kai Moana as capital;
 - (d) payments to iwi under **sections 59 and 60** without addition of earnings or other adjustment;
 - (e) up to \$18 million plus earnings on so much of that amount as is not already spent and earnings on the amounts referred to in **paragraphs (a) to (d)** prior to their payment, to fund transitional arrangements including:
 - (i) to fund Te Ohu Kai Moana in the performance of its functions, including assistance to iwi to meet their obligations under this Act; and
 - (ii) in payments of up to \$5 million under **section 38(1)** to Te Putea Whakatupu Trust and up to \$10 million under **section 43(2)** to Te Wai Maori Trust, without additions of earnings.
 - (f) the remaining PRESA money to be allocated to iwi, as contemplated by **section 47(1) and (3)**, in the percentage proportions specified alongside each iwi in **column 3 of Schedule 4**.
- (2) The following provisions apply to the capital referred to in **subsection (1) (c)**:
 - (a) Te Ohu Kai Moana may pay some or all of the capital to Te Putea Whakatupu Trust or Te Wai Maori Trust;
 - (b) Te Ohu Kai Moana may pay some or all of the capital to mandated iwi organisations in the percentage proportions specified alongside each iwi in **column 3 of Schedule 4**;

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- (c) in the event of the payment of the capital under **paragraph (a)**, Te Putea Whakatupu Trust or Te Wai Maori Trust may not dispose of the capital transferred, but may use the earnings for the carrying out of their purposes.

49 Allocation of POSA that is income shares

- (1) Te Ohu Kai Moana must allocate the income shares in Aotearoa Fisheries Limited referred to in **section 27(5)(b)** to mandated iwi organisations in the proportions specified alongside the relevant iwi in **column 3 of Schedule 4**.
- (2) Te Ohu Kai Moana must hold the income shares referred to in **section 27(5)(b)** and distributions in respect of them (less expenses) separately in trust for each iwi that does not comply with **section 47(1)** unless it exercises its discretion under **section 47(3)**.

50 Allocation of quota and sales of ACE

- (1) Te Ohu Kai Moana must allocate in accordance with **this Part** all quota described in **Parts 1 and 2 of Schedule 1** and all POSA quota received directly from the Crown under section 44 of the Fisheries Act 1996.
- (2) Transfer of ownership of allocated quota from Te Ohu Kai Moana to a mandated iwi organisation can only take effect at the commencement of a fishing year for the relevant fishstock; and until the transfer of that ownership, Te Ohu Kai Moana may sell or grant annual catch entitlements to recognised iwi organisations or mandated iwi organisations on such terms and conditions that Te Ohu Kai Moana thinks fit.
- (3) Where the Crown transfers POSA quota to Te Ohu Kai Moana after the commencement of this Part, the obligation to allocate the quota must be complied with by the start of the next fishing year after the fishing year in which the quota is transferred but only if the restrictions in **section 47** do not apply.

51 Allocation of inshore quota

Except as provided in **sections 53 to 57**, in respect of inshore quota for each quota management stock available to Te Ohu Kai Moana for allocation from time to time, Te Ohu Kai Moana must allocate the quota to mandated iwi organisations

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proportionately according to their coastlines (as determined under this Act) that are within the quota management area concerned.

52 Allocation of deepwater quota

Except as provided in **sections 53 and 55 to 57**, in respect of deepwater quota for each quota management stock available to Te Ohu Kai Moana for allocation, from time to time Te Ohu Kai Moana must allocate the quota to mandated iwi organisations proportionately as follows -

- (a) 25 percent of the quota management stock on the same basis as the allocation of inshore quota;
- (b) 75 percent of the quota management stock by the percentage stated in **column 3 of Schedule 4** that the population of the iwi bears to the notional Maori population.

53 Chatham Island allocations

Te Ohu Kai Moana must allocate quota for quota management stocks available to it for allocation within the Chatham Zone from time to time to mandated iwi organisations on the following basis-

- (a) there is to be a Chatham Zone comprising the area within 200 nautical miles of the baseline of the territorial sea around the Chatham Islands as determined under the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977;
- (b) there is to be an overlap area which is the area that is within the Chatham Zone and also within the area that would be within 200 nautical miles of the baseline of the territorial sea around New Zealand if the Chatham Islands were not part of New Zealand. **(Cross-reference for illustrative (not definitive) purposes to the map which would be in a Schedule. Copy attached to this draft Bill).**

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- (c) where a quota management area is wholly or partly within the Chatham Zone the quota management stock attributed to the Chatham Zone is

$$\frac{a}{b} \times c$$

a = the amount of the fishstock taken by commercial fishers in the Chatham Zone based on

- (i) for those fishstocks introduced into the quota management before 1 October 1999, data available from the fishing years commencing 1 October 1990 to 30 September 2001 inclusive

- (ii) for those fishstocks introduced into the quota management system after 1 October 1999, the most recent 5 years of available commercial catch histories for that stock

b = the total commercial catch taken for that fishstock for the relevant period described in *a* above in that quota management area

c = the quota for that fishstock available to Te Ohu Kai Moana for allocation in that quota management area

- (d) inshore quota for each quota management stock within the Chatham Zone must be allocated to the mandated iwi organisations of Ngati Mutunga (Chathams) and Moriori according to their proportionate coastlines of the Chatham Islands:

- (e) deepwater quota for each quota management stock within the Chatham Zone must be allocated-

- (i) as to 50 percent, among the mandated iwi organisations of Ngati Mutunga (Chathams) and Moriori according to their proportionate coastlines of the Chatham Islands;

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- (ii) as to 50 percent, among all mandated iwi organisations according to the percentage stated in **column 3 of Schedule 4** that the population of the relevant iwi bears to the notional Maori population.

54 Allocation of quota within harbours

- (1) Te Ohu Kai Moana must allocate harbour quota to mandated iwi organisations with rohe abutting any harbour specified in **Schedule 3** in accordance with an agreement made by all those mandated iwi organisations.
- (2) The PRESA harbour quota to be allocated under **subsection (1)** are specified in **Schedule 3**.
- (3) Te Ohu Kai Moana may, by notice in the *Gazette* specify POSA harbour quota for any fishstock for any harbour specified in **Schedule 3**; or specify that there is no harbour quota for a fishstock for a harbour or harbours.
- (4) Quota for allocation under **section 51** is reduced by the quota allocated or to be allocated under this section.
- (5) **Sections 7 and 8** (except **section 7(3)**) apply in all respects to harbours specified in **Schedule 3** and iwi with rohe abutting those harbours as if the shorelines relating to those harbours were coastlines.

55 Allocation of quota in quota management areas coinciding with FMA 4

Where a quota management area for a fishstock coincides completely with fisheries management area 4, Te Ohu Kai Moana must allocate the quota for the fishstock that is in that quota management area and outside the Chatham fishery described in **section 53** to mandated iwi organisations by the percentage stated in **column 3 of Schedule 4** that the population of the relevant iwi bears to the notional Maori population.

56 Allocation of quota in quota management areas coinciding with FMA 6

Where a quota management area for a fishstock coincides completely with fisheries management area 6, Te Ohu Kai Moana must allocate the quota that it has available for allocation for that fishstock to each mandated iwi organisation by the

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percentage stated in **column 3 of Schedule 4** that the population of the iwi bears to the notional Maori population.

57 Allocation of quota in quota management areas coinciding with FMA 10

Where a quota management area for a fishstock coincides completely with fisheries management area 10, Te Ohu Kai Moana must allocate quota in accordance with this **Part** the quota described in **Part 3 of Schedule 1** only when satisfied that there is a viable total allowable commercial catch for the relevant fishstock; and all such quota must be allocated to each mandated iwi organisation by the percentage stated in **column 3 of Schedule 4** that the population of the relevant iwi bears to the notional Maori population.

58 Allocation of freshwater quota

- (1) Te Ohu Kai Moana must allocate freshwater quota -
 - (a) in accordance with any agreement between the mandated iwi organisations of all iwi whose rohe is wholly or partially within the quota management area;
 - (b) if there is no agreement then to those iwi whose rohe is wholly or partially within the quota management area by the percentage of each iwi's population residing within the quota management area in proportion to the total population of all iwi whose rohe is wholly or partially within the quota management area who reside within the quota management area; with the residing population of each of these iwi according to the 2001 Census.
- (2) **Sections 7(1) and (2) and section 8** apply to agreements under **subsection (1)(a)** as if they were agreements or determinations relating to coastlines.

59 Additional cash in lieu of PRESA quota shortfalls

For those fishstocks shown in **Part 1 of Schedule 1** that do not show a holding of 10,000,000 shares, Te Ohu Kai Moana must pay the amount (if any) in **column 4 of Schedule 1** (without the addition of earnings) to the various iwi concerned in proportion to their relative shares of the fishstock when the iwi receive the related allocated quota.

*Maori Fisheries Development Bill 2003***60 Specific cash allocations to certain iwi**

- (1) Te Ohu Kai Moana must, at the time the relevant mandated iwi organisation becomes entitled to receive PRESA under **section 47**, pay to the mandated iwi organisation of:
 - (a) Te Atiawa ki Whakarongotai, the sum of \$398,039
 - (b) Ngai Takoto, the sum of \$556,184
 - (c) Ngati Whare, the sum of \$585,234
 - (d) Ngati Maru, the sum of \$463,348
 - (e) Ngati Hauiti, the sum of \$385,247
 - (f) Ngati Pukenga, the sum of \$264,544
 - (g) Ngati Manawa, the sum of \$72,841
- (2) The payments under **subsection (1)** are in addition to any other entitlements of the iwi under this Act.

Part 8**Sales and Exchanges of Allocated Quota****61 Interpretation and construction**

- (1) In this Part –

sell includes granting any annual catch entitlement which (together with any rights of renewal, options or other rights if exercised) could apply for more than 5 years; and **sale** has a corresponding meaning

Te Ohu Kai Moana includes the Te Ohu Kai Moana group; except in **sections 63(10), 64, and 66**
- (2) This Part is in addition to and not in substitution for Parts 4 and 8 of the Fisheries Act 1996.

62 Quota to be treated as allocated quota

- (1) A mandated iwi organisation may request Te Ohu Kai Moana to treat any quota owned by that mandated iwi organisation as allocated quota after
 - (a) notifying the proposal to adult members of the iwi in accordance with the constitutional documents of the mandated iwi organisation; and

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- (b) obtaining the approval of 75 percent of adult members of the iwi who vote at a hui-a-iwi or through other mechanisms required by the constitutional documents of the mandated iwi organisation.
- (2) Every notice of a potential request under **subsection (1)** must specify a reasonable estimate of the market value of the affected quota and the amount of quota affected.
- (3) Upon receipt of approval of a request under **subsection (1)** by Te Ohu Kai Moana the quota becomes allocated quota for the purposes of this **Part**.

63 Restrictions on disposal of allocated quota

- (1) No mandated iwi organisation may sell any allocated quota other than to another mandated iwi organisation or Te Ohu Kai Moana.
- (2) No mandated iwi organisation that owns allocated quota may –
 - (a) sell that quota other than in accordance with this section and the procedure established under **section 66**; or
 - (b) gift that quota.
- (3) No mandated iwi organisation may sell any allocated quota unless it has owned that allocated quota or allocated quota of some other kind for at least two years.
- (4) A mandated iwi organisation may sell allocated quota to another mandated iwi organisation or Te Ohu Kai Moana only if the organisation selling the quota has
 - (a) notified the potential sale to adult members of the iwi in accordance with the constitutional documents of the mandated iwi organisation; and
 - (b) has obtained the prior approval of 75 percent of adult members of the iwi who vote at a hui-a-iwi or through other mechanisms required by the constitutional documents of the mandated iwi organisation.
- (5) Every notice of a potential sale of allocated quota must specify a reasonable estimate of the market value of the allocated quota and the amount of quota for which approval to sell is sought.

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- (6) Any approval for the sale of allocated quota is valid for a maximum period of 15 months from the date on which it is given.
- (7) No mandated iwi organisation may sell any allocated quota without first giving Te Ohu Kai Moana and every other mandated iwi organisation an opportunity to bid for the allocated quota.
- (8) No mandated iwi organisation may sell any allocated quota that is inshore quota without first giving Te Ohu Kai Moana and every other mandated iwi organisation whose iwi has coastline within the relevant quota management area and holds a coastline agreement for the relevant quota management area the opportunity to purchase at the highest price bid under **subsection (7)**.
- (9) No mandated iwi organisation may sell any allocated quota that is freshwater quota without first giving Te Ohu Kai Moana and every other mandated iwi organisation whose rohe is wholly or partially within the relevant quota management area the opportunity to purchase at the highest price bid under **subsection (7)**.
- (10) A mandated iwi organisation may only sell allocated quota for the highest bid price to whoever submitted that bid unless the procedure established under **section 66** by Te Ohu Kai Moana specifically permits or provides otherwise and the circumstances of that bidding process means another bid should be accepted.
- (11) Where any mandated iwi organisation proposes to enter into any transaction or series of transactions (whether by way of option, security, guarantee, gift, or otherwise) that could, if the rights under it or them were exercised, result in the sale of the allocated quota, or the iwi not being entitled to the income from annual catch entitlements arising from that allocated quota for a period of more than 5 years, **subsections (4) to (6)** must be complied with by the mandated iwi organisation before the transaction or series of transactions are entered into as if they were a sale of the allocated quota, but the other provisions of this section do not apply at that time.
- (12) Where any party to a transaction or series of transactions referred to in **subsection (11)** exercises any right to sell or require sale of allocated quota, **subsections (1) and (7) to (10)**

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and any procedure established under **section 66** apply as if the seller were a mandated iwi organisation.

- (12) Where Te Ohu Kai Moana acquires allocated quota under this section the restrictions and procedures under this Part except **subsection (4)**, that apply to mandated iwi organisations apply to Te Ohu Kai Moana as if it were a mandated iwi organisation.
- (13) Te Ohu Kai Moana may sell allocated quota only pursuant to a special resolution and in accordance with the procedure established under **section 66**.
- (14) Any contract for the sale of allocated quota and any transaction or series of transactions referred to in **subsection (11)** that is in breach of this section or the procedures established under **section 65** is an illegal contract for the purposes of the Illegal Contracts Act 1970 and for the purposes of the granting of relief under **section 7** of that Act every member of the mandated iwi organisation, every other mandated iwi organisation and Te Ohu Kai Moana must be treated as parties to the contract, transaction, or series of transactions.

64 Caveat over allocated quota

- (1) Te Ohu Kai Moana must register under section 147(2) of the Fisheries Act 1996, and maintain, caveats over the quota shares of all allocated quota.
- (2) Where the sale or exchange of allocated quota has taken place in accordance with this Part, including any procedure established under **section 66**, Te Ohu Kai Moana must withdraw the relevant caveat and must register a new caveat over the relevant quota shares in the name of the new owner.

65 Exception for quota exchanges

- (1) **Section 63** does not apply to the exchange at fair market value of allocated quota by a mandated iwi organisation or Te Ohu Kai Moana -
 - (a) for other allocated quota of the same market value; or
 - (b) for other quota of the same market value that is not allocated quota with any other party whether or not that party is Te Ohu Kai Moana or a mandated iwi organisation.

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- (2) Where any allocated quota is exchanged for quota that is not allocated quota,
- (a) the mandated iwi organisation that is the recipient of quota that is not allocated quota must notify Te Ohu Kai Moana; and
 - (b) the quota that is not allocated quota becomes allocated quota;
 - (c) the allocated quota ceases to be allocated quota and Te Ohu Kai Moana must withdraw the relevant caveat;
 - (d) Te Ohu Kai Moana must register a caveat over the quota shares that relate to quota that has become allocated quota as required by **section 64(1)**
- (3) Where allocated quota is exchanged for allocated quota, both quotas remain allocated quota, and Te Ohu Kai Moana must maintain caveats over all the relevant quota shares but record the changes of ownership.
- (4) Any contract for the exchange of quota that is in breach of this section or the procedures established under **section 66** is an illegal contract for the purposes of the Illegal Contracts Act 1970 and for the purpose of granting relief under section 7 of that Act, every member of the mandated iwi organisation that exchanged the quota, every other mandated iwi organisation, and Te Ohu Kai Moana must be treated as parties to the contract of exchange.

66 Procedure for quota sales and exchanges

Te Ohu Kai Moana must establish and publish in the *Gazette* a procedure that must be followed for the sale or exchange of allocated quota. The procedure may include (but is not limited to) –

- (a) provision for notice to all parties eligible to purchase the allocated quota; including methodologies for tender and sale procedures, identification of any iwi to which **section 63 (8) or (9)** applies, notice periods and deadlines for responses to offers, and the form and content of the notices;
- (b) provision prohibiting the mandated iwi organisation or Te Ohu Kai Moana selling allocated quota from accepting

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any price other than the highest unconditional price offered, and any exceptions to that requirement;

- (c) provision for determining the purchaser where more than one mandated iwi organisation or Te Ohu Kai Moana wishes to purchase the allocated quota at the same price;
- (d) requirements for the making of decisions by a mandated iwi organisation to exchange allocated quota;
- (e) provision for determining fair market value of allocated quota to be exchanged and the resolution of disputes as to that value;
- (f) provision for the payment by or deduction from the requesting mandated iwi organisation under **section 62** or vendor under **section 63** or the transferor under **section 65** of the reasonable costs or charges associated with the procedure and the process required by **sections 62 to 65**, including the fees payable in respect of caveats;
- (g) The certificates of compliance and other information required to be supplied to Te Ohu Kai Moana and the form and time with which they must be supplied.

67 Exception for quota sold to wholly controlled entities

- (1) **Section 63** does not apply to the sale of quota to any person or entity that is and remains wholly owned and controlled by the mandated iwi organisation; but that section does apply to any sale by that person or entity as if it were the mandated iwi organisation except where-
 - (a) the sale is back to the mandated iwi organisation; or
 - (b) the sale is to another person or entity wholly owned and controlled by the mandated iwi organisation.
- (2) **Section 63** does not apply to transactions between members of the Te Ohu Kai Moana group; but that section does apply to any sale of allocated quota by any member of that group to any mandated iwi organisation.

*Maori Fisheries Development Bill 2003***Part 9****Dispute Resolution****68 Meaning of specified issue**

In this Part **specified issue** means—

- (a) an issue arising under **section 5** between Te Ohu Kai Moana and one or more mandated iwi organisations as to the classification of quota by Te Ohu Kai Moana;
- (b) an issue arising under **section 7** between mandated iwi organisations or between Te Ohu Kai Moana and one or more mandated iwi organisations or recognised iwi organisations as to the length or percentage of coastline to be attributed to an iwi;
- (c) an issue arising under **section 8** between Te Ohu Kai Moana and one or more mandated iwi organisations or recognised iwi organisations as to an assertion made under **section 8(3)** or a decision in relation to a special resolution made under **section 8(4)**;
- (d) an issue arising under **section 9** between Te Ohu Kai Moana and one or more mandated iwi organisations as to:
 - (i) whether an organisation seeking recognition or claiming continued recognition as a mandated iwi organisation meets the criteria for recognition in **section 9(3)**; or
 - (ii) which of two or more organisations claiming to be qualified to be recognised as a mandated iwi organisation should be given recognition by Te Ohu Kai Moana under **section 9(1)**;
- (e) an issue arising under **section 10** between Te Ohu Kai Moana or an adult member of an iwi and a recognised iwi organisation as to whether the recognised iwi organisation has failed to comply with **section 10(5)**;
- (f) an issue arising under **section 10** between Te Ohu Kai Moana and one or more recognised iwi organisations as to whether a recognised iwi organisation has failed to

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remedy any breach of a condition of any assistance given by Te Ohu Kai Moana to the recognised iwi organisation.

- (g) an issue arising out of the verification contemplated by **section 16(c)(iii)** of a coastline agreement or assertion as to coastline.
- (h) an issue arising under **section 23 or section 26** between one or more mandated iwi organisations, or between one or more representative Maori organisations, or between any combination of those organisations, or between a person who has been removed from Te Kawai Taumata and a mandated iwi organisation or a representative Maori organisation as to compliance with the requirements for the calling or conduct of meetings.
- (i) an issue arising under **section 47** between a mandated iwi organisation and Te Ohu Kai Moana as to any decision by Te Ohu Kai Moana under any of **subsections (2), (3), (4) or (6)** of that section.
- (j) an issue arising under **section 54** between mandated iwi organisations or between Te Ohu Kai Moana and one or more mandated iwi organisations as to harbour quota to be allocated to an iwi;
- (k) an issue arising under **section 58** between Te Ohu Kai Moana and one or more mandated iwi organisations as to freshwater quota to be allocated to an iwi;
- (l) an issue arising under **clause 8 of Schedule 6** between Te Ohu Kai Moana and one or more mandated iwi organisations claiming coastline in a quota management area as to whether or not the coastline of an island should be included in the coastline of that quota management area;
- (m) an issue raised by an adult member of an iwi alleging that any decision, act or omission of the mandated iwi organisation of that iwi concerning a matter or matters addressed in this Act is contrary to this Act or the constitutional documents or policies of the mandated iwi organisation;

*Maori Fisheries Development Bill 2003***69 Resolution of specified issues**

- (1) Where the parties cannot agree on a specified issue, they must endeavour to agree on and engage in good faith in a dispute resolution process.
- (2) Where –
 - (a) the parties cannot agree on a dispute resolution process; or
 - (b) the dispute resolution process timetable is not being complied with; or
 - (c) the dispute resolution process does not resolve the specified issue –

any of the parties to the dispute may refer the matter to Te Ohu Kai Moana which may, but except as provided in **subsection (3)** is not obliged to, make a decision in respect of the matter.
- (3) Te Ohu Kai Moana must make a decision under **subsection (2)** in respect of the specified issues described in **section 68(d)**.
- (4) Any party to a dispute may refer any decision of Te Ohu Kai Moana under **subsection (2) or (3)** to the Maori Land Court under **section 26A(2)** of Te Ture Whenua Maori Act 1993 for review and determination.
- (5) Where Te Ohu Kai Moana declines to make a decision under **subsection (2)** it must refer the matter to the Maori Land Court under **section 26A(2)** of Te Ture Whenua Maori Act 1993 for determination.

70 Determinations as to coastline

In resolving an issue described in **section 68(b)**, Te Ohu Kai Moana or the Maori Land Court may attribute coastlines to iwi by specifying lengths of coastline or specifying percentages of coastline (totalling 100 percent) between two defined points to be allocated to iwi without applying the percentages to the physical coastline, irrespective of the basis sought by the mandated iwi organisations concerned.

71 Further powers concerning mandated iwi organisations

- (1) Irrespective of whether the processes in **section 69** have been followed, Te Ohu Kai Moana may apply to the Maori Land Court under **section 26A(2)** of Te Ture Whenua Maori Act 1993

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for an order denying or suspending recognition of a mandated iwi organisation on the ground that it fails to meet one or more of the criteria set out in **section 9(3)** (other than **paragraph (c)(ii)**).

- (2) An application under **subsection (1)** must be accompanied by a detailed submission explaining why, in the opinion of Te Ohu Kai Moana, an organisation has failed to meet one or more of the criteria for recognition set out in **section 9(3)** (other than **paragraph (c)(ii)**).
- (3) An application under **subsection (1)** may be accompanied by an application for the protection of assets held by the organisation concerned.

72 Other powers not limited

Nothing in **section 69** or **section 71** prevents Te Ohu Kai Moana from taking any action that a mandated iwi organisation or a recognised iwi organisation has, by acceptance of any assistance from Te Ohu Kai Moana, agreed that Te Ohu Kai Moana may take for breach of any condition of that assistance.

Part 10

Transfer from Commission to Te Ohu Kai Moana

73 Interpretation

In this Part, unless the context otherwise requires, —

existing undertaking means —

- (a) all PRESA and POSA and other assets held, managed, or controlled by the Commission immediately before the appointed day; and
- (b) all rights and liabilities of the Commission

liabilities means liabilities, debts, charges, duties, and obligations of the Commission (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere)

transferred employee means a person employed by the Commission immediately before the appointed day who

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becomes an employee of Te Ohu Kai Moana or Aotearoa Fisheries Limited on the appointed day

74 Vesting of existing undertaking

On the appointed day the existing undertaking vests in Te Ohu Kai Moana and the Commission is consequentially dissolved.

75 References in instruments

- (1) A reference (express or implied) to the Commission in any enactment (other than this Act), or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the appointed day, must be read as a reference to Te Ohu Kai Moana.
- (2) A reference (express or implied) to an officer of the Commission in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the appointed day must be read as a reference to—
 - (a) the corresponding employee of Te Ohu Kai Moana; or
 - (b) if there is no corresponding employee, such other employee of Te Ohu Kai Moana as it thinks fit.
- (3) This section is subject to **section 91**.

76 Status of contracts and other instruments

- (1) Consents, agreements, conveyances, deeds, leases, licences, other instruments, undertakings, notices and any binding rulings made under section 91 of the Tax Administration Act 1994 (whether in writing or not), entered into by, made with, given to or by, or addressed to the Commission (whether alone or with another person) before the appointed day and having effect immediately before the appointed day (**contracts and other instruments**) are subject to **subsection (2)**.
- (2) The contracts and other instruments are binding on, and enforceable by, against, or in favour of, Te Ohu Kai Moana and have effect for the purposes of the Inland Revenue Acts as if Te Ohu Kai Moana and not the Commission had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

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77 Status of existing securities

- (1) A security held by the Commission as security for a debt or other liability to the Commission incurred before the appointed day—
 - (a) is available to Te Ohu Kai Moana as security for the discharge of that debt or liability; and
 - (b) if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to Te Ohu Kai Moana incurred on or after the appointed day.
- (2) Te Ohu Kai Moana is entitled to the same rights and priorities, and is subject to the same liabilities, in relation to the security as the Commission would be if this Act had not been passed.

78 Continuation of proceedings

- (1) An action, arbitration, proceeding, or cause of action that was pending or existing by, against, or in favour of the Commission, or to which the Commission was a party, before the appointed day may be continued and enforced by, against, or in favour of Te Ohu Kai Moana.
- (2) It is not necessary to amend a pleading, writ, or other document to continue the action, arbitration, proceeding, or other cause of action.

79 Effect of Act

Nothing effected or authorised by **this Part** of this Act—

- (a) places the Commission, Te Ohu Kai Moana, or any other person in breach of contract or confidence, or breach of trust, or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate, cancel, or amend a contract or arrangement, or to accelerate the performance of an obligation, or to impose a penalty or increased charge; or
- (c) places the Commission, Te Ohu Kai Moana, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of an asset, right, or liability or the disclosure of information; or

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- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or surety.

80 Books and documents to remain evidence

- (1) A document, matter, or thing that would have been admissible in evidence for or against the Commission is, on and after the appointed day, admissible in evidence for or against Te Ohu Kai Moana.
- (2) For the purpose of this section, **document** has the meaning given to it by section 2(1) of the Evidence Amendment Act (No 2) 1980.

81 Registers

- (1) Neither the Registrar General of Land, Commercial Fisheries Services Limited nor any other person charged with keeping books or registers is required to change the name of the Commission to Te Ohu Kai Moana or the Corporate Trustee in the books or registers, or in a document, solely because of the provisions of **this Part** of this Act.
- (2) If Te Ohu Kai Moana presents an instrument referred to in **subsection (3)** to a registrar or other person, the presentation of that instrument by Te Ohu Kai Moana is, in the absence of proof to the contrary, sufficient evidence that the property is vested in Te Ohu Kai Moana, or the Corporate Trustee on behalf of Te Ohu Kai Moana, as specified in the instrument.
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must —
 - (a) be executed or purport to be executed by Te Ohu Kai Moana or the Corporate Trustee; and
 - (b) relate to an existing undertaking held, managed, or controlled by the Commission immediately before the appointed day; and
 - (c) be accompanied by a certificate by Te Ohu Kai Moana or the Corporate Trustee that the property became vested in Te Ohu Kai Moana or the Corporate Trustee by virtue of the provisions of this Act.

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82 Liability of employees and agents

- (1) A person who, at any time before the appointed day, held off as a member of the Commission or who was an office employee, agent, or representative of the Commission is personally liable in respect of an act or thing done or omitted to be done by him or her before the appointed day in the exercise or bona fide purported exercise of an authority conferred by or under the Maori Fisheries Act 1989, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or any other enactment.
- (2) This section applies only—
 - (a) in the absence of actual fraud; and
 - (b) if the act or omission does not amount to an offence.

83 Transfer of existing employees

On the appointed day, each employee of the Commission becomes an employee of Te Ohu Kai Moana or Aotearoa Fisheries Limited, as determined by the Commission.

84 Terms and conditions of employment of transferred employees

- (1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before the appointed day.
- (2) **Subsection (1)**—
 - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and Te Ohu Kai Moana or Aotearoa Fisheries Limited, as the case requires; and
 - (b) does not apply to a transferred employee who receives a subsequent appointment with Te Ohu Kai Moana or Aotearoa Fisheries Limited.

85 Continuity of employment

For the purposes of every enactment, law, determination, contract, and agreement relating to a transferred employee—

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- (a) the contract of employment of that employee that applied immediately before the transfer in respect of that person's employment by Te Ohu Kai Moana or Aotearoa Fisheries Limited is deemed to have been unbroken; and
- (b) the employee's period of service with Te Ohu Kai Moana or Aotearoa Fisheries Limited, and every other period of service that is recognised by the Commission as continuous service, is deemed to have been a period of service with Te Ohu Kai Moana or Aotearoa Fisheries Limited.

86 No compensation for technical redundancy

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that—

- (a) the position held by the employee with the Commission has ceased to exist; or
- (b) the employee has ceased, as a result of the transfer to Te Ohu Kai Moana or Aotearoa Fisheries Limited, to be an employee of the Commission.

87 Application of the Inland Revenue Acts

- (1) For the purposes of the Inland Revenue Acts, a binding ruling under those Acts, and any other enactment that imposes a tax, provides for the collection of a tax, duty, levy or other charge, the Commission and Te Ohu Kai Moana as represented by its Corporate Trustee are the same person.
- (2) For the purposes of the Inland Revenue Acts, Te Ohu Kai Moana and the Corporate Trustee must be treated as having held all voting interests and market value interests that they received from the Commission under this Act at all times since those interests were acquired by the Commission.

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Part 11

Miscellaneous Provisions , Repeals, and Amendments

88 Commission has powers of Te Ohu Kai Moana

- (1) In the period between the commencement of this Act and the appointed day, the Commission has all the functions, duties and powers of Te Ohu Kai Moana.
- (2) Any matter or consideration commenced before the appointed day by the Commission may be continued by Te Ohu Kai Moana as if they were the same entity.

89 Name protection

- (1) No body may be incorporated or registered, under any enactment or in any other manner under any specified name as to be likely to mislead any person.
- (2) No person other than the person to whom the name applies under this Act may, either alone or with any other person or persons –
 - (a) trade or carry on business under a specified name; or
 - (b) trade or carry on business under any other name, knowing that the name so resembles a specified name as to be likely to mislead any person.
- (3) Every person who contravenes **subsection (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues.
- (4) It is a defence in any prosecution for an offence against **subsection (3)** if the defendant proves that, either alone or with any other person or persons, the defendant has carried on business continuously under the name to which the prosecution relates from any date before the commencement of this Act.
- (5) For the purposes of this section, a specified name is any of the following –
 - (a) Te Ohu Kai Moana
 - (b) Te Ohu Kai Moana Corporate Trustee Limited
 - (c) Te Kawai Taumata

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- (d) Aotearoa Fisheries Limited
- (e) Te Putea Whakatupu Trust
- (f) Te Putea Whakatupu Corporate Trustee Limited
- (g) Te Wai Maori Trust
- (h) Te Wai Maori Corporate Trustee

90 Enactments repealed

- (1) The Maori Fisheries Act 1989 is repealed on and from the appointed day.
- (2) The following enactments are consequentially repealed on and from the appointed day:
 - (a) Sections 12 to 20 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
 - (b) So much of Schedule 1 to the Company Law Reform (Transitional Provisions) Act 1994 as relates to the Maori Fisheries Act 1989
 - (c) Section 314(2)(h) of the Fisheries Act 1996
 - (d) So much of the Schedule to the Stamp Duties Abolition Act 1999 as relates to the Maori Fisheries Act 1989
 - (e) The Maori Fisheries Amendment Act 2001
 - (f) So much of Part 1 of Schedule 2 to the Human Rights Amendment Act 2001 as relates to the Maori Fisheries Act 1989.

91 Enactments amended

- (1) The enactments listed in **Part 1 of Schedule 10** are amended in the manner set out in that Schedule on and from the appointed day.
 - (2) The enactment listed in **Part 2 of Schedule 10** is amended in the manner set out in that Schedule.
-

*Maori Fisheries Development Bill 2003***Schedule 1
Quota****Part 1
PRESA Quota**

Fishstock	Description	PRESA Shares to be Allocated	Value of PRESA Shares Shortfall
BAR1	IN	9,154,221	\$128,860
BAR4	IN*	9,988,235	\$201
BAR5	IN	10,000,000	NIL
BAR7	IN	9,778,523	\$21,479
BCO1	IN	9,709,368	\$380
BCO2	IN	10,000,000	NIL
BCO3	IN	6,267,975	\$84,758
BCO4	IN*	9,481,931	\$26,062
BCO5	IN	9,900,993	\$13,505
BCO7	IN	10,000,000	NIL
BCO8	IN	10,000,000	NIL
BNS1	IN	8,612,700	\$287,865
BNS2	IN	9,720,632	\$48,800
BNS3	DW	6,760,168	\$359,621
BNS7	DW	10,000,000	NIL
BNS8	DW	7,500,000	\$12,115
BYX1	IN	10,000,000	NIL
BYX2	IN	10,000,000	NIL
BYX3	DW	10,000,000	NIL
BYX7	DW	6,708,074	\$5,639
BYX8	DW	10,000,000	NIL
CRA1	IN	9,303,231	\$173,508
CRA2	IN	10,000,000	NIL
CRA3	IN	10,000,000	NIL
CRA4	IN	10,000,000	NIL
CRA5	IN	10,000,000	NIL
CRA6	IN*	10,000,000	NIL
CRA7	IN	10,000,000	NIL
CRA8	IN	10,000,000	NIL
CRA9	IN	10,000,000	NIL

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ELE1	IN	10,000,000	NIL
ELE2	IN	10,000,000	NIL
ELE3	IN	9,014,095	\$68,177
ELE5	IN	10,000,000	NIL
ELE7	IN	10,000,000	NIL
FLA1	IN	9,947,865	\$2,144
FLA2	IN	10,000,000	NIL
FLA3	IN	10,000,000	NIL
FLA7	IN	9,975,407	\$722
GMU1	IN	9,833,593	\$5,255
GMU2	IN	10,000,000	NIL
GMU3	IN	10,000,000	NIL
GMU7	IN	10,000,000	NIL
GUR1	IN	10,000,000	NIL
GUR2	IN	9,999,145	NIL
GUR3	IN	10,000,000	NIL
GUR7	IN	9,957,921	\$1,146
GUR8	IN	10,000,000	NIL
HAK1	DW	9,812,104	\$35,467
HAK4	DW#	10,000,000	NIL
HAK7	DW	10,000,000	NIL
HOK1	DW	10,000,000	NIL
HPB1	IN	7,695,508	\$185,302
HPB2	IN	9,906,085	\$5,036
HPB3	IN	9,756,192	\$10,784
HPB4	IN*	10,000,000	NIL
HPB5	IN	9,986,705	\$480
HPB7	IN	10,000,000	NIL
HPB8	IN	9,997,503	NIL
JDO1	IN	10,000,000	NIL
JDO2	IN	10,000,000	NIL
JDO3	IN	10,000,000	NIL
JDO7	IN	10,000,000	NIL
JMA7	DW	9,999,919	NIL
LIN1	IN	9,800,907	\$3,162
LIN2	IN	10,000,000	NIL
LIN3	IN	9,624,660	\$91,377
LIN4	DW#	10,000,000	NIL
LIN5	DW	8,849,370	\$208,971
LIN6	DW#	10,000,000	NIL
LIN7	DW	7,662,577	\$515,887
MOK1	IN	9,935,296	\$1,359
MOK3	IN	8,347,091	\$5,940
MOK4	IN*	9,529,436	\$346

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MOK5	IN	9,690,100	\$245
OEO1	DW	10,000,000	NIL
OEO3A	DW	10,000,000	NIL
OEO4	DW#	10,000,000	NIL
OEO6	DW#	10,000,000	NIL
ORH1	DW	10,000,000	NIL
ORH2A	DW	10,000,000	NIL
ORH2B	DW	10,000,000	NIL
ORH3A	DW	10,000,000	NIL
ORH3B	DW	8,096,630	\$2,750,865
ORH7A	DW	10,000,000	NIL
ORH7B	DW	10,000,000	NIL
PAU1	IN	9,948,187	NIL
PAU2	IN	8,243,390	\$675,362
PAU3	IN	7,356,874	\$532,730
PAU4	IN*	9,199,401	\$549,003
PAU5A	IN	10,000,000	NIL
PAU5B	IN	10,000,000	NIL
PAU5D	IN	10,000,000	NIL
PAU6	IN	10,000,000	NIL
PAU7	IN	10,000,000	NIL
PHC1	IN	10,000,000	NIL
RCO1	IN	7,377,282	\$2,218
RCO2	IN	9,999,640	NIL
RCO3	IN	9,995,723	\$1,252
RCO7	IN	9,997,841	\$134
SCH1	IN	9,776,953	\$17,139
SCH2	IN	10,000,000	NIL
SCH3	IN	9,999,845	NIL
SCH4	IN*	10,000,000	NIL
SCH5	IN	9,712,027	\$19,339
SCH7	IN	10,000,000	NIL
SCH8	IN	10,000,000	NIL
SKI1	IN	9,999,348	NIL
SKI2	IN	9,991,507	\$214
SKI3	IN	9,986,884	NIL
SKI7	IN	10,000,000	NIL
SNA1	IN	9,934,489	\$131,360
SNA2	IN	8,829,327	\$62,026
SNA3	IN	9,758,514	NIL
SNA7	IN	9,017,500	\$23,586
SNA8	IN	8,465,133	\$740,949
SPO1	IN	9,932,318	\$3,903
SPO2	IN	9,998,056	NIL

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SPO3	IN	7,926,166	\$167,993
SPO7	IN	9,421,999	\$23,455
SPO8	IN	9,721,290	\$8,035
SQU1J	IN	10,000,000	NIL
SQU1T	DW	9,999,982	NIL
SQU6T	DW#	10,000,000	NIL
STA1	IN	10,000,000	NIL
STA2	IN	4,352,632	\$5,198
STA3	IN	10,000,000	NIL
STA4	IN*	9,332,654	\$12,960
STA5	IN	10,000,000	NIL
STA7	IN	10,000,000	NIL
STA8	IN	10,000,000	NIL
SWA1	DW	9,625,469	\$28,930
SWA3	DW	9,197,787	\$103,471
SWA4	DW	9,999,998	NIL
TAR1	IN	9,894,046	\$18,795
TAR2	IN	10,000,000	NIL
TAR3	IN	9,999,401	NIL
TAR4	IN*	10,000,000	NIL
TAR5	IN	10,000,000	NIL
TAR7	IN	9,987,230	\$743
TAR8	IN	10,000,000	NIL
TRE1	IN	9,996,105	\$276
TRE2	IN	9,997,388	NIL
TRE3	IN	7,314,815	\$1,044
TRE7	IN	9,999,754	NIL
WAR1	IN	10,000,000	NIL
WAR2	IN	9,994,202	\$128
WAR3	IN	10,000,000	NIL
WAR7	IN	9,999,795	NIL
WAR8	IN	9,999,141	NIL
Totals		1,444,584,253	8,185,701

* For allocation of this inshore quota see **sections 55, and 56**

For allocation of this deepwater quota see **sections 55, and 56**

Where fewer than 10,000,000 shares are shown, for any fishstock, see **section 59**. Where the amount shown in column 4 alongside fewer than 10,000,000 is NIL that is because the value is less than \$100.

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Part 2
POSA Quota

Fishstock	Description	POSA Shares to be Allocated	
ANC1	IN	20,000,000	
ANC2	IN	20,000,000	
ANC3	IN	20,000,000	
ANC4	IN*	20,000,000	
ANC7	IN	20,000,000	
ANC8	IN	20,000,000	
ANG11	FW	20,000,000	
ANG12	FW	20,000,000	
ANG13	FW	20,000,000	
ANG14	FW	20,000,000	
ANG15	FW	20,000,000	
ANG16	FW	20,000,000	
BUT1	IN∅	20,000,000	
BUT2	IN∅	20,000,000	
BUT3	IN∅	20,000,000	
BUT4	IN*∅	20,000,000	
BUT5	IN∅	20,000,000	
BUT6	DW#∅	20,000,000	
BUT7	IN∅	20,000,000	
CDL1	DW	20,000,000	
CDL2	DW	20,000,000	
CDL3	DW	20,000,000	
CDL4	DW#	20,000,000	
CDL5	DW	20,000,000	
CDL6	DW	20,000,000	
CDL7	DW	20,000,000	
CDL8	DW	20,000,000	
CDL9	DW	20,000,000	
COC1A	IN∅	20,000,000	
COC7A	IN∅	20,000,000	
COC7B	IN∅	20,000,000	
EMA1	IN∅	20,000,000	
EMA2	IN∅	20,000,000	
EMA3	IN∅	20,000,000	

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EMA7	INØ	20,000,000	
FRO1	DW	20,000,000	
FRO2	DW	20,000,000	
FRO3	DW	20,000,000	
FRO4	DW#	20,000,000	
FRO5	DW	20,000,000	
FRO6	DW#	20,000,000	
FRO7	DW	20,000,000	
FRO8	DW	20,000,000	
FRO9	DW	20,000,000	
GAR1	INØ	20,000,000	
GAR2	INØ	20,000,000	
GAR3	INØ	20,000,000	
GAR4	IN*Ø	20,000,000	
GAR7	INØ	20,000,000	
GAR8	INØ	20,000,000	
GSH1	IN	20,000,000	
GSH2	IN	20,000,000	
GSH3	IN	20,000,000	
GSH4	DW#	20,000,000	
GSH5	DW	20,000,000	
GSH6	DW#	20,000,000	
GSH7	DW	20,000,000	
GSH8	DW	20,000,000	
GSH9	DW	20,000,000	
GSP1	DW	20,000,000	
GSP5	DW	20,000,000	
GSP7	DW	20,000,000	
JMA1	IN	19,999,098	
JMA3	DW	19,999,978	
LEA 1	INØ	20,000,000	(Shares expected to be received from Crown 1 October 2003
LEA 2	INØ	20,000,000	(Shares expected to be received from Crown 1 October 2003
LEA 3	INØ	20,000,000	(Shares expected to be received from Crown 1 October 2003
LEA 4	INØ	20,000,000	(Shares expected to be received from Crown 1 October 2003
LFE 17	FWØ	20,000,000	(Shares expected to be received from Crown 1 October 2003

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OYS7	IN∅	20,000,000	
OYU5	IN∅	20,000,000	
PAD1	IN∅	20,000,000	
PAD2	IN∅	20,000,000	
PAD3	IN∅	20,000,000	
PAD4	IN*∅	20,000,000	
PAD5	IN∅	20,000,000	
PAD6	IN*∅	20,000,000	
PAD7	IN∅	20,000,000	
PAD8	IN∅	20,000,000	
PAD9	IN∅	20,000,000	
PIL1	IN∅	20,000,000	
PIL2	IN∅	20,000,000	
PIL3	IN∅	20,000,000	
PIL4	IN*∅	20,000,000	
PIL7	IN∅	20,000,000	
PIL8	IN∅	20,000,000	
QSC3	IN∅	20,000,000	
RBY1	IN	20,000,000	
RBY2	IN	20,000,000	
RBY3	IN	20,000,000	
RBY4	IN*	20,000,000	
RBY5	IN	20,000,000	
RBY6	DW#	20,000,000	
RBY7	IN	20,000,000	
RBY8	IN	20,000,000	
RBY9	IN	20,000,000	
RIB1	DW	20,000,000	
RIB2	DW	20,000,000	
RIB3	DW	20,000,000	
RIB4	DW#	20,000,000	
RIB5	DW	20,000,000	
RIB6	DW#	20,000,000	
RIB7	DW	20,000,000	
RIB8	DW	20,000,000	
RIB9	DW	20,000,000	
RSK 1	IN∅	20,000,000	<i>(Shares expected to be received from Crown 1 October 2003</i>
RSK 3	IN∅	20,000,000	<i>(Shares expected to be received from Crown 1 October 2003</i>
RSK 7	IN∅	20,000,000	<i>(Shares expected to be received from Crown 1 October 2003</i>

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RSK 8	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SBW1	DW	20,000,000	
SBW6A	DW#	20,000,000	
SBW6B	DW#	20,000,000	
SBW6I	DW#	20,000,000	
SBW6R	DW#	20,000,000	
SCA1	IN	20,000,000	
SCA4	IN∅	20,000,000	
SCACS	IN	20,000,000	
SFE 17	FW∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SPE1	IN	20,000,000	
SPE2	IN	20,000,000	
SPE3	IN	20,000,000	
SPE4	DW#	20,000,000	
SPE5	DW	20,000,000	
SPE6	DW#	20,000,000	
SPE7	DW	20,000,000	
SPE8	DW	20,000,000	
SPE9	DW	20,000,000	
SPR1	IN∅	20,000,000	
SPR3	IN∅	20,000,000	
SPR4	IN*∅	20,000,000	
SPR7	IN∅	20,000,000	
SSK 1	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SSK 3	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SSK 7	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SSK 8	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SUR1A	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SUR1B	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)
SUR2A	IN∅	20,000,000	(Shares expected to be received from Crown 1 October 2003)

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			October 2003)
			<i>(Shares expected to be received from Crown 1</i>
SUR2B	IN∅	20,000,000	October 2003)
SUR3	IN∅	20,000,000	
SUR4	IN*∅	20,000,000	
SUR5	IN∅	20,000,000	
SUR7A	IN∅	20,000,000	
SUR7B	IN∅	20,000,000	
			<i>(Shares expected to be received from Crown 1</i>
SUR 8	IN∅	20,000,000	October 2003)
			<i>(Shares expected to be received from Crown 1</i>
SUR 9	IN∅	20,000,000	October 2003)
TRU1	IN	20,000,000	
TRU2	IN	20,000,000	
TRU3	IN	20,000,000	
TRU4	IN*	20,000,000	
TRU5	IN	20,000,000	
TRU6	DW#	20,000,000	
TRU7	IN	20,000,000	
TRU8	IN	20,000,000	
TRU9	IN	20,000,000	
WWA1	DW	20,000,000	
WWA2	DW	20,000,000	
WWA3	DW	20,000,000	
WWA4	DW#	20,000,000	
WWA5	DW	20,000,000	
WWA6	DW#	20,000,000	
WWA7	DW	20,000,000	
WWA8	DW	20,000,000	
WWA9	DW	20,000,000	
YEM1	IN	20,000,000	
YEM2	IN	20,000,000	
YEM3	IN	20,000,000	
YEM4	IN*	20,000,000	
YEM5	IN	20,000,000	
YEM6	DW#	20,000,000	
YEM7	IN	20,000,000	
YEM8	IN	20,000,000	
YEM9	IN	20,000,000	

Total	3,459,999,076
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- * For the allocation of this inshore quota see **sections 55 and 56**
- # For the allocation of this deepwater quota see **sections 55 and 56**
- ∅ Fishstock Description yet to be classified

Part 3
FMA 10 FISHSTOCKS
Section 57 refers

FMA 10 Fishstocks	
ANC10	20,000,000
BAR10	10,000,000
BCO10	10,000,000
BNS10	10,000,000
BUT10	20,000,000
BYX10	10,000,000
CDL10	20,000,000
CRA10	10,000,000
ELE10	10,000,000
EMA10	20,000,000
FLA10	10,000,000
FRO10	20,000,000
GAR10	20,000,000
GMU10	10,000,000
GSH10	20,000,000
GUR10	10,000,000
HAK10	10,000,000
HOK10	10,000,000
HPB10	10,000,000
JDO10	10,000,000
JMA10	10,000,000
LEA10	20,000,000
LIN10	10,000,000
MOK10	10,000,000
OEO10	10,000,000
ORH10	10,000,000
PAD10	20,000,000
PAU10	10,000,000

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PIL10	20,000,000
RBY10	20,000,000
RCO10	10,000,000
RIB10	20,000,000
RSK10	20,000,000
SCH10	10,000,000
SKI10	10,000,000
SNA10	10,000,000
SPE10	20,000,000
SPO10	10,000,000
SPR10	20,000,000
SQU10T	10,000,000
SSK10	20,000,000
STA10	10,000,000
SUR10	20,000,000
SWA10	10,000,000
TAR10	10,000,000
TRE10	10,000,000
TRU10	20,000,000
WAR10	10,000,000
WWA10	20,000,000
YEM10	20,000,000
Total	700,000,000

Schedule 2**PRESA defined**

PRESA

1. Quota and money described in **Part 1 of Schedule 1**. This includes quota transferred from Charisma Limited and an allowance of \$8,185,701 which is the value assigned in **Part 1 of Schedule 1** to the shortfall from the 10 percent policy target for all PRESA fishstocks.
2. \$40,420,000 representing the value of Moana Pacific Limited shares transferred to POSA for cash.
3. \$3,121,000 representing the value attributed to sales of quota in excess of the 10 percent policy target for all PRESA fishstocks where that quota was purchased as a result of commercial market transactions.

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4. \$24,781,000 in cash representing residual retained earnings from operations of the Commission over the period from 20 December 1989 to **30 September 2002** inclusive.

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Schedule 3

Harbours and harbour quota fishstocks

PRESA QUOTA FOR FISHSTOCKS IN HARBOURS
(expressed as quota shares)

FISHSTOCKS	BC07	ELE7	FLA1	FLA7	GMU1	GUR1	RCO7	SCH1	SCH7	SNA1	SNA7	SPO1	SPO7	TRE1
HARBOURS														
Parengarenga			34,000		50,000					2,000				40,000
Houhora			8,000		20,000									
Rangunu			34,000		50,000					2,000				20,000
Mangonui			34,000		60,000					2,000				30,000
Whangaroa			34,000											26,000
Upper Bay of Islands			17,000		50,000					4,000				13,000
Whangaruru			17,000		20,000					4,000				13,000
Whangarei			168,000		300,000			75,000		22,000		64,000		467,000
Mangawhai			16,000		30,000					4,000				3,000
Whitianga														
Tairua														
Tauranga			51,000		2,000					27,000				467,000
Ohiwa														30,000
Aotea & Kawhia			24,000		50,000					4,000				13,000
Raglan			24,000		50,000					4,000				13,000
Port Waikato			16,000		700,000									13,000
Manukau			827,000		1,749,000	9,000		100		7,000		667,000		125,000
Kaipara			1,238,000		2,446,700	15,000		430,000		3,900		459,300		124,100
Hokianga			80,000		80,000			45,000		18,000		64,000		66,000
Marlborough Sounds	160,000	590,000		96,000			16,000		94,000		250,000		90,000	

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Schedule 4

Iwi

Name of iwi ⁽¹⁾ and Group	Population	% of notional Maori population	Number of members required to be on iwi register before PRESA or POSA can be allocated
A TAITOKERAU			
Ngati Whatua	13,113	1.931%	3000
Te Rarawa	11,998	1.767%	2800
Te Aupouri	8,168	1.203%	2100
Ngati Kahu	7,244	1.067%	1900
Ngati Kuri	4,841	0.713%	1400
Ngati Wai	4,115	0.606%	1300
Ngapuhi/Ngati Kahu ki Whaingaroa	2,040	0.300%	800
Ngai Takoto	509	0.075%	200
	52,028	7.661%	
B NGAPUHI			
Ngapuhi	107,242	15.791%	10900
	107,242	15.791%	
C TAINUI			
Waikato	46,526	6.851%	7300
Ngati Maniapoto	30,857	4.543%	5300
Hauraki (twelve iwi) ⁽²⁾	13,622	2.006%	3100
Ngati Raukawa (ki Waikato)	9,051	1.333%	2300
	100,056	14.733%	
D TE ARAWA WAKA			
Te Arawa (ten iwi) ⁽³⁾	40,533	5.968%	6600
Tuwharetoa	34,226	5.040%	5700
	74,759	11.008%	
E MATAATUA			
Tuhoe	29,726	4.377%	5100
Ngati Awa	13,252	1.951%	3000
Ngaiterangi	10,451	1.539%	2500

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Name of iwi⁽¹⁾ and Group	Population	% of notional Maori population	Number of members required to be on iwi register before PRESA or POSA can be allocated
Whakatohea	10,107	1.488%	2500
Ngati Ranginui	6,631	0.976%	1700
Ngai Tai	2,266	0.334%	900
Ngati Manawa	1,567	0.231%	600
Ngati Pukenga	1,243	0.183%	500
Ngati Whare	701	0.103%	300
	75,944	11.182%	
F POROURANGI			
Ngati Porou	63,613	9.367%	9000
Te Whanau a Apanui	10,113	1.489%	2500
	73,726	10.856%	
G TAKITIMU			
Ngati Kahungunu	53,478	7.874%	8000
Te Aitanga a Mahaki	4,501	0.663%	1400
Rongowhakaata	3,728	0.549%	1300
Ngai Tamanuhiri	1,207	0.178%	500
	62,914	9.264%	
H HAUAURU			
Te Atiawa (Taranaki)	14,147	2.083%	3200
Te Atihaunui a Paparangi	9,780	1.440%	2400
Taranaki	6,001	0.884%	1600
Ngati Ruanui	5,675	0.836%	1500
Rangitane (North Island)	3,321	0.489%	1200
Nga Rauru	3,285	0.484%	1200
Nga Ruahine	3,276	0.482%	1200
Ngati Apa (North Island)	2,461	0.362%	900
Muaupoko	1,901	0.280%	800
Ngati Mutunga (Taranaki)	1,652	0.243%	700

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Name of iwi⁽¹⁾ and Group	Population	% of notional Maori population	Number of members required to be on iwi register before PRESA or POSA can be allocated
Ngati Tama (Taranaki)	1,201	0.177%	500
Ngati Hauiti	1,039	0.153%	400
Ngati Maru (Taranaki)	907	0.134%	400
	54,646	8.046%	
I TE MOANA O RAUKAWA			
Ngati Raukawa (ki te Tonga)	19,698	2.900%	3900
Ngati Toa (Wellington)	4,955	0.730%	1400
Te Atiawa (Wellington)	1761	0.259%	760
Te Atiawa (Te Tau Ihu)	1,965	0.289%	800
Ngati Kuia	1,266	0.186%	500
Rangitane (Te Tau Ihu)	1,258	0.185%	500
Ngati Koata	885	0.130%	400
Ngati Rarua	805	0.119%	400
Ngati Apa ki te Waipounamu	649	0.096%	300
Ngati Tama (Te Tau Ihu)	628	0.092%	300
Atiawa ki Whakarongotai	493	0.073%	200
Ngati Toa (Te Tau Ihu)	247	0.036%	100
	34,610	5.096%	

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J	WAIPOUNAMU/RE KOHU			
	Ngai Tahu	41,496	6.110%	6700
	Ngati Mutunga (Chathams)	1,132	0.167%	500
	Moriori	601	0.088%	300
		43,229	6.365%	

(1) **Note this list could change as there is a range of entities within existing iwi who continue to assert that they should be recognised as iwi in their own right – the Commission is undertaking a process with each.**

(2) The twelve Hauraki iwi to be treated as one iwi for the purposes of this Act are:

Ngati Hako
 Ngati Hei
 Ngati Maru
 Ngati Paoa
 Patukirikiri
 Ngati Porou ki Harataunga, ki Mataora
 Ngati Pukenga ki Waiau
 Ngati Rahiri Tumutumu
 Ngai Tai
 Ngati Tamatera
 Ngati Tara Tokanui
 Ngati Whanaunga

(3) The ten Te Arawa iwi to be treated as one iwi for the purposes of this Act are:

Ngati Pikiaio
 Ngati Rangiteaorere
 Ngati Rangitihi
 Ngati Rangiwehehi

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Tapuika
Tarawhai
Tuhourangi
Uenuku-Kopako / Ngati Whakaue
Waitaha
Ngati Tahu

**Schedule 5
Representative Maori Organisations**

Federation of Maori Authorities
Manukau Urban Maori Authority
Maori Women's Welfare League
New Zealand Maori Council
Te Runanga o Nga Maata Waka Incorporated
Te Runanganui o te Upoko o Te Ika Association Incorporated
Te Whanau O Waipareira Trust

**Schedule 6
Coastlines**

1 Te Ohu Kai Moana to define coastlines

- (1) Te Ohu Kai Moana must define the lengths of coastlines for the purposes of this Act, and make the definitions and related determinations available to all relevant recognised iwi organisations and mandated iwi organisations, and generally.
- (2) There must be definitions of the lengths of coastlines for each quota management area for each fish stock.

2 End points

The end points of the coastlines for each quota management area are the points on the coastline defined in or under the Fisheries Act 1996 for that quota management area.

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3 Definitive Dates

For any quota management area Te Ohu Kai Moana may specify a definitive date, and for the purposes of determining coastlines any changes to the quota management area under the Fisheries Act 1996 must be disregarded unless Te Ohu Kai Moana changes the definitive date.

4 Mean high-water mark

Coastlines must be defined along the line of the mean high-water mark.

5 Verification and certification

Before adopting a definition of a coastline for a quota management area, Te Ohu Kai Moana must have the measurements verified and certified by an independent third party. The verification and certification is confined to the measurement of bays, river mouths, and coastlines (including coastlines of islands) described by Te Ohu Kai Moana and does not extend to decisions of Te Ohu Kai Moana under **clause 8** as to whether any coastline of any island should or should not be included in any coastline measurement.

6 River Mouths

Rivers are cut off where the mean high-water mark meets the natural entrance points and the distance across the river mouth is included in the coastline.

7 Bays

- (1) A bay is an indentation of the coast such that its area is not less than that of the semi-circle whose diameter is a line drawn across the mouth of the indentation (for the purposes of which definition —
- (a) The area of an indentation shall be taken to be the area bounded by the high-water mark around the shore of the indentation and the straight line joining the high-water marks of its natural entrance points; and
 - (b) Where, because of the presence of islands, an indentation has more than one mouth, the length of the diameter of the semi-circle referred to is the sum of the lengths of the straight lines drawn across each of the mouths; and
 - (c) In calculating the area of an indentation, the area of any islands lying within it must be treated as part of the area of the indentation).

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- 2) Where the straight line or lines drawn across the mouth or mouths of a bay are 10 km or less in total then the following provisions apply:
- (a) If the surface area of the semi-circle referred to in **paragraph (1)** is smaller than the water surface area of the bay (including any islands) measured along the mean high-water mark then the line that is the diameter of the semi-circle is included in the coastline;

(Cross-reference for illustrative purposes to Coastline Calculations – Juridical Bay Formula Figure 1 which would be in a Schedule. Copy attached to this draft Bill.)

- (b) If the surface area of the semi-circle referred to in **paragraph (1)** is greater than the water surface area of the bay (including any islands) measured along the mean high-water mark then the coastline of the bay is included in the coastline.

[(Cross-reference for illustrative purposes to Coastline Calculations – Juridical Bay Formula Figure 2 which would be in a Schedule. Copy attached to this draft Bill.)

i Islands

- 1) An island is a naturally formed area of land that is surrounded by, and above water at mean high-water tides.
- 2) The coastlines of the following islands must be counted as coastlines of the relevant quota management areas:

Stewart/Rakiura
Great Barrier

- 3) The coastlines of other islands must be counted as coastlines of the relevant quota management area if Te Ohu Kai Moana is satisfied that one or more iwi have:
- (a) ahi kaaroa (long term and current habitation on the island); and
- (b) a traditional and separate fishery associated with the island; and
- (c) current occupation of the island such as by marae and other communal structures.

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1 Islands within bays

Where a coastline is a straight line across the mouth of a bay, the coastlines of islands within the bay are not to be counted.

1.0 Chatham Islands

In defining the coastlines of the Chatham Islands for the purposes of the Chatham Zone and quota management areas, Te Ohu Kai Moana must count the coastlines of only the following islands:

Chatham
Pitt

Schedule 7

Criteria for recognition and continued recognition of mandated iwi organisation

Iwi Representation Principles and Requirements

The constitutional documents of the mandated iwi organisation must:

Kaupapa 1: Acknowledge the mandated iwi organisation's obligation to act ultimately for the benefit of all members of the iwi for fisheries settlement purposes irrespective of where they reside.

Kaupapa 2: Provide that membership, expressed as the right to participate in choosing directors, trustees or officeholders according to the nature of the mandated iwi organisation, is a right open to all adult members of the iwi.

Kaupapa 3: Provide that adult members of the iwi have the opportunity at intervals not exceeding 5 years to elect directors, trustees or officeholders according to the nature of the mandated iwi organisations. Not all positions need be elected at once, but no person can hold any office for more than 5 years without an election.

Kaupapa 4: Provide that voting rights in iwi elections and matters relating to constitutional amendments are available to adult members of the iwi and any other persons permitted to vote under the constitution, trust deed or rules of the mandated iwi organisation (members) and are able to be exercised in accordance with the agreed electoral system of that iwi. Issues relating to whangai are for determination according to the tikanga of each

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iwi. Accordingly the matter of whangai membership and voting rights remains at the discretion of each mandated iwi organisation.

Kaupapa 5: Provide that those entitled to vote have the right to request and exercise a personal postal vote in any process that elects directors, trustees or officeholders according to the nature of the mandated iwi organisation, or considers amendments to the constitution, trust deed or rules. If the mandated iwi organisation has electronic voting facilities then electronic voting must be allowed but cannot be mandatory.

Kaupapa 6: Provide that the mandated iwi organisation must have and maintain a register of those who affiliate to the iwi by whakapapa (members) including contact details and dates of birth and make ongoing efforts to add members to that register and keep it current.

Kaupapa 7: Provide that the organisation is accountable to all the members of the iwi (including those not living within its rohe) for its performance by providing planning and reporting systems to allow adult members of the iwi to measure the performance of the directors, trustees or officeholders and management of the organisation against previously published objectives. These systems must include holding a hui-a-tau (AGM) at which it will provide to iwi members:

- (a) an annual plan, including objectives;
 - (b) an annual report including the efforts of the mandated iwi organisation to increase the number of registered members and comparing performance against objectives in the previous annual plan;
 - (c) annual audited accounts;
 - (d) a report on the performance of the asset holding company or trust that receives the allocated quota and income shares;
 - (e) any proposal by that company or trust to rationalise those fisheries assets;
- (a) any proposal to change the constitution or trust deed of that company or trust, or any fish harvesting company;
 - (b) the policy of the mandated iwi organisation in respect of sales and exchanges of allocated quota and any changes to that policy from the policy for the previous year.
 - (c) a report detailing all sales and exchanges of allocated quota in the previous year including the value of quota sold or exchanged and the identity of the purchaser or other party to the exchange.

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Kaupapa 8: Provide a dispute resolution mechanism to deal with disputes within the iwi relating to matters arising under this Act.

Iwi Fisheries Assets - Ownership Principles and Requirements

The constitutional documents of the mandated iwi organisation must:

Kaupapa 9: Provide that a company or trust separate from but responsible to and wholly owned or controlled by the mandated iwi organisation must be established to receive the allocated quota and income shares of the iwi, and that company or trust must provide any financial return on the use of those assets only to the mandated iwi organisation.

Kaupapa 10: Provide that where the iwi wishes to have its own fishing operation to harvest, process or market fish or be involved in a joint venture to harvest, process or market fish, a company separate from but responsible to the iwi organisation must be established to undertake those operations and that company must provide all returns on its operations direct to the mandated iwi organisation. That company must be a separate entity from the company or trust that receives the allocated quota and income shares of the iwi.

Kaupapa 11: Provide that in the company or trust established to receive the allocated quota and income shares of the iwi, the directors, trustees or officeholders that are also elected members of the mandated iwi organisation must not exceed more than 40 percent of the total number of directors or trustees.

Kaupapa 12: Provide that the mandated iwi organisation must exercise strategic governance over the company or trust that receives the allocated quota and income shares of the iwi and any fishing harvesting company and as part of that exercise must agree on annual plans that set out:

- the key strategies for the development of iwi fisheries assets;
- the expected financial return on the assets;
- any proposals to rationalise the assets to advance the strategies and/or improve the financial returns;

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Kaupapa 13: Any proposals to change the constitution or deed of the company or trust that receives the allocated quota and income shares or any fishing harvesting, processing or marketing company must not be inconsistent with **Kaupapa 9 to 12** and must have the approval of at least 75 percent of the elected representatives of the mandated iwi organisation, and must be reported to all members.

Kaupapa 14: Any proposal to change the constitution, trust deed or rules of a mandated iwi organisation in respect of any matter to which **Kaupapa 1 to 12** relate, or to change the constitution or trust deed of a company or trust to which **Kaupapa 13** relates –

- (a) cannot be made within 2 years after the date on which the mandated iwi organisation is recognised by Te Ohu Kai Moana;
- (b) can only be promoted if the mandated iwi organisation resolves that the change is ultimately for the benefit of all members of the iwi;
- (c) must be notified to all individuals entitled to vote at a hui-a-tau or other special or general meeting to consider the issue;
- (d) must be carried by at least a 75 percent majority of votes cast at that hui-a-tau or special or general meeting; and
- (e) must be reported in the next annual report or earlier general communication to members.

Schedule 8
Te Kawai Taumata

1 Chairperson and Deputy Chairperson of Te Kawai Taumata

- (1) Te Kawai Taumata must elect 1 of its members as its chairperson, and another member as its deputy chairperson.
- (2) The chairperson of Te Kawai Taumata must at all times act within the authority of the College and in accordance with its directions.
- (3) If the chairperson or deputy chairperson vacates office as a member, or resigns from office, Te Kawai Taumata must elect an existing member to hold the office.

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2 Meetings

- (1) Te Kawai Taumata may hold meetings as necessary to appoint or remove Commissioners.
- (2) The chairperson must determine the date, time, and place of each meeting of the College and must give not less than 7 working days' written notice to members and alternate members of-
 - (a) the date, time, and place of the meeting; and
 - (b) the agenda for the meeting.
- (3) Notice need not be given under **subclause (2)**-
 - (a) to a member who for the time being is absent from New Zealand; or
 - (b) in respect of an adjourned meeting.
- (4) If all members who are entitled to receive notice give their consent, the requirement to notify a meeting may be waived.
- (5) It is the responsibility of a member to notify the appropriate alternate members, and the chairperson, if the member is unable to attend any meeting.

3 Teleconference meetings

- (1) A meeting may be conducted by teleconference or by any means of communication that allows the members reasonably to participate in the proceedings.
- (2) All the provisions in this Act relating to the meetings of Te Kawai Taumata apply to a meeting held in accordance with this clause.

4 Quorum

- (1) A quorum for a meeting of Te Kawai Taumata is not less than 6 members.
- (2) No business may be transacted at a meeting of Te Kawai Taumata at any time when a quorum is not present.

5 Conduct of meetings

- (1) At all meetings of Te Kawai Taumata, the chairperson must preside.
- (2) If the chairperson is not present-
 - (a) the deputy chairperson, if present, must preside; or
 - (b) if the deputy chairperson is not present, the members present must elect 1 of their number to be the chairperson of the meeting.

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A record must be kept in the minute book of all decisions taken at every meeting, signed by the chairperson of the meeting.

The signed minutes of the proceedings of a meeting are evidence-

- (a) of the proceedings; and
- (b) unless the contrary is proved, that the meeting was properly convened and the proceedings were properly conducted.

Voting

Except as provided in **subclause (3)**, each member present has 1 vote.

All questions arising at a meeting must be decided by a majority of the votes cast by the members present.

In the case of an equality of votes, the chairperson or member presiding has a second or casting vote.

A written resolution signed by all the members is effective for all purposes as a resolution passed at a meeting of Te Kawai Taumata and may comprise more than 1 copy of the resolution, each signed by 1 or more of the members of Te Kawai Taumata.

Special provisions where meeting called to remove Commissioner

Where a meeting is called to remove a Commissioner –

- (a) the Commissioner concerned must be given 10 working days notice of the meeting and its purpose and be given a reasonable opportunity to be heard; and
- (b) **Subclause 6(4)** does not apply.

Vacancies or irregularities in appointment

Despite a vacancy in its membership, Te Kawai Taumata may perform its functions, provided there is a quorum.

The decisions and transactions of Te Kawai Taumata are not affected if a member's appointment is defective.

Remuneration for members of Te Kawai Taumata

The members of Te Kawai Taumata are entitled to receive from Te Ohu Kai Moana —

- (a) remuneration determined by Te Ohu Kai Moana; and

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- (b) payment of reimbursing allowances or actual and reasonable expenses incurred in undertaking the function of Te Kawai Taumata as approved by Te Ohu Kai Moana

Schedule 9

Review of Te Ohu Kai Moana (including Te Kawai Taumata), Aotearoa Fisheries Limited and Te Putea Whakatupu and Te Wai Maori Trusts (“the Trusts”)

Part 1

Matters to be Reviewed

The matters to be considered at any review are:

The governance structure of Te Ohu Kai Moana, Aotearoa Fisheries Limited and the Trusts, including -

- (a) Te Kawai Taumata and associated processes and costs;
- (b) the processes and appointment criteria for Commissioners, directors of Aotearoa Fisheries Limited and trustees of the Trusts;
- (c) the operation of, and experience with, the appointment criteria for Commissioners, directors of Aotearoa Fisheries Limited, trustees of the Trusts and the associated processes;
- (d) the levels of interaction by Aotearoa Fisheries Limited and the Trusts with mandated iwi organisations;
- (e) the accountability of Aotearoa Fisheries Limited to mandated iwi organisations, including the quality of information provided and quality of reporting to mandated iwi organisations.
- (f) the effectiveness of the relationship between Te Ohu Kai Moana and Aotearoa Fisheries Limited and the Trusts.

The performance of Aotearoa Fisheries Limited, including but not limited to -

- (a) increase in shareholder value;
- (b) dividend performance;

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- and analysis of these could examine variability in performance and where possible benchmark that performance against the performance of other participants in the fishing industry and other similar entities.

- (3) The outcomes of the allocation process, including -
 - (a) shareholder participation and concentration;
 - (b) iwi interaction with Aotearoa Fisheries Limited such as joint ventures or management contracts in relation to quota or aquaculture;
 - (c) Aotearoa Fisheries Limited's position within and relationships with the fishing industry;
 - (d) the effectiveness of relationships of Te Ohu Kai Moana and Aotearoa Fisheries Limited with Government;
 - (e) The level of skilled Maori participants across all levels of the wider seafood business; and
 - (f) The extent to which freshwater fisheries management is being undertaken in way that is supportive of and encourages Iwi/hapu management of freshwater fisheries.

- (4) A review of the performance of mandated iwi organisations including but not limited to:-
 - (a) annual audited financial statements;
 - (b) increase in shareholder or member value;
 - (c) dividend performance or profit distribution; and

- and analysis where possible of the performance against other participants in the fishing industry and other similar entities.

- (5) The outcomes for mandated iwi organisations from the allocation process, including -
 - (a) effectiveness of the process of recognition of mandated iwi organisations
 - (b) mandated iwi organisations interactions, such as contractual arrangements within the iwi fishing industry and with the fishing industry generally; and
 - (c) the accountability of mandated iwi organisations to iwi members, including the quality of information provided and quality of reporting to iwi members particularly as to performance measured against published plans and strategies.

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Part 2

Procedure for Review

The procedure for each review must include the following steps:

- (1) Te Ohu Kai Moana must provide a draft terms of reference to mandated iwi organisations for comment within a reasonable time.
- (2) Following consideration of any comments from mandated iwi organisations, Te Ohu Kai Moana must determine the terms of reference for the review.
- (3) Te Ohu Kai Moana must conduct a public process to appoint a reviewer (which may be an individual or organisation) and take into account any proposals from mandated iwi organisations as to who should or should not be appointed.
- (4) The reviewer must consult mandated iwi organisations and other parties interested in the review, including Te Ohu Kai Moana, Aotearoa Fisheries Limited, Te Putea Whakatapu Trust and Te Wai Maori Trust.
- (5) The reviewer must make preliminary recommendations to Te Ohu Kai Moana.
- (6) After consultation between the reviewer and Te Ohu Kai Moana, the final reviewer's report and any response from Te Ohu Kai Moana must be provided by Te Ohu Kai Moana to mandated iwi organisations for comment within a reasonable time.
- (7) Following consideration of any comments from mandated iwi organisations Te Ohu Kai Moana must prepare recommendations for any proposed changes, an implementation plan, and appropriate resolutions, and provide them to mandated iwi organisations for consideration at a hui-a-tau. Proposed changes may be put forward in resolutions in combinations as Te Ohu Kai Moana considers appropriate.
- (8) Where a resolution promoted by Te Ohu Kai Moana has the support at a hui-a-tau of at least 75 percent of mandated iwi organisations representing more than 50 percent of the notional Maori population as shown in **Schedule 4** then Te Ohu Kai Moana must implement the resolutions to the extent that it is able, and if amendments to this Act are required, must request the Minister to promote those amendments.

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Schedule 10
Part 1
Amendments to other Acts

Fisheries Act 1996

(1996 No. 88)

Repeal the definition of Commission in section 2 and substitute:

“Te Ohu Kai Moana means the trust established under **section 12 of the Maori Fisheries Development Act 2003**”.

Omit from section 26(6) the words “the Commission” and substitute the name, “Te Ohu Kai Moana”.

Omit from section 30(2)(a) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from section 31(2) the words “the Commission” where they appear twice and substitute in each occasion the name “Te Ohu Kai Moana”.

Omit from section 31(2) the words “the Commission’s” and substitute the name “Te Ohu Kai Moana’s”.

Omit from section 44(1) the word “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from section 48(1) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Add to section 50 the following subsection:

“(3) Where the Crown owns allocated quota within the meaning of the **Maori Fisheries Development Act 2003** as a result of forfeiture under sections 58, 61, 255C or 255D, the Crown must sell that quota within a reasonable period to a mandated iwi organisation or Te Ohu Kai Moana.”

Omit from section 52(3)(d)(i), (ii) and (iii) the words “the Commission” and substitute in each case the name “Te Ohu Kai Moana”.

Omit from section 52(4)(c) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from the heading of section 55 the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

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Omit from section 55 the words “the Commission” where they appear twice and substitute in each case the name “Te Ohu Kai Moana”.

Insert in section 59, after subsection (2),

“(2A) Nothing in subsection (1) prevents any person from owning more than the permitted number of quota shares where

“(a) immediately prior to allocation of allocated quota under the **Maori Fisheries Development Act 2003** the person did not own more than the permitted number of quota shares; and

“(b) after allocation under that Act, the reason the person owns more than the permitted number of quota shares is the ownership of quota shares resulting from that allocation –

but except as may be permitted by any consent granted under section 60 of this Act, no such person may acquire any more such quota.”

Insert in section 59, after subsection (10),

“(10A) For the purposes of subsection (10)(e) a person is not a beneficiary of Te Putea Whakatupu Trust, Te Wai Maori Trust or a trust that holds allocated quota within the meaning of the **Maori Fisheries Development Act 2003**, or any mandated iwi organisation that controls that trust .”

Omit from section 59(11) the words “the Commission” and substitute in each case the name “Te Ohu Kai Moana”.

Insert in section 74, after paragraph (a),

“(aa) following the allocation of allocated quota under **Part 7 of the Maori Fisheries Development Act 2003** the commercial fisher owns all the annual catch entitlement generated from all the quota for the relevant stock allocated to an iwi under that Part, and that entitlement is not sufficient to satisfy the requirements of subsection (1);or”

Omit from section 78(12)(a) and (b) the words “the Commission” and substitute in each case the name “Te Ohu Kai Moana”.

Omit from section 79(6)(a) and (b) the words “the Commission” and substitute in each case the name “Te Ohu Kai Moana”.

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Add to section 147 the following subsection:

- “(2) A caveat may in accordance with **section 63 of the Maori Fisheries Development Act 2003**, be registered over any quota shares at the request of Te Ohu Kai Moana”.

Delete at the end of section 149(c) the expression “,-” and substitute the expression “; or”.

Insert after section 149(c) the following paragraph:

- “(d) Te Ohu Kai Moana requests that a caveat be lodged on the approval form,-”

Add at the end of section 151(3) the words “or **section 63 of the Maori Fisheries Development Act 2002**”.

Omit from section 255(4) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from section 255(5) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from section 343(1)(b) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from section 343(2B) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Omit from section 343(2C) the words “the Commission” and substitute the name “Te Ohu Kai Moana”.

Income Tax Act 1994

(1994 No 164)

Add to paragraph (h) of section HI 2 the words “and Te Ohu Kai Moana established under the **Maori Fisheries Development Act 2003**”.

Omit from paragraphs (i) and (j) of section HI 2 the name “Treaty of Waitangi Fisheries Commission” and substitute the name “Te Ohu Kai Moana”.

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Part 2
Amendments to Te Ture Whenua Maori Act 1993

Insert after section 26 the following sections:

“26A Jurisdiction of Court under Maori Fisheries Development Act 2003

- “(1) The Court has exclusive jurisdiction to advise on all matters referred to it under a dispute resolution process referred to in **section 69(1)** of the **Maori Fisheries Development Act 2003**.
- “(2) The Court has exclusive jurisdiction to hear and determine, by order, all applications, claims, disputes and questions referred to it under **sections 69(4), 69(5), 71(1) or 72** of the **Maori Fisheries Development Act 2003**.
- “(3) The Court must determine any application under **subsection (1) or (2)** by applying the same criteria as would be applied under the **Maori Fisheries Development Act 2003**.
- “(4) Nothing in **subsection (1) or (2)** limits the right of any person to appeal against any decision of the Court.
- “(5) A request for advice under **subsection (1)** or an application for a determination under **subsection (2)** is an application within the ordinary jurisdiction of the Court, and the Court has the power and authority to give advice and make determinations as the Court thinks proper.
- “(6) The Court does not have jurisdiction under this section unless it is satisfied that **section 69(1)** of the **Maori Fisheries Development Act 2003** has been complied with by the parties.
- “(7) Where a dispute resolution process contemplated by that section has not been agreed or has not been complied with the Court must order the parties to engage in a dispute resolution process on terms prescribed by the Court unless the Court believes, for specified reasons, that such a process is inappropriate.
- “(8) Nothing in this section restricts any other right of any person to bring proceedings in the Court.

“26B Procedure regarding requests for advice under Maori Fisheries Development Act 2003

- “(1) The jurisdiction in **section 26A(1)** is exercised by written request to the Chief Judge by the party or parties seeking the advice.
- “(2) The Chief Judge may address the request or may allocate the request to another Judge, and must do 1 or the other within 20 working days of receiving the request.

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- “(3) The Judge addressing a request for advice may (but is not obliged to) do 1 or more of the following things, before supplying the advice sought:
- “(a) exercise the powers in section 67 for the purpose expressed in that section:
 - “(b) consult with the requestor and parties affected by the advice:
 - “(c) refer some or all of the issues arising from the request to a mediator for mediation:
 - “(d) appoint one or more additional members (not being Judges of the Maori Land Court) to be known as pukenga who have knowledge of relevant tikanga Maori or other expertise for the purpose of assisting with the request for advice.

“26C Procedure regarding applications for determination under Maori Fisheries Development Act 2003

- “(1) The jurisdiction in **section 26A(2)** is exercised on written application to the Chief Judge by the party or parties seeking the determination.
- “(2) The Chief Judge may address the application or may allocate the application to another Judge and must do 1 or the other within 20 working days of receiving the application.
- “(3) The Judge addressing an application for a determination may (but is not obliged to) do 1 or more of the following things:
- “(a) determine the issue and order accordingly, if **subsection (5)** applies:
 - “(b) refer the application to the Court for hearing and determination:
 - “(c) exercise the powers in section 67 for the purpose expressed in that section:
 - “(d) refer some or all of the issues arising from the application to a mediator for mediation:
 - “(e) appoint one or more additional members (not being Judges of the Maori Land Court) to be known as pukenga who have knowledge of relevant tikanga Maori or other expertise for the purpose of providing advice on the application:
 - “(f) dismiss or defer consideration of the application, if **subsection (6)** applies.
- “(4) The Judge may choose not to address an application if the Judge is satisfied that the issues it presents are governed by another enactment or are more appropriately addressed in another forum.
- “(5) The Judge may make a determination under **subsection (3)(a)** if the Judge is satisfied that the applicant has taken reasonable steps to notify those parties affected by the application of the application.

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- “(6) The Judge may dismiss or defer consideration of an application under **subsection (3)(f)** if—
- “(a) it is vexatious, frivolous or an abuse of the Court, or fails to satisfy rules of court; or
 - “(b) it does not present serious issues for determination; or
 - “(c) the Judge considers it appropriate to dismiss or defer consideration of the application for another reason.
- “26D Procedure regarding applications referred to Court**
- “(1) Where any matter is referred to the Maori Land Court for hearing and determination under **section 26C(3)(b)** the Court may (but it is not obliged to) do one or more of the following things:
- (a) determine the issue and order accordingly if **subsection (3)** applies:
 - (b) exercise the powers in section 67 for the purpose expressed in that section:
 - (c) dismiss or defer consideration of the application if **subsection (5)** applies:
 - (d) request a report from Te Ohu Kai Moana on any matter the Court considers appropriate.
- “(2) The Maori Land Court may choose not to address an application if the Court is satisfied that the issues it presents are governed by another enactment or are more appropriately addressed in another forum.
- “(3) The Maori Land Court may make a determination under **subsection (1)(a)** if the Court is satisfied that the applicant has taken reasonable steps to notify those parties affected by the application of the application.
- “(4) Where any matter is referred to the Maori Land Court for hearing and determination under **section 26C(3)(b)**, the Court may, of its own motion or at the request of any party to the proceeding, appoint one or more additional members (not being Judges of the Maori Land Court) to be known as pukenga who have knowledge of relevant tikanga Maori or other expertise to assist the Court.
- “(5) The Maori Land Court may dismiss or defer consideration of an application under **subsection (1)(c)** if—
- (a) it is vexatious, frivolous or an abuse of the Court, or fails to satisfy rules of court; or
 - (b) it does not present serious issues for determination; or
 - (c) the Maori Land Court considers it appropriate to dismiss or defer consideration of the application for another reason.

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“(6) Nothing in this section limits the powers of Te Ohu Kai Moana under the **Maori Fisheries Development Act 2003**.

“26E Appointment of mediator

“(1) A Judge who decides to refer issues to a mediator under **section 26B(3)(c), section 26C(3)(d), or section 26H(3)(a)** must consult the parties affected by the application about who to appoint as mediator.

“(2) The parties affected by the application may, by agreement among them, appoint as mediator a person or persons with the skills and experience to undertake mediation on issues arising under the Maori Fisheries Act 2003.

“(3) The Judge must appoint a mediator if a mediator is not appointed by agreement under **subsection (2)**.

“(4) The Judge must be satisfied, before appointing a mediator, that the mediator has the skills and experience to undertake mediation on issues arising under the Maori Fisheries Act 2003.

“(5) A Judge other than the Judge addressing an application may be a mediator; a Judge acting as a mediator is, however, to be treated as acting judicially, and retains the same immunities as when acting as a Judge.

“(6) Despite **subsection (5)**, a Judge who acts as a mediator must not sit as a Judge of the Court on some or all of the same issues.

“26F Conduct of mediation

“(1) A Judge may advise a mediator of the issues that need to be addressed at mediation.

“(2) The following persons are entitled to attend and participate in a mediation:

(a) parties affected and their representatives;

(b) any other person with the leave of the Judge addressing the application.

“(3) A mediator may

“(a) follow those procedures (structured or unstructured) and do those things the mediator considers appropriate to resolve the issues referred to the mediator promptly and effectively; and

“(b) receive any information, statement, admission, document, or other material, in any way or form the mediator thinks fit, whether or not it would be admissible in judicial proceedings.

“(4) Written and oral material presented at or for the mediation must be kept confidential by the mediator and those participating in the mediation unless the party who produces the material consents to its disclosure.

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- “(5) A party may not be sued for defamation for statements made in mediation.
- “(6) Statements made and material presented at mediation are admissible in a subsequent mediation of the same issues but are not admissible in other proceedings before a person acting judicially unless the parties participating in the mediation consent to the admission of the statement or material.

“26G Successful mediation

- “(1) If some or all of the issues referred to mediation are resolved at mediation, the mediator must—
 - (a) record the terms of that resolution; and
 - (b) deliver them to the Judge.
- “(2) The Judge may include the terms of resolution so delivered in an order signed by the Judge and sealed with the seal of the Court.

“26H Unsuccessful mediation

- “(1) If some or all of the issues referred to mediation are not resolved by mediation and the mediator believes that those issues are unlikely to be resolved, the mediator must—
 - “(a) report that lack of resolution to the Judge; and
 - “(b) state the issues that are unresolved and any issues that have been resolved.
- “(2) The parties affected participating in the mediation may, if mediation fails and they all agree, withdraw and discontinue the application.
- “(3) Subject to **subsection (2)**, the Judge must, on receiving a report under **subsection (1)**, either—
 - “(a) refer some or all of the unresolved issues to a mediator for mediation; or
 - “(b) refer the unresolved issues to the Court for hearing and determination or for the provision of advice, as the case may be.
- “(4) A Judge referring unresolved issues to the Court under **subsection (3)(b)** may be the Judge of the Maori Land Court that hears the matter or provides advice.

“26I Orders and interim orders

- “(1) In making orders under **sections 26A to 26H**, the Judge or the Court, as the case may be, may do 1 or more of the following:
 - (a) incorporate or restate the terms of an agreement reached by the persons participating in an application;
 - (b) incorporate the terms that express the outcome of mediation;
 - (c) specify that the order applies for general or specific purposes:

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- (d) specify the purpose or purposes for which the order is made:
 - (e) specify a date after which the order ceases to have effect:
 - (f) vary the constitutional documents of a mandated iwi organisation:
 - (g) remove any or all directors, trustees or officeholders from office:
 - (h) appoint new or additional directors, trustees or officeholders to a mandated iwi organisation, or direct how new or additional directors, trustees or officeholders are to be appointed or elected to a mandated iwi organisation:
 - (i) make such other orders as are contemplated by the **Maori Fisheries Development Act 2003** or as the Judge or Court considers appropriate.
- “(2) In addition to the matters set out in **subsection (1)**, the Judge or the Court as the case may be, may order whenever it considers it appropriate or at the request of Te Ohu Kai Moana:
- “(a) that any or all distributions under the **Maori Fisheries Development Act 2003** (including income shares and distributions in respect of them) to or by one or more of the parties to the proceeding be suspended until further notice, being no later than such time as the matter is finally resolved by the Court;
 - “(b) that an asset or assets held by a representative iwi organisation be protected.

“26J Proceedings involving pukenga

Where pukenga are appointed under section **26B(3)(d)**, or **26C(3)(e)** or **26D(4)** the proceedings and processes of the Court cannot be challenged on appeal or in any other proceedings on the grounds that a pukenga had a tribal affiliation or other relationship with any of the parties unless it is shown that the pukenga acted in bad faith.”

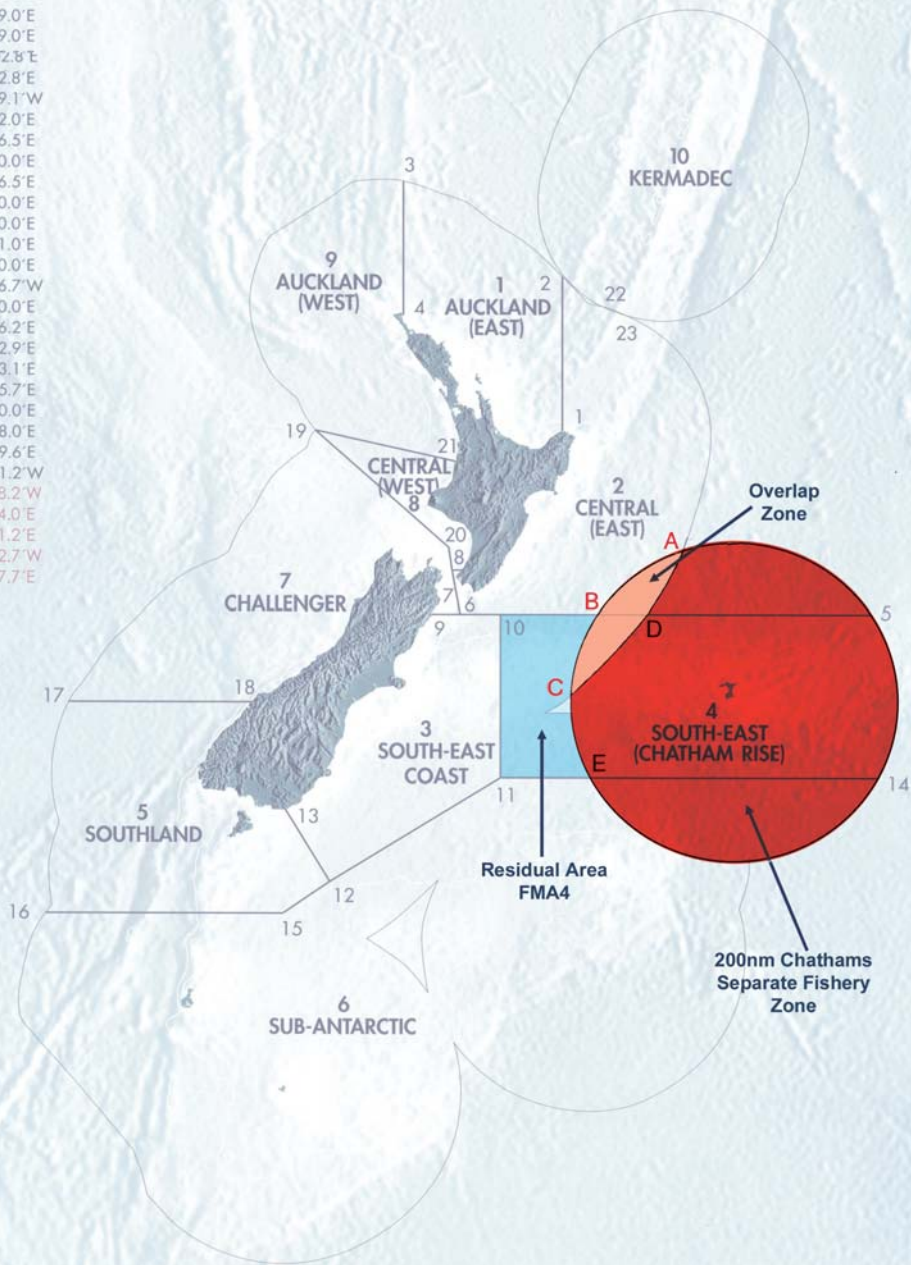
Insert in section 34, after the words “appointed under”, the words “**section 26B(3) or section 26C(3) or section 26D(4)** or”.

Insert in section 35, after the words “appointed under” the words “**section 26B(3) or section 26C(3) or section 26D(4)** or”.

Insert in section 36(1), after the words “Maori Land Court under”, the words “**section 26D(4)** or”.

Chatham Zone (Section 53 refers)

- 1 37°32.3'S 177°59.0'E
- 2 33°27.7'S 177°59.0'E
- 3 30°53.1'S 173°02.8'E
- 4 34°24.8'S 173°02.8'E
- 5 42°10.0'S 171°59.1'W
- 6 42°10.0'S 174°42.0'E
- 7 41°06.2'S 174°26.5'E
- 8 41°06.2'S 174°50.0'E
- 9 42°10.0'S 173°56.5'E
- 10 42°10.0'S 176°00.0'E
- 11 46°00.0'S 176°00.0'E
- 12 48°19.0'S 170°31.0'E
- 13 46°40.5'S 169°00.0'E
- 14 46°00.0'S 171°46.7'W
- 15 49°00.0'S 169°00.0'E
- 16 49°00.0'S 161°26.2'E
- 17 44°15.6'S 162°12.9'E
- 18 44°15.6'S 168°03.1'E
- 19 37°35.6'S 170°05.7'E
- 20 40°32.0'S 174°20.0'E
- 21 38°23.3'S 174°38.0'E
- 22 34°22.1'S 179°29.6'E
- 23 34°34.2'S 179°51.2'W
- A 40°20.7'S 177°58.2'W
- B 42°10.0'S 179°04.0'E
- C 44°06.5'S 178°21.2'E
- D 42°10.0'S 179°32.7'W
- E 46°03.0'S 179°07.7'E



Coastline Calculations - Juridical Bay Formula

(Clause 7 of Schedule 6 refers)

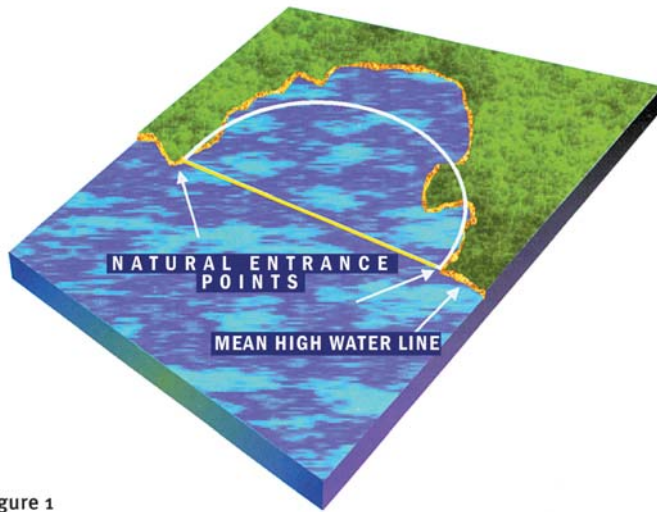


Figure 1

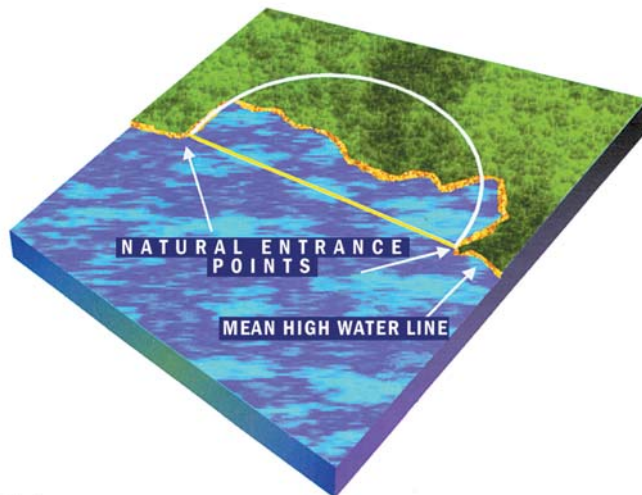


Figure 2

APPENDIX 2

CHRONOLOGY OF COMMISSION'S STEPS TOWARDS ALLOCATION

1988	
June	Release of Waitangi Tribunal "Muriwhenua Fishing Report".
1989	
December	Maori Fisheries Act 1989 enacted. The act sets up the Maori Fisheries Commission to receive 10% of the then TACC for each QMA species. The Act does not explicitly empower the Commission to allocate the fishing assets.
1990	
February	Commissioners appointed by Minister of Maori Affairs.
July	Maori Fisheries Commission hui-a-tau includes discussion with Iwi over allocation. Report does not propose a method but states that quota belongs to Iwi and will be returned after October 1992, being the end of the transition period.
1991	
Feb-July	13 hui are held with tribal representatives concerning allocation.
Nov-Dec	The Commission receives two reports on aspects of allocation. The first report, incorporating discussion from a kaumatua hui and evidence from oral traditions, looks at tikanga associated with Maori fishing rights and concludes that, with respect to fisheries, Iwi had mana over the sea adjacent to their lands (this concept is referred to as "mana whenua-mana moana"). The second report examines legal principles associated with allocation and considered that such rights were collective in nature and generally the right to control fishing was an adjunct to shoreline residence.
Nov-Dec	The Commission considered the above two reports and accepted those principles as over-arching principles for allocation.
1992	
January	After a period of consultation and discussion, the Commission proposes (in its newsletter Te Reo o te Tini a Tangaroa) a set of principles to govern the allocation of assets to Iwi.
Mar-Dec	The Commission holds a number of regional consultation hui on the principles of allocation.
June-July	Submissions are received from Iwi on allocation issues.
July	The Commission states in the July Tangaroa it will allocate the assets to tribes with mana moana over sea areas. The location/density model is advocated as a means of achieving this.

The Commission's hui-a-tau discusses the principles released in January and reaches a number of resolutions relating to allocation of the Pre-settlement Assets (PRESA). These resolutions become Schedule 1A of the amended Maori Fisheries Act and guide the Commission in developing an optimum model for allocation.

August	Release of Waitangi Tribunal "Ngai Tahu Sea Fisheries Report".
September	Maori fisheries negotiators and the Crown sign the Deed of Settlement.
Oct-Jan 93	The Commission seeks submissions from Maori on the allocation of the PRESA (and other issues).
November	Release of Waitangi Tribunal "Fisheries Settlement Report 1992".
December	Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 enacted to give effect to the Deed of Settlement. The Act amends the Maori Fisheries Act and reconstitutes the Maori Fisheries Commission as the Treaty of Waitangi Fisheries Commission. The Commission, among other things, becomes responsible for implementing the process set out in Schedule 1A of the Maori Fisheries Act for allocating the PRESA.
1993	
February	Submissions received in 1992 are analysed. Analysis finds that there is no clear consensus and Iwi want further time to consider the issues and the Commission calls for further submissions from Iwi.
May	New Commissioners appointed under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
October	The Commission releases discussion document developed by previous Commissioners, "Pre-settlement Assets. Possible Methods For Allocation, A Discussion Document for Iwi". This discussion document is very comprehensive and provides analyses of the following models: <ol style="list-style-type: none"> 1. Location/density. 2. Coastline length. 3. Population. 4. Equal division of assets among four regional consortia of Iwi. 5. Allocation to collectives of Iwi within a fish stock area. 6. Different methods for allocation of inshore and deep sea quota. <p>Each model is set out and then analysed against criteria. The document concludes that location/density is the model that best meets the criteria.</p>
Oct-Feb 94	The Commission seeks submissions on discussion material. Analysis of submissions identifies three models as representative of the range of views put forward. These three models are carried forward into the August 1994 discussion material.

1994

- June The Commission receives final cash settlement of \$9,402,632.50 on quota that remained outstanding from the 1992 Settlement pursuant to Section 42 of the Maori Fisheries Act 1989.
- August The Commission releases discussion document "Discussion Material on Allocation Models for Consultation with Iwi." The discussion document states that TOKM has analysed the views set out in the earlier consultation rounds and has decided that the following three models are representative of the views submitted:
- Mana moana
 - Population
 - Progressive allocation
- The discussion document sets out an analysis of each model and invites comment on them. The document also contains six criteria to be used in developing the final allocation model. Submissions are sought on the proposals.
- The Commission holds four separate hui involving 99 Iwi representatives to consult over the above discussion document.
- Sept-Nov The Commission holds 17 consultation hui with Iwi. Discussion focuses on the key principles in the mana whenua-mana moana and population models. There is widespread support for allocation, with Iwi as the preferred recipients. There is considerable support for inshore species to be allocated to adjoining Iwi, and some support for an approach which combines the mana whenua-mana moana and population principles.
- November The Commission approves a 6 point work plan which sets the parameters for further work on allocation while not excluding consideration of any other factors. The work plan indicates that the principles of both mana whenua-mana moana and population would have to be present in any model to achieve an adequate level of support.
- The location-density method of translating the mana whenua-mana moana concept into an allocation formula (as proposed in earlier discussion material) is found to have major technical problems and is abandoned by TOKM in favour of a coastline measurement approach.
- 1995**
- January An independent summary and analysis is prepared of the submissions and discussions on the Pre-settlement Assets. Two main views on allocation emerge - one favouring allocation based on mana whenua-mana moana (represented by the Treaty Tribes Coalition), and one favouring allocation based on Iwi population (represented by the Area One Consortium).
- June In the High Court, as a result of judicial review proceedings brought against the Commission by the Area One Consortium and four urban Maori authorities, Anderson J. orders that a preliminary question be determined before trial being; is the Commission required to allocate the PRESA solely to Iwi and/or bodies representing Iwi? The Area One

	<p>Consortium subsequently appeals to the Court of Appeal against the decision to set the preliminary question.</p>
July	<p>Treaty Tribes Coalition and Area One Consortium develop a Memorandum of Understanding reconciling the two previously opposing views on allocation.</p> <p>The Commission's hui-a-tau endorses the Memorandum of Understanding and supports the establishment of a working party of Iwi representatives to assist in the development of an allocation model. This working party evolves into Taumata Paepae - a consultative group that meets regularly from this time until November 1997.</p> <p>Economic analysis prepared on 5 allocation scenarios (the Iwi Enterprise Model; the Effective Ownership Model; the Regional Enterprise Model; the Commercial Subsidiary Model; the Status Quo Model).</p>
December	<p>Following consultation with Maori, the Commission publishes "Disputes Resolution Procedures – October 1995", setting out ways for Iwi to resolve inter and intra-Iwi disputes over fisheries matters.</p>
1996	
February	<p>The Commission releases full list of Iwi recognised by the Commission for fisheries purposes following consultation with Iwi groups.</p> <p>The Commission considers an analysis of a proposed regional allocation model and on the basis of the analysis resolves not to further consider that model.</p>
April	<p>Joint Working Party, subsequently Taumata Paepae, meets for the first time with the objective of reaching agreement by the 1996 hui-a-tau on a set of principles to underpin an allocation model.</p> <p>In considering the appeal on the preliminary question posed by Anderson J (see 30 June 1995), the Court of Appeal considers the meaning of the term "Iwi", makes a declaration on the scope of the Commission's statutory duty of consultation, and says any allocation scheme should include "an equitable and separately administered provision for urban Maori". The decision is appealed to the Privy Council.</p>
July	<p>Taumata Paepae reaches agreement on a series of elements of the allocation model, including that the PRESA should be allocated to Iwi, and that the allocation formula should include both mana whenua-mana moana and maatotoru o te tangata (coastline and population parameters).</p>
July	<p>The Commission/Taumata Paepae joint report to hui-a-tau outlines agreements reached and proposes continuation of the process.</p> <p>The Commission's hui-a-tau:</p> <ul style="list-style-type: none"> • Expands the membership of Taumata Paepae; • Endorses the continuation of the consultation process between Taumata Paepae and the Commission;

- Endorses the following:
 - Allocate
 - Allocate to Iwi
 - Mana Whenua-Mana Moana and Maatotoru o te Tangata are to be components of Allocation
 - There are other components of Allocation that are also to be identified and agreed (Moved Joe Mason – Mataatua; Secended Whata Winiata - Ngati Raukawa)
 - Iwi Criteria
 - Coastline Measurement (Except islands)
 - Inshore / Deepwater Species Classification
 - Disputes Resolution
 - Benefits for all Maori
 - The process is inclusive

September Taumata Paepae reconvenes to continue working towards agreement on the principles for allocation.

November The Commission sets up the Iwi Helpline to help Maori who do not know their Iwi to discover their tribal connections.

Te Iwi Moriori Trust Board presents the Commission with a submission proposing a “separate fishery” as a means of calculating the allocation for the Chatham Islands. (Ngati Mutunga o Wharekauri presents a slightly different “separate fishery” proposal to the Commission in September 1997.)

December The Commission distributes panui on “*Mandate Recognition of Iwi Organisations*”, setting out minimum standards expected before an Iwi organisation could be formally recognised by the Commission. Mandate recognition becomes a major focus for the Commission during 1997.

1997

January Privy Council gives decision on appeal from the Anderson J preliminary question (see 30 June 1995 and April 1996). The Privy Council upholds the appeal, quashes the Appeal Court’s finding and remits the matter to the High Court for determination.

April Taumata Paepae develops a Memorandum of Understanding recording principles of allocation agreed to by Taumata Paepae which were subsequently endorsed by a large number of Iwi, those principles included:

- Allocation to Iwi (recognition of Iwi based on set of criteria);
- Mana whenua-mana moana and maatotoru o te tangata (Iwi population) as key components of allocation, with other factors yet to be defined, and
- Coastline measurement methodology confirmed (islands to be included if they comply with criteria).

The Commission agrees to a framework for consultation on the allocation of PRESA. The Commissioners pass a number of resolutions on key factors for an allocation method, which are to be the subject of consultation. The main elements of the proposed model are:

- Allocation to Iwi (through properly mandated Iwi organisations);
- Inshore quota allocated on the basis of Iwi coastline;
- Deepwater quota 60% allocated on the basis of Iwi coastline, 40% on the basis of Iwi affiliations (using 1996 Census results), and
- Cash and shares allocated in proportion with quota.

The resolutions and proposed consultation process are conveyed to Iwi in panui on 17 and 30 April.

May An independent analysis is prepared of the alternative models for allocation proposed to date. An assessment is also undertaken of proposed allocation models against Commission's criteria.

The Commission distributes a panui on Structural Requirements for Iwi, which sets out minimum standards designed to promote accountability in Iwi organisations.

June Commissioners consider "other factors" (ie, factors other than coastline and population that have been proposed as being relevant to allocation) and conclude that most other factors have already been considered. Those not already considered were examined and found to be either not relevant and/or technically and financially unfeasible.

July The Commission releases discussion document 'Proposed optimum method for allocation consultation', setting out the Commission's preferred allocation method. The document is not the Commission's final proposal. It seeks submissions on all aspects of the method. In particular, the document indicates there are various options to be considered for the inclusion of islands in coastline measurements and for calculating the allocation to the Chatham Islands.

The Commission resolves to financially assist Iwi to meet the Commission's minimum structural requirements by offering a subsidy matching Iwi spending, dollar for dollar, to a maximum of \$12,000 per Iwi.

The Commission presents its proposed optimum allocation method at its hui-a-tau.

Sept-Oct The Commission holds 15 consultation hui with Iwi to discuss the proposed allocation method. The Commission includes the development putea concept. Alternative proposals distributed by Iwi at this time are:

- The Tangaroa Accord. An Optimum method for the fair allocation of Maori Fisheries Assets to Iwi (September 1997) which sets out the Takutaimoana model;
- The Allocation of Pre-settlement Fisheries Assets (September 1997) which sets out elements of an alternative approach proposed by Ngati Raukawa.

November As a result of support received during consultation hui and following a recommendation from Taumata Paepae, the Commission establishes a Development Putea Project Group (consisting of representatives of urban Maori, Iwi and the Commission). This group continues working through to July 98.

Taumata Paepae adjourns, having reached agreement on key elements of an allocation method, including support for the concept of a “separate fishery” for the Chatham Islands, but is unable to reach agreement on the “deepwater split”.

December A summary and analysis of submissions and discussions on the latest proposal are prepared. An analysis of discussions at hui and written submissions is also completed including translations of the Maori language speeches at consultation hui. While there is still a lot of debate, very few participants suggest the proposals should be rejected in their entirety. There is significant support for:

- The assets to be allocated as quickly as possible;
- Allocation to Iwi, and
- Inshore quota to be allocated on the basis of mana whenua-mana moana (as measured by coastline length).

The main areas of debate are:

- The allocation of deepwater quota - how should the split between the parameters of Iwi coastline and Iwi affiliations be divided? and
- How can non-Iwi Maori (groups & individuals) access the benefits of the settlement in a way which is also acceptable to Iwi?

Representatives from Tainui, Ngai Tahu, Hauraki and Nga Puhī propose a “compromise model”, containing many of the key elements of the current proposed optimum model. Elements of this model include:

- Inshore quota allocated on the basis of coastline;
- Deepwater quota allocated on a 50/50 coastline/“population” split;
- Cash allocated on the basis of affiliations, and
- Shares allocated on the basis of volume of quota.

1998

February The Commission holds a series of meetings with “urban Maori” representatives to discuss the structure of the proposed Development Putea.

August Justice Paterson, in the Auckland High Court (considering the decision on the preliminary question remitted by the Privy Council) finds that the Commission is required to allocate the PRESA solely to Iwi, and that in the context of the legislation, Iwi means traditional Maori tribe. Justice Paterson also says that the allocation model must ensure all Maori are able to access the benefits under the Settlement. This decision is appealed to the Court of Appeal.

August	Commissioners again consider “other factors” (see June 1997) and after deliberating reach the same conclusion.
September	Analysis prepared of all alternative PRESA models proposed to date, including Takutaimoana model, Treaty Tribes model, Tatou Tatou model, Ngati Raukawa model, Urban Maori model, Ngati Whatua Residential model, Chatham Islands “Separate Fishery”, Regional Allocation model, Rohe Pooti model, Marae model and Kaupapa Iwi method. This report is distributed to Iwi with other material on 12 November.
16-17 Sept	<p>At a special meeting, Commissioners:</p> <ul style="list-style-type: none"> • Assess alternative models against criteria and conclude that only 2 - the Takutaimoana and Kaupapa Iwi models - are consistent with legislation, allocate to Iwi and are technically feasible. Commissioners conclude that neither of these models are likely to be politically sustainable to the required level (ie, capable of attracting sufficient support from Iwi); • Agree to adopt a “separate fishery” proposal as a means of calculating the allocation of PRESA for the Chatham Islands; • Considered that there have been no lease round inequities and therefore no need to adjust the model; • Agree to the development putea proposal, and • Decide by overwhelming majority on the proposed method of allocation that will be reported to the Minister of Fisheries. This decision is conveyed to Iwi in a panui of 21 September 1998.
November	The Report on the Proposed Method for Allocation of Pre-Settlement Assets (PRESA) is distributed to all Iwi, interested parties and Urban Maori organisations. The report sets out the Commission’s proposed allocation method and provides background information on why the method is favoured, how it is proposed to be implemented, principles underlying the method, and alternative models considered by the Commission. Iwi are requested to indicate whether they accept or reject the proposed model, and to provide any comments on it, by 18 December 1998.
Dec-Feb 99	The Commission analyses responses and the level of acceptance for the proposed optimum method for allocation.
1999 February	The Commission considers comments on, and the level of support for, the proposed optimum method for allocation and concludes there is sufficient support for that method to report to the Minister of Fisheries on it.
March	Pursuant to an undertaking provided by the Commission all interested parties are notified of its intention to submit a report to the Minister of Fisheries.

An injunction is placed on the Commission by the Ryder plaintiffs in the High Court which bars the Commission from reporting to the Minister of Fisheries on the proposed Optimum Method of Allocation.

- Aug-Oct The decision of Paterson J is heard before the Court of Appeal who unanimously held that “Iwi” means a traditional tribe for the purposes of allocating PRESA.
- September The Commission sends out to Iwi a further policy on the Commission’s minimum constitutional requirements.

2000

- February The Ryder plaintiffs bring an unsuccessful judicial review proceeding against the Crown concerning the validity of the current Commissioner warrants.
- August New Commissioners are appointed by the Minister of Maori Affairs.
- November The Commission initiates a dispute resolution procedure to pragmatically settle litigation on allocation. Sir Rodney Gallen sends an invitation to all litigant parties as mediator.
- December The Commission forms the considered view that since March 1999 there was a decline in Iwi support for the 1999 model. Also the Commission is legally required to review the model.

The High Court determined in *Te Arawa Maori Trust Board v Attorney General* that commercial freshwater fisheries are included in the Settlement.

The Court of Appeal decision in *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* reaffirmed the view that the fisheries settlement remained a “tribal settlement” and that the benefits of the settlement are ultimately to be available to all Maori delivered through “tribal mechanisms”.

2001

- Feb-July Further dispute resolution meetings are held with most litigant parties to provide an initial opportunity to raise their issues underlying their specific litigation.
- July The Court of Appeal “Iwi” decision is appealed to the Privy Council who reaffirmed the decision of the Court of Appeal, that allocation of Pre Settlement assets must be to Iwi – meaning traditional tribes.
- Aug-Sept A second series of dispute resolution meetings are held to discuss opportunities for the withdrawal of each litigant parties respective proceedings.
- December The Commission launches “*He Anga Mua – A Path Forward*” containing four separate allocation models for consideration by Maori. Including proposals for addressing commercial freshwater fisheries, post settlement assets (POSA) and other issues raised during the dispute resolution procedure.

2002

- Feb-Mar The Commission embarks on a series of national consultation hui to present the four allocation proposals to Iwi and receive their submissions on the proposals.
- Mar-May The Commission analyses the submissions on *“He Anga Mua – A Path Forward”*.
- August The High Court removes the restraining order preventing the Commission from reporting a method of allocation of PRESA to the Minister of Fisheries.
- Release of *“Ahu Whakamua”*. Events since this time are recorded in Part C of *“He Kawai Amokura”*.

APPENDIX 3

IWI POPULATION – 2001 Census Adjustments

1. For the population component in the Commission's allocation model the Commission has made the following adjustments to the data derived from the 2001 Census:
 - (a) The Commission did not count the 13,305 respondents who identified a hapu that is affiliated to more than one lwi. This was done on the grounds that where there are several hapu of the same name that are associated with different lwi and only the hapu name is given in the Census, there would be no reasonable way to pro-rata this data because the distribution of affiliates among these hapu is almost certainly uneven and the margin of error would be too great.
 - (b) The 15 respondents that identified, in answer to the identification of lwi question, the waka Kurahaupo, Mamari and Horouta were also not counted. The reason for this was that the numbers were so small that it was not reasonable to pro-rata them to the lwi that associate with those waka in an accurate way.
 - (c) Internal double-counting from those lwi which have sub-groups not recognised as lwi by the Commission (namely, Ngati Kahungunu, Ngati Tahu, Ngati Whatua and Ngati Ruanui) have been removed. For example, because the Commission has determined to treat Tangahoe as a hapu of Ngati Ruanui, where a respondent in the Census identified that his or her lwi are Ngati Ruanui and Tangahoe, the Commission has only increased the Ngati Ruanui population by one, not two persons. To do otherwise would result in an artificial increase of Ngati Ruanui's population.
 - (d) If, in answer to the identification of question in the Census, a respondent provided an answer that resulted in an entry being recorded under the category "lwi not defined", but also named an lwi that could be identified by Statistics New Zealand, then the entry under "lwi not defined" has been removed by the Commission for the purposes of calculating lwi affiliate populations.
 - (e) The remainder of entries for "lwi not defined" for each region (there are 11 regions for which Statistics New Zealand maintain "lwi not defined" data, namely, Northland/Auckland, Hauraki, Waikato/King Country, Te Arawa/Taupo, Bay of Plenty, East Coast, Hawkes Bay/Wairarapa, Taranaki, Whanganui, Manawatu/Horowhenua/Wellington and South Island/Chatham Islands) have been divided on a pro-rata basis between the lwi in each region.
 - (f) Where respondents to the lwi identification question in the Census provided a response that resulted in an entry being made under the category "Kahungunu area not specified", but that respondent also named a specific Kahungunu regional affiliation (eg Ngati Kahungunu Ki Wairoa, Ngati Kahungunu Ki Heretaunga, or Ngati Kahungunu Ki Wairarapa), then the entry from the category "Kahungunu area not

specified” has been removed by the Commission for the purpose of calculating Iwi affiliates.

- (g) Similarly, where entries have been recorded under the category “Rangitane area not specified” where the respondent has also indicated an affiliation to Rangitane in either Hawkes Bay/Wairarapa or Manawatu/Horowhenua/Wellington or the South Island, then the entry under the category “Rangitane area not specified” has been removed.
 - (h) There are nine Iwi recognised by Statistics New Zealand that have more than one rohe (namely Ngati Haua, Ngati Tama, Ngati Maru, Te Atiawa, Ngati Mutunga, Rangitane, Ngati Raukawa, Ngati Toa and Waitaha). Where respondents have identified one of these Iwi, but not specified an area and have therefore been entered under the category “area not specified” for those Iwi, then those entries have been distributed on a pro-rata basis to each of the respective rohe populations for the Iwi concerned.
 - (i) The entries for groups recorded for statistical purposes by Statistics New Zealand, but not recognised as Iwi by the Commission (namely, Te Roroa, Te Kawerau, Rongomaiwahine, Pakakohi, Ngati Mamoe, Waitaha (South Island), Te Uri o Hau, Ngati Haua, and Tangahoe) have been allocated to the appropriate Iwi recognised by the Commission to which the Commission considers that they are affiliated. Where the group is affiliated to more than one Iwi recognised by the Commission, then the entries are distributed on a pro-rata basis. The affiliations recognised by the Commission in this respect are Te Roroa (Ngati Whatua and Nga Puhī), Te Kawerau (Ngati Whatua and Waikato), Rongomaiwahine (Ngati Kahungunu), Ngati Haua (Waikato and Te Atihaunui), Pakakohi (Ngati Ruanui and Nga Rauru), Tangahoe (Ngati Ruanui), Te Uri o Hau (Ngati Whatua) and Ngati Mamoe and Waitaha (South Island) (both Ngai Tahu).
 - (j) Where respondents to the Iwi identification question in the Census identified other categorisations that the Commission could reasonably associate with known Iwi (namely, Muriwhenua, Tauranga Moana, Te Tau Ihu and Turanganui-a-Kiwa), these figures were distributed on a pro-rata basis between those known Iwi.
 - (k) Similarly, where respondents provided their waka affiliation as Aotea, Tainui, Te Arawa, Takitimu, Mataatua and/or Tokomaru (where the figures identified in the Census were sufficient to enable pro-rata distribution), the responses were distributed on a pro-rata basis between the Iwi recognised as affiliated to those waka (for example, Aotea is distributed among Ngati Ruanui, Nga Ruahine, Ngati Maru (Taranaki), Nga Rauru and Te Atihaunui-a-Paparangi).
 - (l) Finally, where respondents simply identified a region, but not an Iwi and were therefore recorded in the Census under the category “region not further specified”, these respondents have been distributed on a pro-rata basis to all of the Iwi within the region concerned.
2. The consequent Iwi population figures (after the adjustments above) that will be used by the Commission are set out in Schedule 4 to the Draft Maori Fisheries Development Bill.

Appendix 4

Indicative Iwi Entitlements

In Appendix 1 of *Ahu Whakamua* the Commission published tables to provide Iwi with indicative figures of the broad level and relativity of assets and income that each Iwi was likely to receive under the policy decisions set out in that report. However, it was made clear in *Ahu Whakamua* that these figures were subject to several important variables and that they may change by the time that allocation occurs.

In finalising the allocation model in *He Kawai Amokura* the Commission has enhanced certain aspects of the allocation model. However, while these modifications have altered certain aspects of the model, they have not materially altered the core allocation formulae and therefore have not materially altered the distributional impact on any single Iwi. For these reasons, and the fact that the variables noted in Appendix 1 of *Ahu Whakamua* are still generally applicable, the figures in Appendix 1 of *Ahu Whakamua* may also be used to provide an indication of the general level and relativity of assets and benefits that Iwi will receive under *He Kawai Amokura*.

Accordingly, rather than simply referring to the *Ahu Whakamua* document when other aspects of that report have been modified, Table 3 from Appendix 1 of *Ahu Whakamua* is repeated below for ease of reference.

However, while the figures in Table 3 remain the same, some of the related information that was in Appendix 1 of *Ahu Whakamua* has altered due to both modifications to the allocation model in *He Kawai Amokura* and the need for greater certainty given the real prospect of allocation following the presentation of this Report to the Minister. The following points should therefore be noted:

1. Before allocation can occur there needs to be certainty in relation to some variables because there is PRESA and POSA assets that the Commission has to allocate are largely fixed. Accordingly, there needs to be agreement on Iwi coastlines prior to allocation.
2. In addition, even where some matters may still fluctuate after allocation commences, such as quota values and the TACC for different fishstocks, there needs to be a fixed point at which values are determined in advance of allocation for the purpose of settling the exact amounts that will be paid to certain Iwi in terms of the quota shortfall and minimum settlement policies that form part of *He Kawai Amokura*. The Commission has therefore determined in *He Kawai Amokura* and in the Draft Maori Fisheries Development Bill that the figures to be used for top up payments to Iwi for minimum settlements and quota shortfalls will be based on the values published in *Ahu Whakamua* and now set out in the table below.

3. The amounts to be paid by way of minimum settlement top-ups for the seven eligible Iwi identified in *Ahu Whakamua* are now set out in section 60 of the Draft Maori Fisheries Development Bill.
4. The fishstocks in respect of which there are quota shortfalls and the amounts to be paid by way of top-ups based on the quota values in *Ahu Whakamua* are now set out in Part 1 of Schedule 1 to the Draft Maori Fisheries Development Bill.
5. The Commission has also confirmed in *He Kawai Amokura* that the classification of fishstocks that has been used for several years in the Commission's quota and ACE distribution rounds, which were used in *He Anga Mua* and *Ahu Whakamua*, will be used for allocation under *He Kawai Amokura*.
6. There have been changes in several areas that impact upon PRESA cash including:
 - the proposed establishment of Te Wai Maori Trust with both its initial capital of \$10 million after 5 years and the assessed transitional funding of up to \$2 million over the 5 years to advance freshwater fisheries management;
 - the purchase of quota to reduce some of the quota shortfalls referred to above;
 - a less favourable outcome for the year to September 2002 than was projected in *Ahu Whakamua*, reflecting the difficult trading situation resulting from an appreciating New Zealand dollar as well as a softening of international demand and pricing worldwide reflecting geo-political events, and
 - a higher valuation of the shares in Moana Pacific Fisheries Limited reflecting greater certainty in its debt levels and operating performance.
 - The initial capital for Te Ohu Kai Moana will be \$5 million at the end of the 5 year transition, rather than the previously assessed \$10 million, as the Te Wai Maori Trust's activities will reduce the expenditure of Te Ohu Kai Moana.

However, while these factors principally impact on the level of PRESA cash, their cumulative effect is that the net PRESA cash to be allocated to Iwi under *He Kawai Amokura* is expected to be very similar to that estimated in *Ahu Whakamua*, namely, a little over \$ 20.7 million. These variations therefore do not affect the figures in *Ahu Whakamua* that are repeated in the table below.

As already noted, this table provides indicative figures for the allocation of assets and benefits to Iwi under *He Kawai Amokura*. The figures are indicative only because they are based on a range of estimates and/or assumptions about important variables including:

- **Coastline lengths for Iwi** – Indicative figures only have been used based on “compromised” coastline lengths contained in the ‘*Tainui Position on Maori Fish Allocation*’ report dated 19 April 2000. However, many coastline lengths are in

dispute and these will need to be the subject of agreement. This is likely to be the factor that now has most effect in terms of any changes to individual Iwi entitlements;

- **Quota Volume** – The volume of quota may change with the Minister of Fisheries’ TACC decisions at the time of allocation;
- **Quota Value** – The trading values will change to reflect market and currency conditions at the time of allocation;
- **New Species** – The timing and classifications of new species entering the QMS will increase the quota entitlement for some Iwi. In addition, the Table does not include fishstocks introduced into the QMS since 1 October 2001 because the Commission has not completed the analysis of catch data needed to make decisions on fishstock classification (as per section 5 of the Draft Maori Fisheries Development Bill) nor are quota values readily available for those species proposed to be introduced on 1 October 2003;
- **Chatham Zone** – An analysis of catches in the Chatham Zone for species that have entered the QMS since 1999 is to be carried out and this will affect the quota that is attributed to the Chatham Zone;
- **Harbour Quota** – An analysis of catches in harbours for POSA species is to be carried out and this may affect the quota that is classified as Harbour Quota;
- **Share Value** – The values of shares in the Table are generally based on estimates for each company at July 2002 and these values may change and in turn affect the anticipated value of the AFL Income Shares;
- **Value of cash** – The cash value used is the audited year end balance sheet at 30 September 2002 adjusted for quota shortfall purposes. This may change depending on trading results and expenditure prior to the commencement of allocation;
- **Annual Income** - Where the Table shows estimated annual Iwi income, the figures have been calculated on the following basis:
 - the income from inshore and deepwater quota is based on the indicative lease price of 75% of the average quota leasing prices for the period October 2000 to September 2001 as reported in the FishServe “Bluebook” dated September 2001. It has been assumed that the costs of Iwi managing their quota would be 25% of the lease price for that quota and hence the income is 75% of the lease price;
 - the income derived from cash is estimated at 3.5%. This figure allows for management costs including tax;

- The income from AFL shares is based on the Commission's estimate of AFL's maintainable earnings. This is the Iwi share of the 40% on Net Profit After Tax that AFL must pay each year. No allowance has been made for any improved earnings that may result from rationalisation of the commercial assets.

Accordingly, while the Table can be used for broad comparative purposes, it does not accurately portray the final result for any individual Iwi. Even where the Table can be used for comparative purposes between Iwi, it remains very sensitive to changes in coastline length.

Indicative Iwi Entitlements

Allocation Outcomes for Iwi by Income Bands

(Based on Table 3 of Appendix 1 of Ahu Whakamua)

	C/line (km)	% of Coastline	Affins	% of Affins	Estimated Value of PRESA Inshore Quota Allocation	Estimated Value of PRESA Deepwater Quota Allocation	Estimated Value of POSA Inshore Quota Allocation	Estimated Value of POSA Deepwater Quota Allocation	Estimated PRESA Catch Allocation by Affiliation
Income Over \$1 million									
04 Nga Tahi	2,347,998	38.88%	41,496	6.11%	\$ 46,650,003	\$ 14,550,855	\$ 4,658,851	\$ 1,889,929	\$ 1,455,009
17 N Kahurangi	515,900	8.98%	53,476	7.67%	\$ 17,165,018	\$ 8,186,592	\$ 4,000,943	\$ 1,448,038	\$ 1,631,422
09 Naapuhi	95,902	1.51%	107,242	15.79%	\$ 1,685,436	\$ 13,685,009	\$ 43,654	\$ 2,547,427	\$ 3,271,608
25 Ngati Porou	217,300	3.41%	53,613	9.37%	\$ 3,585,890	\$ 8,623,258	\$ 169,227	\$ 1,586,745	\$ 1,940,628
01 Chatham	139,100	n/a	1,725	0.26%	\$ 11,953,981	\$ 8,892,790	\$ 30,041	\$ 1,854,473	\$ 2,898,898
54 Waikato	139,100	2.18%	46,526	6.85%	\$ 1,407,611	\$ 6,194,336	\$ 4,963	\$ 1,107,022	\$ 1,419,359
TOTAL for Group	3,315,600	52.08%	314,083	46.25%	\$ 64,657,230	\$ 60,053,039	\$ 5,514,678	\$ 8,758,632	\$ 9,981,814
Income \$500,000 to \$1 million									
02 Hauraki iwi (total)	395,375	6.21%	13,622	2.01%	\$ 10,282,996	\$ 2,697,672	\$ 212,306	\$ 356,092	\$ 415,563
45 Te Arawa a	53,900	0.85%	40,533	5.97%	\$ 1,417,491	\$ 5,215,170	\$ 29,837	\$ 964,974	\$ 1,236,931
53 Tairāhema	19,300	0.29%	34,288	5.04%	\$ 1,111,561	\$ 4,206,031	\$ 6,733	\$ 812,277	\$ 1,044,125
22 Ngati Maniapoto	109,300	1.72%	30,857	4.54%	\$ 1,186,594	\$ 4,170,315	\$ 2,490	\$ 736,778	\$ 841,348
52 Tuhoe	6,800	0.11%	29,726	4.38%	\$ 1,889,789	\$ 3,742,707	\$ 4,104	\$ 704,933	\$ 906,845
38 Ngati Whai	298,000	4.60%	4,115	0.61%	\$ 7,009,546	\$ 1,863,211	\$ 109,881	\$ 122,860	\$ 125,538
30 Ngati Raukawa ki te tonga	55,264	0.87%	19,098	2.90%	\$ 1,333,900	\$ 2,632,508	\$ 433	\$ 470,821	\$ 600,923
38 Ngati Whatau	235,300	3.70%	13,113	1.93%	\$ 3,185,269	\$ 2,254,159	\$ 27,102	\$ 320,510	\$ 406,035
TOTAL for Group	1,169,639	18.37%	185,998	27.37%	\$ 25,011,566	\$ 26,304,243	\$ 474,186	\$ 4,489,033	\$ 5,670,906
Income \$100,000 to \$500,000									
50 Te Aupouri	259,600	4.08%	8,188	1.20%	\$ 4,354,450	\$ 1,990,230	\$ 94,850	\$ 207,784	\$ 249,179
56 Te Whanau a Apanui	113,800	1.78%	10,115	1.49%	\$ 2,891,496	\$ 1,557,294	\$ 63,514	\$ 251,755	\$ 308,515
14 Ngati Awa (BOP)	32,800	0.52%	13,262	1.95%	\$ 960,573	\$ 1,743,335	\$ 17,852	\$ 336,979	\$ 404,275
46 Te Aitawa (Taranaki)	42,887	0.67%	14,147	2.06%	\$ 607,527	\$ 1,000,121	\$ 319	\$ 338,377	\$ 431,579
51 Te Rarawa	84,100	1.25%	11,996	1.77%	\$ 1,046,040	\$ 1,723,590	\$ 8,093	\$ 287,065	\$ 366,020
08 Ngaiterangi	34,100	0.54%	10,451	1.54%	\$ 990,333	\$ 1,306,291	\$ 19,453	\$ 260,610	\$ 318,326
58 Whakatoke	26,300	0.41%	10,107	1.49%	\$ 687,739	\$ 1,332,628	\$ 14,284	\$ 241,702	\$ 308,332
34 Ngati Toa (Wellington)	63,665	1.00%	4,054	0.73%	\$ 2,494,149	\$ 806,126	\$ 14,735	\$ 127,453	\$ 151,161
18 Ngati Kahurangi	60,700	0.95%	7,244	1.07%	\$ 1,380,244	\$ 1,059,866	\$ 30,696	\$ 128,781	\$ 200,951
47 Te Aihauani (Whanganui)	24,036	0.38%	9,780	1.44%	\$ 285,152	\$ 1,296,555	\$ 207	\$ 235,510	\$ 298,356
41 Rangitane (Manawatu)	86,484	1.04%	3,321	0.49%	\$ 1,989,474	\$ 595,645	\$ 38,827	\$ 87,253	\$ 101,315
27 Ngati Rangitiki	34,100	0.54%	6,031	0.88%	\$ 899,098	\$ 815,665	\$ 19,395	\$ 159,265	\$ 202,593
49 Te Aitawa (Wellington)	62,800	0.95%	1,761	0.26%	\$ 2,121,736	\$ 391,812	\$ 48,880	\$ 63,522	\$ 78,356
29 Ngati Raukawa ki Waikato	0,000	0.00%	9,051	1.33%	\$ 3,362	\$ 1,134,397	\$ 139	\$ 214,464	\$ 276,177
44 Te Aitanga a Mahaki	36,300	0.57%	4,501	0.66%	\$ 1,190,051	\$ 872,776	\$ 29,162	\$ 119,252	\$ 157,311
43 Taranaki	64,700	1.02%	6,001	0.88%	\$ 759,456	\$ 943,758	\$ 246	\$ 146,985	\$ 183,071
31 Ngati Ruamoi	38,300	0.60%	5,676	0.84%	\$ 450,420	\$ 824,707	\$ 176	\$ 197,294	\$ 271,126
42 Rongopohaka	25,100	0.39%	3,728	0.55%	\$ 781,934	\$ 542,271	\$ 10,503	\$ 87,048	\$ 113,729
57 Whaingaroa	61,200	0.96%	2,040	0.30%	\$ 1,389,484	\$ 408,981	\$ 40,244	\$ 53,494	\$ 67,234
48 Te Aitawa (SI)	71,613	1.12%	1,059	0.20%	\$ 1,451,352	\$ 514,208	\$ 158,719	\$ 60,543	\$ 59,846
19 Ngati Kaiti	71,612	1.12%	1,496	0.22%	\$ 1,451,096	\$ 454,596	\$ 158,709	\$ 43,980	\$ 38,622
39 Rangitane Te Tau Ihu	71,612	1.12%	1,258	0.19%	\$ 1,451,052	\$ 453,993	\$ 158,709	\$ 43,790	\$ 38,378
20 Ngati Kuri	7,900	0.12%	4,841	0.71%	\$ 181,214	\$ 626,530	\$ 5,265	\$ 115,373	\$ 147,053
18 Ngati Koati	71,613	1.12%	865	0.13%	\$ 1,480,315	\$ 468,649	\$ 158,703	\$ 54,952	\$ 26,399
28 Ngati Raua (SI)	71,613	1.12%	805	0.12%	\$ 1,480,843	\$ 356,621	\$ 158,702	\$ 33,056	\$ 24,558
12 Ngati Apa ki te Waipounamu	71,613	1.12%	648	0.10%	\$ 1,480,919	\$ 377,269	\$ 158,699	\$ 29,360	\$ 19,799
32 Ngati Tama (SI)	71,613	1.12%	628	0.09%	\$ 1,480,811	\$ 374,637	\$ 158,699	\$ 28,662	\$ 19,158
10 Ngai Rouri	39,300	0.62%	3,895	0.60%	\$ 661,194	\$ 608,141	\$ 144	\$ 60,726	\$ 106,410
TOTAL for Group	1,679,562	26.38%	158,566	23.24%	\$ 35,382,291	\$ 26,056,072	\$ 1,581,674	\$ 3,991,430	\$ 4,835,968
Income less than \$100,000									
35 Ngati Toa (SI)	71,613	1.12%	247	0.04%	\$ 1,460,657	\$ 326,885	\$ 158,693	\$ 19,835	\$ 7,535
11 Nga Ruahine	21,600	0.34%	3,276	0.49%	\$ 294,058	\$ 474,569	\$ 102	\$ 79,218	\$ 99,840
05 Ngai Tamamohuri	20,900	0.33%	1,207	0.18%	\$ 650,275	\$ 218,633	\$ 16,211	\$ 35,855	\$ 36,822
08 Ngai Tai (BOP)	15,000	0.24%	2,266	0.33%	\$ 390,933	\$ 321,980	\$ 8,931	\$ 59,967	\$ 69,126
13 Ngati Apa	11,356	0.18%	2,481	0.38%	\$ 133,866	\$ 342,681	\$ 65	\$ 89,151	\$ 75,077
49A Te Aitawa ki Whakarongotai	8,735	0.14%	492	0.07%	\$ 283,924	\$ 87,664	\$ 28	\$ 12,396	\$ 15,040
24 Ngati Mutunga (Taranaki)	19,700	0.29%	1,652	0.24%	\$ 219,469	\$ 262,437	\$ 70	\$ 40,593	\$ 50,397
07 Ngai Takoto	5,560	0.09%	509	0.07%	\$ 125,004	\$ 77,572	\$ 3,622	\$ 12,524	\$ 15,528
33 Ngati Tama (Taranaki)	26,000	0.41%	1,201	0.18%	\$ 394,701	\$ 227,633	\$ 80	\$ 30,375	\$ 36,639
03 Mairoro	2,271	0.04%	1,031	0.28%	\$ 74,526	\$ 245,986	\$ 39	\$ 4,214	\$ 5,293
21A Ngati Whare	0,000	0.00%	701	0.10%	\$ 284	\$ 87,859	\$ 11	\$ 10,610	\$ 21,385
23 Ngati Maru (Taranaki)	0,000	0.00%	507	0.13%	\$ 367	\$ 113,878	\$ 14	\$ 21,491	\$ 27,670
15 Ngati Hapai	0,000	0.00%	1,038	0.15%	\$ 420	\$ 130,222	\$ 16	\$ 24,619	\$ 31,067
26 Ngati Pukenga	0,000	0.00%	1,243	0.18%	\$ 503	\$ 155,790	\$ 19	\$ 29,453	\$ 37,920
21 Ngati Manawa	0,000	0.00%	1,867	0.23%	\$ 634	\$ 186,398	\$ 24	\$ 37,130	\$ 47,804
TOTAL for Group	201,616	3.17%	20,670	3.04%	\$ 3,899,320	\$ 3,263,087	\$ 187,069	\$ 519,279	\$ 630,575
Total Allocation All Harbours									
SCAT Held on behalf of Te Tau Ihu Iwi					\$ 737,515				
Transition Funding							\$ 1,025,450		
Putea Trust									
Fisheries Development Putea									
Te Ohu Kai Moana									
TOTAL	6,366,677	100.00%	679,154	100.00%	\$ 149,687,922	\$ 114,746,441	\$ 8,782,457	\$ 17,758,375	\$ 20,718,803

Sensitivity of results to changes in data

To provide readers with an appreciation of the sensitivity of allocation and the possible changes to those allocation outcomes which may result from changes to the various input data which is set out in the following paragraphs.

Quota Values and Income from Leasing/Selling Annual Catch Entitlement

Differences in the assessed overall capital and also the income from Allocated Quota will, in part, reflect the result of differences in quota values. Quota valuation provides an estimate of what the quota is worth at a fixed point in time. Normal market forces of supply and demand determine this valuation, which only remains current at the point in time that the valuation was completed.

Ahu Whakamua used trade values determined from an average value of all trade transactions recorded over the fishing year ending 30 September 2001.

He Anga Mua quota values followed this same process except that average trade values were derived from all trade transactions recorded for the 12 months ending 30 September 2000. The quota valuations recorded at these two specific points in time have been affected by market forces and are different, as they may be again at the time of allocation.

The following examples (based on data from *Ahu Whakamua*) show how the overall level of assets allocated to and income receivable by each individual Iwi may be affected by changes in quota valuations.

At the beginning of the year 1 October 2001 to 30 September 2002 – the year used for the *Ahu Whakamua* proposed model – the Hoki TACC was reduced from 250,000 tonnes to 200,000 tonnes.

The quota trade price for HOK 1 for the previous year, 1 October 2000 to 30 September 2001, when the TACC was 250,000, was \$2,814 per tonne (See October 2001 Blue Book)

This trade price has been applied to the Commission's HOK 1 quota holdings of 20,000 tonnes (10% of TACC) to arrive at the value of HOK 1 allocated to Iwi by the *Ahu Whakamua* proposed model. This method when applied to all the Commission's quota holdings at the beginning of October 2001 provides an estimate of the relative values of the quota assets to be allocated to Iwi in the *Ahu Whakamua* proposed model.

Prices continue to vary in response to changing international markets and local availability. At the end of May 2002, the average trade price for HOK 1 for the period October 2001 to May 2002 was \$2,662 per tonne (See May 2002 Blue Book.).

The average quota lease price for HOK 1 for the period 1 October 2000 to 30 September 2001 was \$288 per tonne. The average sale price for ACE (Annual Catch Entitlement, equivalent to the former lease price) reported in the May 2002 Blue Book was \$340 per tonne. (To allow for the costs of managing quota, the income derived from quota is taken as 75% of the income generated.)

To show the effects of the changing quota values and ACE prices, the following examples are the results for Ngapuhi, a predominantly population affected Iwi and Ngai Tahu, a predominantly coastline affected Iwi.

<u>Ngapuhi</u>	<i>He Anga Mua</i> Data September 2000	<i>Ahu Whakamua</i> Proposed Model Data September 2001	May 2002 Data
Quota Allocation HOK 1	3301.675 tonnes	2414.905 tonnes	2414.905 tonnes
Trade price per tonne	\$2619	\$2814	\$2662
Quota Value	\$8.647m	\$6.795m	\$6.428m
ACE price per tonne	\$310	\$288	\$340
75% of annual Income generated by quota	\$768,000	\$522,000	\$616,000

<u>Ngai Tahu</u>	<i>He Anga Mua</i> Data September 2000	<i>Ahu Whakamua</i> Proposed Model Data September 2001	May 2002 Data
Quota Allocation HOK 1	3342.984 tonnes	2688.417 tonnes	2688.417 tonnes
Trade price per tonne	\$2619	\$2814	\$2662
Quota Value	\$8.775m	\$7.565m	\$7.157m
ACE price per tonne	\$310	\$288	\$340
75% of annual Income generated by quota	\$777,000	\$581,000	\$686,000

In spite of declining quota values, the income derived from HOK 1 quota has declined and increased again for all Iwi, although not to the levels seen in 1999/2000.

In the case of CRA 1, values and incomes have been fluctuating.

<u>Ngapuhi</u>	<i>He Anga Mua</i> Data September 2000	<i>Ahu Whakamua</i> Proposed Model Data September 2001	May 2002 Data
Quota Allocation CRA 1	13.046 tonnes	13.106 tonnes	13.106 tonnes
Trade price per tonne	\$160,000	\$190,000	\$125,000 (estimated)
Quota Value	\$2.087m	\$2.479m	\$1.631m
ACE price per tonne	\$12,881	\$14,400	\$10,117
75% of annual Income generated by quota	\$126,000	\$141,000	\$99,000

CRA 5 shows a trend of increasing quota value and fluctuating income.

<u>Ngai Tahu</u>	<i>He Anga Mua</i> Data September 2000	<i>Ahu Whakamua</i> Proposed Model Data September 2001	May 2002 Data
Quota Allocation CRA 5	35.000 tonnes	35.000 tonnes	35.000 tonnes
Trade price per tonne	\$74,437	\$271,000	\$305,971
Quota Value	\$2.605m	\$9.485m	\$10.835m
ACE price per tonne	\$11,468	\$15,294	\$11,971
75% of annual Income generated by quota	\$301,000	\$401,000	\$314,000

PAU 5 A, B and D are quota allocated solely to Ngai Tahu which show minor fluctuations in values and an upward trend in income.

<u>Ngai Tahu</u>	<i>He Anga Mua</i> Data September 2000	<i>Ahu Whakamua</i> Proposed Model Data September 2001	May 2002 Data
Quota Allocation PAU 5A	14.898 tonnes	14.898 tonnes	14.898 tonnes
B	11.291 tonnes	11.291 tonnes	11.291 tonnes
D	14.898 tonnes	14.898 tonnes	14.898 tonnes
Trade price per tonne A	\$212,194	\$204,455	\$230,630
B	\$172,085	\$160,954	(estimated) \$180,000
D	\$171,204	\$207,032	\$110,830
Quota Value	\$7.642m	\$7.936m	\$7.106m
ACE price per tonne A	\$10,139	\$13,455	\$13,490
B	\$8,483	\$12,389	\$15,961
D	\$8,608	\$11,101	\$12,864
75% of annual Income generated by quota	\$281,000	\$379,000	\$429,000

These examples serve to illustrate that the income generating capacity of quota is not directly related to its capital value and where Iwi are in the business of fishing, the important factor is the income that can be derived from the quota, not its capital value.

Establishing an ongoing appreciation of the value of quota will be important to all Iwi. Understanding the possible levels of return or income that can be generated from the quota through inclusive processes that encourage market participation will also be essential for all Iwi.

Coastline values

This section looks at the sensitivity of the allocation total for Iwi with changes in coastline to illustrate how coastline length will affect Iwi entitlements. Agreement over coastline lengths is critical as this determines the size of an Iwi's inshore quota entitlement and also influences its share of the deepwater quota. Many coastline lengths are in dispute. All coastline lengths will need to be agreed or determined prior to allocation to any mandated Iwi Organisation.

To ensure no impression is given that the Commission will set values, it has used figures provided by another source to signal these figures are not official estimates. Indicative figures only have been used based on "compromised" coastline lengths contained in the "Tainui Position on Maori Fish Allocation" report, 19 April 2000.

The table below shows the change in allocated assets with changes in coastline length for a number of Iwi. However, as the modelling has only varied the coastline of the Iwi concerned and not made changes to the coastline of other Iwi sharing various QMAs for all the species, the figures are not accurate: they overstate what the Iwi involved would receive. Any change shown represents reductions that must happen to the allocation to other Iwi. As noted in the Report, this will need to be by way of agreement.

The table illustrates how changes to an Iwi coastline length affects the estimated total value of Iwi assets. The Iwi have been chosen from different areas to allow them and other neighbouring Iwi to gain an impression of results for these areas. In all cases the examples chosen are where there is a significant margin between the coastline value shown in this Report for the proposed model and an earlier value either nominated by the Iwi or used as a share in ACE distributions.

Iwi	Year	Coastline Length (kms)	Estimated Value of Iwi Assets	Variance
Ngai Takoto	1993	38.600	\$985,261	
Ngai Takoto	2002	5.500	\$443,816	\$541,445
Ngati Whatua	1993	355.300	\$14,540,476	
Ngati Whatua	2002	235.300	\$11,585,927	\$2,954,549
Ngaiterangi	1993	51.800	\$7,691,925	
Ngaiterangi	2002	34.100	\$7,176,614	\$515,311
Tuhoe	1993	13.200	\$17,972,487	
Tuhoe	2002	6.800	\$17,786,235	\$186,252
Ngati Tamanuhiri	1993	68.100	\$3,110,917	
Ngati Tamanuhiri	2002	20.900	\$1,449,744	\$1,661,173
Ngati Kahungunu	1993	593.600	\$53,737,740	
Ngati Kahungunu	2002	515.300	\$50,827,207	\$2,910,533
Muaupoko	1993	23.100	\$1,945,113	
Muaupoko	2002	2.271	\$1,205,436	\$739,677

The table above shows that in 1993, Ngai Takoto maintained its coastline length was 38.6kms. Assuming an *Ahu Whakamua* allocation determination and the 1993 Coastline length of 38.6kms, Ngai Takoto would have stood to receive an estimated value of Iwi assets of \$985,261.

Using the Tainui data that Ngai Takoto's coastline length was 5.5 kms and *Ahu Whakamua* policies, Ngai Takoto would then receive only \$443,816. (However, another policy in *Ahu Whakamua* proposes to effect a minimum allocation of \$1 million to all Iwi. This would assist Ngai Takoto and as a consequence offset the impact of a reduced coastline length.)

Ngati Kahungunu claimed a coastline length of 593.6kms in 1993. If it is assumed an *Ahu Whakamua* allocation determination and the 1993 Coastline length, Ngati Kahungunu would have received an estimated value of Iwi assets of \$53,737,740.

Again, using the Tainui data that Ngati Kahungunu's coastline was 515.3km and *Ahu Whakamua* policies, Ngati Kahungunu would then receive \$50,827,207. In this particular example, there is a decrease of \$2,910,533 as a direct result of changes to the coastline length.

Defining Coastline boundaries and lengths continues to be a difficult process. Historical and current disputes will need to be resolved before allocation can be achieved. Iwi must take the lead role in the determination of coastline lengths. All coastline measurements that have been used within the various allocation documents and proposals over the years, including *Ahu Whakamua*, have only represented estimated coastline lengths. Iwi will confirm exact coastline lengths prior to allocation or in the event that a lengthy impasse occurs, there is the ability to request Te Ohu Kai Moana to make a decision or take the matter to the Maori Land Court.

There are many examples where currently Iwi are in dispute over coastline lengths. For example, the group of Iwi that are situated within FMA 8. In accordance with various requests for information from some of these Iwi, the table below sets out the indicative result if a compromise option based on the shares used by Iwi in lease rounds was used. On the assumption that these Iwi were agreeable to this compromise which relates to similar coastline proportions, Iwi would receive the following estimate values of Iwi Assets. The point is that ultimately the emphasis is on Iwi to work through these disputes.

Iwi	Coastline	Coastline Length (kms)	Estimated Value of Iwi Assets	Variance
Muaupoko	Ahu Whakamua	2.271	\$1,205,436	
Muaupoko	Compromise option	20.388	\$1,848,296	\$642,860
Ngati Apa	Ahu Whakamua	11.356	\$1,623,490	
Ngati Apa	Compromise option	20.338	\$1,757,424	\$133,934
Ngati Raukawa ki te Tonga	Ahu Whakamua	55.264	\$13,148,769	
Ngati Raukawa ki te Tonga	Compromise option	20.338	\$12,092,588	-\$1,056,181
Ngati Toa (Wellington)	Ahu Whakamua	63.666	\$5,232,549	
Ngati Toa (Wellington)	Compromise option	39.338	\$4,372,012	-\$860,537

Rangitane (Manawatu)	Ahu Whakamua	66.484	\$4,189,853	
Rangitane (Manawatu)	Compromise option	70.338	\$4,268,222	\$78,370
Te Atihaunui (Whanganui)	Ahu Whakamua	24.036	\$6,140,865	
Te Atihaunui (Whanganui)	Compromise option	20.338	\$6,092,242	-\$48,623
Te Atiawa (Wellington)	Ahu Whakamua	62.800	\$3,404,520	
Te Atiawa (Wellington)	Compromise option	83.138	\$4,127,951	\$723,431
Te Atiawa ki Whakarongotai	Ahu Whakamua	8.736	\$1,000,000	
Te Atiawa ki Whakarongotai	Compromise option	20.338	\$1,014,381	\$14,381

Company Valuations

1. This part sets out:
 - a. The methodologies used in establishing estimated fair market valuations of the Commission's equity in its subsidiary and associate companies as at July 2002;
 - b. The principal variables that impact on the valuations, and
 - c. The assessed fair market valuation of the Commission's equity in its subsidiary and associate companies as at July 2002.

The purpose of the valuations is to provide an estimate of the combined value of the Commission's equity in subsidiary and associate companies to be used in the allocation process.

2. Methodology

There are a number of methodologies commonly used for valuing a business or shares in a trading enterprise, including.

- a. Discounted cashflow analysis (DCF);
- b. Net asset value (NAV);
- c. Capitalisation of future maintainable earnings (CME);
- d. Industry rules of thumb (IRT), and
- e. Observed trades (OT)

Each of these valuation methods has applications in different circumstances. We have chosen to use a combination of the CME, NAV and OT as the most appropriate methods.

Valuing a business is an art not a science. Valuations rely heavily on the judgement of the parties carrying out the valuation and adherence to good practice. For each of the companies being valued we have used two different valuation approaches to ensure that we have a cross check on the valuation results.

An overview of each of the approaches we have used in valuing the companies is set out as follows.

3. The Net Asset Value Method (NAV)

The NAV method is commonly used to value businesses to establish a minimum value where there is a controlling interest. It is an assessment of the realisable value of the company's assets and liabilities, together with the expenses and any losses that would be incurred in an orderly liquidation of the company.

NAV is also used as a cross check against other methods by providing an estimate of the minimum value for a company. Where the assessed NAV is greater than the alternative valuation method used we have adopted the NAV as a minimum value.

4. The Capitalisation of Future Maintainable Earnings Method (CME)

The CME method is a commonly used approach to valuations and is a substitute for the DCF method. It requires an assessment of the future maintainable earnings of the company. The maintainable earnings are then capitalised using a market derived earnings multiple that reflects the inherent risk profile and growth prospects of the business.

CME is appropriate where historical earnings are relatively stable and a good guide to the earnings that can be expected in the future, or where available forecasts of future earnings are considered sufficiently reliable.

Our valuations are based on capitalising earnings before tax and interest (EBIT). The use of EBIT eliminates the impact of financial leverage and any distortions caused by the company's tax position. The effects of financial leverage and tax differ from company to company and therefore it is considered that using an EBIT approach is appropriate.

The maintainable earnings used are normalised to remove distortions from non-recurring revenue items or items attributable to surplus assets not required in the business. By multiplying the assessed normalised future maintainable earnings by the chosen multiplier an enterprise value is derived.

The value of the equity in the company is calculated by deducting external interest bearing debt from the enterprise value.

4.1. Earnings Multiples

In using the CME approach it is necessary to establish an appropriate earnings multiple. The multiple used must be derived from comparable companies that have similar business activities. In New Zealand, Sanford Limited represents the closest and most suitable comparable company to use.

Wherever the CME method has been used the earnings multiple is primarily based on the observed multiples of Sanford Limited with a small weighting given to a number of overseas seafood businesses.

4.2. Assessment of Maintainable Earnings.

In arriving at an assessment of maintainable earnings for each company the historical and projected earnings have been normalised to remove the effects of abnormal forex losses, foreign currency loan revaluations, profits and losses on the sale of assets and any subvention receipts or payments.

Historical earnings, the latest forecasts for the financial year ended 30 September 2002 and projections for subsequent years have been used as a means of establishing the future maintainable earnings for each of the companies.

5. Observed Trades (OT)

This approach is appropriate where the company or shares in the company have been traded on an arms length basis. While not being a principal method of valuation, the OT approach, where available, provides a useful check against the values determined using alternative valuation methods.

We have used the OT method as a benchmark for our valuations in relation to the Commission's shareholding in Kura Limited (the holding company for Sealord Group Limited). An equal 50% shareholding of Kura Limited was purchased in January 2001 and it is our opinion that this provides meaningful information in determining the valuation of the Commission's shareholding.

6. Principal Variables

It is important to recognise that valuations are an assessment of the equity values in each of the companies at a point in time.

The businesses being valued are subject to a number of key variables that impact on their prospective earnings and the value of their quota assets. A summary of some key variables is set out below (this list is not exhaustive).

Exchange rates	<p>Approximately 90% of the product sold from the Group is exported and paid for in currencies other than the NZ dollar.</p> <p>The NZ dollar has been extremely volatile since March 2002. In simple terms if the NZ dollar strengthens then this will have a negative affect on future earnings and vice versa. Long term trends in the value of the NZ dollar are likely to be reflected in quota values.</p>
Resources	<p>Most of the businesses rely on wild fisheries and have extensive quota portfolios. A reduction in the TACC's of any of the core species has a potential chain effect on the businesses. Earnings reduce as less product is available and the value of the quota assets is reduced. In seeking to replace lost volume companies are often forced to buy expensive ACE.</p>

International Prices	As stated approximately 90% of the Group's sales are into international markets. By and large NZ seafood producers are price takers and changes in market prices quickly feed through into earnings.
Quota Values	<p>A number of the businesses are valued on a NAV basis. In most cases the quota assets in the balance sheet make up the core value of the assets.</p> <p>Changes in the market value of quota have a direct and immediate impact on the NAV's of the businesses.</p>
Forecasts	<p>The CME approach relies on assessments of the future maintainable earnings.</p> <p>Earnings assessments are themselves subject to the factors above. Confidence is gained from analysis of historical earnings and the knowledge and experience from being involved with the businesses over time.</p>

7. Valuation Summary

The total value of the Commission's equity in its subsidiary and associate companies as at July 2002 is assessed to be \$335 million.

Training and Development Grants

It should also be noted that the PRESA cash figures shown for each Iwi make no allowance for changes to reflect the operation of the Commission's policy on training and development grants made to bodies in 1992 and 1993.

The Commission intends to deduct the amount of the grants from the PRESA cash that is to be allocated to those organisations that receive final allocation. Where organisations received grants from the Commission, but will not receive final allocation, the Commission intends, where possible, to use its best endeavours to secure repayment of the grant from such organisations. Any PRESA cash deducted from allocation or recovered from such organisations on account of training and development grants will form part of PRESA cash and will be allocated to all Iwi on the basis of population.

The level of those grants are as shown in the table below.

Training and Development Grants		
Distributed from initial Capital Received from Government		
31/01/92	Hauraki Maori Trust Board	150,000
20/03/92	Maniapoto Maori Trust Board	50,000
3/02/92	Te Runanga o Ngapuhi	50,000
20/01/92	Ngai Tahu Fisheries Limited	200,000
3/02/93	Ngai Tai Iwi Authority	12,500
8/10/92	Ngaruahine Iwi Authority	20,000
3/12/91	Ngati Kahu Trust Board	25,000
20/01/92	Ngati Kahu Trust Board	25,000
20/04/92	Te Runanga o Ngati Kahungunu	150,000
20/01/92	Te Runanga o Ngati Porou	25,000
31/01/92	Te Runanga o Ngati Porou	25,000
3/02/93	Ngati Ranginui Iwi Society	25,000
20/03/92	Ngatiwai Trust Board	50,000
3/12/91	Te Runanga a Rangitane o Wairau	25,000
20/01/92	Te Runanga a Rangitane o Wairau	25,000
3/12/91	Runanga o Ngati Kuri, Aupouri, Ngai Takoto	50,000
20/01/92	Runanga o Ngati Kuri, Aupouri, Ngai Takoto	50,000
3/09/92	Tainui Maori Trust Board	50,000
11/02/92	Tanenui a Rangi Manawatu	20,000
3/12/91	Te Runanga o Tapuika me Waitaha	25,000
3/12/91	Te Runanga o Taranaki Whanui ki te Upoko o te Ika	25,000
20/01/92	Te Runanga o Taranaki Whanui ki te Upoko o te Ika	25,000
3/02/93	Tchakat Henu Moriori Association	50,000
13/05/92	Te Runanganui o TeArawa Inc	65,200
3/02/93	Te Atiawa Tribal Society	20,000
20/01/92	Te Aupouri	50,000
3/12/91	Te Runanga o Te Rarawa	25,000
20/01/92	Te Runanga o Te Rarawa	25,000
20/03/92	Te Runanga o Ngati Kuia	50,000
20/3/92	Te Runanga o Tarakaipa o Ngati Apa	50,000
3/12/91	Te Runanga o Te Tau Ihu o te Waka a Maui inc 1 Ngati Toarangatira ki Wairau 2 Ngati Rarua 3 Ngati Koata 4 Ngati Tama 5 Te Atiawa	125,000
20/01/92	Te Runanga o Te Tau Ihu o te Waka a Maui inc 1 Ngati Toarangatira ki Wairau 2 Ngati Rarua 3 Ngati Koata 4 Ngati Tama 5 Te Atiawa	125,000
20/04/92	Te Runanganui oToarangatira	50,000
3/12/91	Te Runanga o Turanganui a Kiwa	25,000
20/01/92	Te Runanga o Turanganui a Kiwa	25,000
31/07/92	Te Runanga o Turanganui a Kiwa	15,000
25/08/92	Te Runanga o Tuwharetoa ki Kawerau	12,500
20/03/93	Te Ure o Uenukukopako Runanga	12,500
20/07/92	Te Runanga o Whaingaroa	50,000
20/01/92	Whakatohea Maori Trust Board	25,000
3/12/91	Whakatohea Maori Trust Board	25,000
20/01/92	Te Runanga o Wharekaui Rekohu	50,000
9/2/93	Wharekohu Fisheries Limited	20,000
		1,995,000

Funds held on Trust due to mandate or representation or coastline agreement disputes

It should also be noted that the cash values do not include any funds held on Trust as a result of disputes between or within Iwi. These funds have arisen from disputes relating to quota lease rounds over representation and mandate issues or coastline agreements. The funds are held on individual deposits awaiting resolution of the dispute. Those funds will be paid out as soon as the disputes are resolved. Te Ohu Kai Moana as Trustee of these funds has paid all applicable taxes to the Inland Revenue Department. The amount of these taxes has been deducted from the pool of funds held on deposit. The Iwi involved in the disputes and the amounts being held as at 30 September 2002, before deduction of taxes, are listed below. In some cases the amounts cover disputes involving several lease rounds and may be subject to deduction of resident withholding tax on distribution. The amount of funding and the parties involved are shown below.

Iwi parties in Dispute	2002	2001
	\$	\$
Taranaki Iwi	22,213	21,749
Muaupoko	-	296,326
Ngati Kahu	321,162	242,427
CRA 9 Iwi	68,415	66,689
Ngati Mutunga o Wharekauri and Te Runanga o Wharekauri Rekohu	170,176	166,623
Ngati Kuri	184,231	179,696
Rangitane / Kahungunu	3,128,663	2,332,378
Rongomaiwahine / Kahungunu	205,493	201,203
Ngaruahine	214,324	209,535
Ngati Maru	63,996	62,660
Ngai Takoto	127,353	-
Coromandel Scallops	7,134	-

APPENDIX 5

RECOGNISED IWI ORGANISATIONS

Under the Draft Maori Fisheries Development Bill there is provision, where an Iwi does not yet have a Mandated Iwi Organisation, for Te Ohu Kai Moana to recognise an organisation as the Recognised Iwi Organisation for that Iwi. A Recognised Iwi Organisation is likely to be the body that will be either progressing towards recognition as a Mandated Iwi Organisation or facilitating the establishment of a new body that is to become the Mandated Iwi Organisation. While no Recognised Iwi Organisations can be formally recognised by Te Ohu Kai Moana until the Draft Maori Fisheries Development Bill is enacted, the current Commission has to date recognised the organisations identified below for various purposes under the Maori Fisheries Act 1989 including, for example, annual ACE distribution rounds. At this point the Commission envisages that these bodies are likely to be the organisations that will be working closely with the Commission and Te Ohu Kai Moana during the implementation of *He Kawai Amokura*.

Name of iwi and Group	Recognised Iwi Organisation
A TAITOKERAU Ngati Whatua Te Rarawa Te Aupouri ¹ Ngati Kahu Ngati Kuri Ngati Wai Ngapuhi/Ngati Kahu ki Whaingaroa Ngai Takoto	Te Runanga O Ngati Whatua Te Runanga O Te Rarawa Te Aupouri Maori Trust Board/Te Runanga O Te Aupouri Te Runanga A Iwi O Ngati Kahu Ngati Kuri Trust Board Inc Ngatiwai Trust Board Te Runanga O Whaingaroa RONAN Developments Limited
B NGAPUHI Ngapuhi	Te Runanga A Iwi O Ngapuhi
C TAINUI Waikato Ngati Maniapoto Hauraki (twelve iwi) Ngati Raukawa (ki Waikato)	Waikato Raupatu Lands Trust Maniapoto Maori Trust Board Hauraki Maori Trust Board Raukawa Trust Board
D TE ARAWA WAKA Te Arawa (ten iwi) Tuwharetoa	Te Kotahitanga O Te Arawa Waka Tuwharetoa Maori Trust Board
E MATAATUA Tuhoe Ngati Awa Ngaiterangi Whakatohea Ngati Ranginui Ngai Tai Ngati Manawa Ngati Pukenga	Tuhoe -Waikaremoana Maori Trust Board Te Runanga O Ngati Awa Ngaiterangi Iwi Inc Whakatohea Maori Trust Board Ngati Ranginui Iwi Society Inc Ngai Tai Iwi Authority Te Runanga O Ngati Manawa Ngati Pukenga Iwi ki Tauranga Inc

¹ Te Runanga o Te Aupouri and Te Aupouri Maori Trust Board are presently taking steps to progress the establishment of a single Te Aupouri Mandated Iwi Organisation for fisheries matters.

Name of iwi and Group	Recognised Iwi Organisation
Ngati Whare	Te Runanga O Ngati Whare Iwi Trust
F POROURANGI Ngati Porou Te Whanau a Apanui	Te Runanga O Ngati Porou Te Runanga O Te Whanau
G TAKITIMU Ngati Kahungunu Te Aitanga a Mahaki Rongowhakaata Ngai Tamanuhiri	Ngati Kahungunu Iwi Inc Te Aitanga A Mahaki Trust Rongowhakaata Charitable Trust Ngai Tamanuhiri Whanau Trust
H HAUAURO Te Atiawa (Taranaki) Te Atihaunui a Paparangi Taranaki Ngati Ruanui Rangitane (North Island) Nga Rauru Nga Ruahine Ngati Apa (North Island) Muaupoko Ngati Mutunga (Taranaki) Ngati Tama (Taranaki) Ngati Hauiti Ngati Maru (Taranaki)	Te Atiawa Iwi Authority Whanganui River Maori Trust Board Te Runanga O Taranaki Iwi Inc Te Runanga O Ngati Ruanui Te Runanganui O Rangitane Inc Ngarauru Iwi Authority Inc Ngaruahine Iwi Authority Te Runanga O Ngati Apa Inc Muaupoko Tribal Authority Inc Ngati Mutunga Iwi Authority Inc Ngati Tama Iwi Development Trust Te Runanga o Ngati Hauiti Ngati Maru Wharanui Pukehou Trust
I TE MOANA O RAUKAWA Ngati Raukawa (ki te Tonga) Ngati Toa (Wellington) Te Atiawa (Te Tau Ihu) Te Atiawa (Wellington) Ngati Kuia Rangitane (Te Tau Ihu) Ngati Koata	Te Runanga O Raukawa Inc. Te Runanganui o Toa Rangatira Inc Te Atiawa Manawhenua ki te Tau Ihu Trust Te Runanganui O Taranaki Whanui ki te Upoko O Te Ika A Maui Te Runanga o Ngati Kuia Charitable Trust Te Runanga a Rangitane O Wairau Inc Ngati Koata Trust
Ngati Rarua Ngati Apa ki te Waipounamu Ngati Tama (Te Tau Ihu) Atiawa ki Whakarongotai Ngati Toa (Te Tau Ihu)	Ngati Rarua Iwi Trust Ngati Apa ki te Waipounamu Trust Ngati Tama Manawhenua ki te Tau Ihu Trust Te Runanga o Ati Awa ki Whakarongotai Inc Ngati Toarangatira Manawhenua ki Te Tau Ihu
J WAIPOUNAMU/ REKOHU Ngai Tahu Ngati Mutunga (Chathams) ² Moriori	Te Runanga O Ngai Tahu Te Runanga O Wharekauri Rekohu Inc/ Ngati Mutunga O Wharekauri Trust Hokotehi Moriori Trust

² Te Runanga o Wharekauri Rekohu Incorporated and Ngati Mutunga o Wharekauri Trust are presently taking steps to progress the establishment of a single Mandated Iwi Authority for Ngati Mutunga (Chathams) for fisheries matters

GLOSSARY OF TERMS

For the purposes of this Report, unless the context otherwise implies:

ACE – means Annual Catch Entitlement within the meaning of the Fisheries Act 1996.

AFL – means Aotearoa Fisheries Limited.

Ahu Whakamua – means the report entitled “*Ahu Whakamua: Report for Agreement*” issued by the Commission in August 2002, and the allocation proposal within that report.

Allocated Quota – means the share of the TACC for each fishstock in the Quota Management System that will be allocated by the Commission or Te Ohu Kai Moana to Iwi under the allocation model.

Aotearoa Fisheries Limited – means the company of that name incorporated under the Companies Act 1993 by the Commission to hold and manage on behalf of Te Ohu Kai Moana those settlement assets that are to be managed centrally under the allocation model in this Report.

Chatham Zone – means the special Chatham Islands fisheries area established for allocation purposes under section 53 of the Draft Maori Fisheries Development Bill.

Commission – means the existing Treaty of Waitangi Fisheries Commission, established and operating under the Maori Fisheries Act 1989 (as amended by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992).

Commissioner – means, except where used in the letter of transmittal for this Report, a director of Te Ohu Kai Moana Corporate Trustee Limited.

Current Commissioner – means a Commissioner of the existing Treaty of Waitangi Fisheries Commission.

Deepwater Quota – means the quota, predominantly caught at depths of 300 metres or greater, classified by the Commission as Deepwater Quota for the purpose of the allocation model and either described as “DW” in Schedule 1 to the Draft Maori Fisheries Development Bill or, for POSA species yet to be introduced into the QMS, classified as Deepwater Quota in accordance with section 5 of the Draft Maori Fisheries Development Bill.

Draft Maori Fisheries Development Bill – means the draft legislation attached as Appendix 1 to this Report.

FMA – means Fisheries Management Area within the meaning of the Fisheries Act 1996.

Freshwater Quota – means the quota classified by the Commission as Freshwater Quota for the purpose of the allocation model and either described as “FW” in Schedule 1 to the Draft Maori Fisheries Development Bill or, for POSA species yet to be introduced into the QMS, classified as Freshwater Quota in accordance with section 5 of the Draft Maori Fisheries Development Bill.

Full Particulars Report – means the Full Particulars Report, issued by the Commission in April 2003 in accordance with the Commission’s undertaking to the High Court, which provided the parties involved in the High Court allocation litigation with notice of the full particulars of the scheme for allocation to be included in the Commission’s report to the Minister.

Harbour Quota – means the quota classified by the Commission as Harbour Quota for the purpose of the allocation model and either set out in Schedule 3 to the Draft Maori Fisheries Development Bill or, for those POSA species yet to be introduced into the QMS, notified as Harbour Quota in the Gazette by Te Ohu Kai Moana.

He Anga Mua – means the discussion document entitled “*He Anga Mua, A Path Ahead*” issued by the Commission in December 2001.

He Tohu Arahi – means the publication entitled “*He Tohu Arahi: A Guide to Representation on Iwi Organisations*” issued by the Commission in September 2001 which sets out the Commission’s policies (aratohu and kaupapa) regarding Iwi structures and representation as at September 2001, now set out in modified form in Schedule 7 to the Draft Maori Fisheries Development Bill.

He Kawai Amokura – means the name given by the Commission to the allocation model contained in this Report.

Hui-a-iwi – means a meeting of the members of an Iwi.

Hui-a-tau – means an annual general meeting.

Income Shares – means the Income Shares in AFL, 80% of which are to be allocated to Iwi in proportion to their share of the notional Maori population as set out in Column 3 of Schedule 4 to the Draft Maori Fisheries Development Bill, and 20% of which are to be held by Te Ohu Kai Moana under the allocation model in this Report.

Inshore Quota – means the quota, predominantly caught at depths of 300 metres or less, classified by the Commission as Inshore Quota for the purpose of the allocation model and either described as “IN” in Schedule 1 to the Draft Maori Fisheries Development Bill or, for POSA species yet to be introduced into the QMS, classified as Inshore Quota in accordance with section 5 of the Draft Maori Fisheries Development Bill.

Iwi – means those Iwi recognised by the Commission and set out in Schedule 4 to the Draft Maori Fisheries Development Bill.

Mandated Iwi Organisation – means an Iwi organisation, meeting the criteria specified in section 9 and Schedule 7 to the Draft Maori Fisheries Development Bill, that has been approved by Te Ohu Kai Moana for the purpose of receiving an Iwi’s share of the assets and benefits of the Settlement under the allocation model in this Report.

Maori Fisheries Commission – means the Commission initially established under the Maori Fisheries Act 1989, which was subsequently reconstituted as the Treaty of Waitangi Fisheries Commission by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Maori Representative Organisation – means an organisation listed as a Maori representative organisation in Schedule 5 of the Draft Maori Fisheries Development Bill that will, jointly with other Maori Representative Organisations, elect one representative to Te Kawai Taumata.

Minister – means the Minister of Fisheries.

MRS – means the Maori Registration Service.

Overlap Zone – means the overlap area between the Chatham Zone and the area within 200 nautical miles of the baseline of the territorial sea on the eastern coast of mainland New Zealand and referred to in section 53(b) of the Draft Maori Fisheries Development Bill.

POSA – means generally those assets, comprising quota, shares in a number of fisheries companies and cash, held by the Commission that resulted from the Deed of Settlement signed on 23 September 1992, which finally settled Maori commercial fisheries claims, and accumulated income apportioned to those assets; but for the purposes of the allocation model in this Report means the assets held by the Commission or Te Ohu Kai Moana that are not PRESA including the 20% of quota for any new fishstock brought into the QMS.

PRESA – means generally those assets, comprising quota, shares in Moana Pacific Fisheries Limited and cash, secured in the 1989 interim settlement, which was effected by the Maori Fisheries Act 1989, that were held by the Commission as at 6 January 1993, including any final settlements between the Commission and the Crown relating to those assets and accumulated income apportioned to those assets; but for the purposes of the allocation model in this Report means the assets described in Schedule 2 of the Draft Maori Fisheries Development Bill.

QMA – means Quota Management Area within the meaning of the Fisheries Act 1996.

QMS – means the Quota Management System within the meaning of the Fisheries Acts 1983 and 1996.

Quota – means the individual transferable quota, expressed as shares under the Fisheries Act 1996, that comprises the Inshore Quota, Deepwater Quota, Harbour Quota and Freshwater Quota referred to in this Report.

Report – means this Report to the Minister, which is made by the Commission in accordance with section 6(e)(iv) of the Maori Fisheries Act 1989.

Representative Iwi Organisation – means an Iwi organisation, not being a Mandated Iwi Organisation, that is recognised by the Commission for certain purposes under section 10 of the Draft Maori Fisheries Development Bill.

RFR – means the right of first refusal that applies in relation to the sale and transfer of Allocated Quota and Income Shares in the allocation model in this Report.

Settlement – means, collectively, the interim settlement entered into between Maori and the Crown in 1989 and given effect by the Maori Fisheries Act 1989 and the final settlement entered into between Maori and the Crown in 1992 as set out in the Deed of Settlement dated 23 September 1992 and given effect by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Settlement Assets – means PRESA and POSA collectively.

Subcompany – means Subcompany within the meaning of section 4 of the Draft Maori Fisheries Development Bill.

TACC – means Total Allowable Commercial Catch within the meaning of the Fisheries Act 1996.

Taumata Paepae – means the informal group of Iwi representatives that met between 1995 and 1997 and, in the context of the Commission's ongoing consultation with Iwi and Maori, provided views to the Commission in relation to various allocation issues.

Te Kawai Taumata – means an Electoral College comprised of 11 members that are appointed by 10 regional groups of Iwi and 1 group of representative Maori organisations.

Te Ohu Kai Moana – means the trust that will be created under the allocation model in this Report and the Draft Maori Fisheries Development Bill to implement the allocation model as the legal successor to the Commission.

Te Ohu Kai Moana Corporate Trustee Limited – means the company of that name incorporated under the Companies Act 1993 by the Commission to be the trustee of Te Ohu Kai Moana under the Draft Maori Fisheries Development Bill.

Te Putea Whakatupu Corporate Trustee Limited – means the company of that name incorporated under the Companies Act 1993 by the Commission to be the trustee of Te Putea Whakatupu Trust under the Draft Maori Fisheries Development Bill.

Te Putea Whakatupu Trust – means the trust to be established for the benefit of all Maori under the allocation model in this Report.

Te Wai Maori Corporate Trustee Limited – means the company of that name incorporated under the Companies Act 1993 by the Commission to be the trustee of Te Wai Maori Trust under the Draft Maori Fisheries Development Bill.

Te Wai Maori Trust – means the trust to be established for freshwater fisheries purposes under the allocation model in this Report.

Trustee – means, in relation to Te Wai Maori Trust, the directors of Te Wai Maori Corporate Trustee Limited and, in relation to Te Putea Whakatupu Trust, means the directors of Te Putea Whakatupu Corporate Trustee Limited.

Voting Shares – means the Voting Shares in AFL that are to be held by Te Ohu Kai Moana under the allocation model in this Report.

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