MAORI FISHERIES ACT REVIEW
IMPLEMENTATION PROPOSALS

February 2016

Ka ora ki tai - ka hua ki uta
A bountiful ocean will sustain us
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Foreword

Kia ora koutou

Iwi have decided to make fundamental changes to the governance arrangements for Maori Fisheries Settlement entities. In June 2015, they resolved to:

- retain Te Ohu Kaimoana but take more direct control of the organisation’s governance through Mandated Iwi Organisations
- retain Te Wai Maori and Te Putea Whakatupu as part of the Te Ohu Kaimoana group and allow for up to five directors on each corporate trustee
- transfer the AFL voting and income shares held by Te Ohu Kaimoana to iwi owned Asset Holding Companies and consider a revised funding model for Te Ohu Kaimoana at the Hui-a-Tau on 31 March 2016
- take direct control of Aotearoa Fisheries Ltd (AFL) through iwi owned Asset Holding Companies
- simplify the process for trading settlement assets amongst Maori Fisheries Settlement entities.

Iwi also adopted Te Ohu Kaimoana’s plan to implement their decisions, setting out the actions needed to deliver draft legislative amendments to the Government by September 2016 for passage through Parliament.

This paper contains a draft business and funding model for Te Ohu Kaimoana, based on our engagement with iwi since June 2015. We have endeavoured to be as responsive as possible to the different views we have heard so far. Through further engagement with iwi in late February and early March – we wish to test our proposals and identify where modifications might be required. A final proposal will be presented to iwi for approval at the Hui-a-Tau on 31 March.

The paper also contains more detailed work on the governance arrangements for AFL, Te Wai Maori and Te Putea Whakatupu for your comment.

We look forward to your feedback on how to ensure these changes create greater benefits for iwi.

Noho ora mai

Jamie Tuuta
Chair, Te Ohu Kaimoana
Purpose

1. The purpose of this paper is to seek the views of iwi on:
   - Te Ohu Kaimoana’s proposed business model prior to submitting it to the Hui-a-Tau for approval
   - Proposed governance arrangements for AFL, Te Wai Maori and Te Putea Whakatupu
   - The proposed process for selling settlement assets.

Introduction

The review

2. The Maori Fisheries Act 2004 requires that an independent review of the Maori Fisheries Settlement Entities be completed no later than the 11th year after the Act’s commencement. The “2015 review” was concerned with the entities established under the Act. Ultimately the reviewer was required to assess the effects of the existing governance arrangements on the ability of the entities to deliver benefits to their beneficiaries. The reviewer released his report in early March 2015.

3. The recommendations of the reviewer are contained in Appendix 1.

IWG process

4. Te Ohu Kaimoana (Te Ohu) established an Iwi Working Group (IWG) as a sub-committee of the Board. The role of the IWG was to assess the reviewer’s recommendations, discuss their implications with iwi and report to the Board, if necessary, with refined recommendations and resolutions prior to the Special General Meeting at which iwi would exercise their vote. Following extensive engagement with iwi, a set of resolutions was developed for iwi to consider.

5. The full set of resolutions, along with the results of the vote, are contained in Appendix 2.

6. On 4 June 2015, iwi resolved to make significant changes to the governance arrangements established under the Maori Fisheries Act. These decisions will result in a new business model for Te Ohu, the transfer of Te Ohu’s AFL shares to iwi, a simpler process for Maori commercial entities to trade their settlement assets with each other and changes to the governance of all the entities reviewed.

7. The resolutions require Te Ohu to be restructured and to develop an amended funding model to be approved by Mandated Iwi Organisations at the Hui-a-Tau on March 31, 2016. Part One of this paper sets out Te Ohu Kaimoana’s proposed business model in response to the resolutions.

8. Part Two provides a progress report on the implementation of resolutions relating to AFL, Te Wai Maori, Te Putea Whakatupu and the process for the sale of settlement assets.
While these matters are not subject to a vote at the Hui-a-Tau, we still wish to obtain feedback from iwi at that time to ensure that they have as much support as possible before the drafting of legislative amendments.

9. Te Ohu has arranged three hui in each of the three main centres to discuss the proposals contained in this paper with iwi. This will be followed by a national hui prior to the Hui-a-Tau on 31 March. The hui are scheduled as follows:

   23 February, Brentwood Hotel, Kilbirnie, Wellington, from 10am to midday;
   24 February, Te Runanga o Ngai Tahu, Christchurch, from 10am to midday; and
   26 February, Novotel Hotel Auckland International Airport, from 10am to midday

   NATIONAL HUI: 9 March, Te Wharewaka o Poneke, Taranaki Wharf, Wellington, from 10am to 1pm

10. At each of the regional hui, we wish to seek your feedback, particularly on our proposed business model. At the National Hui, we will report back on the issues raised in the regional hui, provide responses and identify where changes to the model have been made – if necessary. The National Hui will also provide us with an opportunity to craft the resolution(s) to be put to the Hui-a-Tau in March.
PART 1: PROPOSED BUSINESS MODEL FOR TE OHU KAIMOANA
Summary of proposal

11. Te Ohu Kaimoana proposes the following key elements of our new business model. Iwi have agreed to many of these elements, including Te Ohu’s overall purpose and governance arrangements. Others, such as key focus areas and objectives, roles and relationships and the proposed funding model, have been refined through our engagement process thus far.

<table>
<thead>
<tr>
<th>Purpose</th>
<th>To assist iwi to protect and enhance the fisheries and aquaculture settlements by:</th>
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<tbody>
<tr>
<td></td>
<td>• providing advice and facilitating collective action to enable iwi to advance their commercial and non-commercial interests in fisheries and aquaculture</td>
</tr>
<tr>
<td></td>
<td>• acting as a collective voice for iwi and their fisheries entities on marine management.</td>
</tr>
</tbody>
</table>

| Operating principles and values | Te Ohu will adopt the IWG’s principles as its operating principles. These include: rangatiratanga, kotahitanga, durability, connection, concentration, diversity, performance (effectiveness and efficiency), transparency/accountability. |

<table>
<thead>
<tr>
<th>Goals and objectives</th>
<th>Protect fisheries</th>
<th>• facilitate the achievement and maintenance of well managed sustainable fisheries and aquaculture</th>
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<tbody>
<tr>
<td></td>
<td>Protect access</td>
<td>• ensure policies and proposals developed by the Crown, local government, industry and other parties enable iwi to access their fisheries and marine space.</td>
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<thead>
<tr>
<th>Grow and strengthen capacity and capability</th>
<th>• support iwi and their members to participate in the management of their commercial and non-commercial fisheries and aquaculture assets</th>
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<tbody>
<tr>
<td></td>
<td>• support iwi to meet the requirements of the Maori Fisheries Act and Maori Commercial Aquaculture Claims Settlement Act (“Aquaculture Settlement Act”).</td>
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</table>

| Enhance fisheries and aquaculture | • assist iwi to increase the benefits they obtain from their commercial and non-commercial fisheries and aquaculture assets. |
| Strategic planning and priorities | Te Ohu will collaborate with iwi to develop strategies to implement the goals and objectives by identifying:  
| o what they wish to achieve collectively, both nationally and regionally  
| o what role Te Ohu should play to assist them  
| o what if any mandate needs to be given to Te Ohu to carry out its role. |
| Governance | 5 – 7 directors appointed by MIOs at an AGM:  
| Iwi will have access to various voting methods including electronic voting  
| One MIO/one vote for each director position  
| Director appointments to be based on merit in accordance with criteria to ensure the Board has appropriate skills  
| Nominations committee of the board to call for nominees from iwi, assess fit with skills required and provide recommendations on nominees  
| Nominees must have support from 2 MIOs  
| Iwi able to vote on all nominees irrespective of recommendation or otherwise by Nominations Committee  
| Directors have three year terms with no cap on the number of terms: rotation of 1/3 every year to maintain continuity while “refreshing”  
| Removal of directors: Te Ohu must call a meeting of shareholders if at least 20% of MIOs request. Removal by simple majority of those who vote  
| MIOs approve the total pool for Board fees at AGM  
| Three year strategic plan to be approved by iwi at AGM  
| Board to approval annual plans and report to iwi against them. |
| Resources and costs | To achieve its purpose, the organisation must have ready access to skills and experience in policy, politics, facilitation, communications, advocacy, fisheries/aquaculture science and management, economics, law, government, Treaty of Waitangi, the Fisheries Settlement, tikanga Maori, Te Reo, fisheries allocation, financial management, investment and administrative support  
| The majority of staff will focus on core fisheries/aquaculture work  
| It is estimated that Te Ohu’s operating costs will be $3.6 million per year on average from 2018 if it is to achieve its goals and objectives. |
Sources of revenue

- Services provided for the collective benefit of iwi will be funded as a core activity through income from the investment portfolio
- The costs of services provided for the exclusive benefit of a group of iwi are recovered from those iwi
- Costs of services delivered on behalf of a third party such as the Crown, Te Wai Maori and Te Putea Whakatupu are recovered from those parties.

Redeemable Preference Shares

- The RPS does not form part of this proposed funding model
- It should be converted into shares and distributed to iwi.

What’s different from the current model?

12. The differences between the proposed new business model and the current model include:
   - MIOs will have direct control over the appointment of Te Ohu’s directors and the approval of its strategic plans
   - Te Ohu will no longer have governance responsibilities for AFL
   - Te Ohu will no longer hold any AFL income shares and so will not receive a dividend or any other income from AFL – approximately 1.6 million - $2.4 million per year (including MATCs)
   - The current budget for the review and its implementation will not be required
   - The costs of Te Ohu’s fisheries allocation and transfer duties will be minimal to non-existent
   - The costs of Te Ohu’s aquaculture settlement duties are estimated to be reduced by around 50%
   - The costs of scholarships will be transferred to Te Putea Whakatupu and the Global Fisheries Scholarship Trust.

13. We anticipate that Te Ohu will continue to foster closer working relationships with iwi as a result of the new model, as well as achieve agreement with them on how we deliver benefits in different situations.

What hasn’t changed?

14. Our focus on protecting and enhancing the settlements has not changed. This means we will continue to focus on core policy issues that affect fisheries and aquaculture – as we have done since Te Ohu was first established. The main difference is that with the completion of allocation and removal of governance responsibilities for AFL, this work will now become our core activity. In addition, we expect that the work we do and the way we carry it out will be more responsive to iwi objectives and aspirations.
Why this proposal?

15. In this section, we summarise the drivers for the proposed change and the way we envisage the business model working.

The resolutions that affect Te Ohu’s business model

16. As outlined in the introductory section of this paper, iwi supported a number of resolutions to drive changes to governance arrangements for Maori Fisheries Settlement entities. The following resolutions affect Te Ohu Kaimoana.

<table>
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<tr>
<th>Resolutions that affect Te Ohu Kaimoana business model</th>
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<td>15</td>
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<td>18</td>
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17. Resolution 2 requires Te Ohu to transfer the voting and income shares in AFL – which it currently holds - to iwi Asset Holding Companies (AHCs). This will remove Te Ohu’s existing governance responsibilities for AFL along with the dividend it currently receives from AFL.

18. Iwi resolved to retain Te Ohu, acknowledging that it would need to be restructured (amongst other things, as a result of the loss of between $1.6 – 2.4 million income per year from AFL dividends).

19. The recommendations of the IWG, which included recommendations on Te Ohu’s future governance arrangements, were part of Te Ohu’s plan and – aside from the question of Te Ohu’s future funding - were adopted by iwi (see resolution 15). Iwi resolved to consider Te Ohu’s future funding after more detailed work on its future business model has been completed (resolution 4).
20. The 10 year review will affect Te Ohu as well as other Maori fisheries settlement entities and specifically allow iwi to wind-up any of the entities if that is their collective wish.

21. As noted earlier, resolutions that relate to AFL, the subsidiary trusts and the sales process for settlement assets are discussed in Part Two of this paper.
Where are we now?

22. One of the key outcomes of the resolutions is for iwi to have greater control over the governance and direction of Te Ohu. The organisation’s priorities and the level of resources required to support them will be agreed by iwi through the new governance processes.

23. We are at the stage of designing how the new organisation will work. It needs a clear purpose, goals and objectives to identify the core skills and other resources it needs to begin operating under its revised structure.

24. The new governance processes must be implemented in a way that realises the desire of iwi for greater control. Through these processes, iwi will be able to assess the performance of the organisation, adjust its relative priorities and resources and hold the organisation to account through the appointment of its directors and approval of its strategic plans.

25. The ten year review will provide an opportunity for iwi to review whether Te Ohu is achieving its purpose, consider whether any changes are necessary, or whether all iwi are now at a stage where they can take on all of Te Ohu’s responsibilities.

26. The relationship between the design stage, including confirmation of Te Ohu’s goals, objectives, governance processes and estimated resource needs, is illustrated below.

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**Figure 1: Initial design and processes for iwi to make adjustments**

- **Designing**
  - Iwi decide purpose, priorities and objectives, governance details, estimated resources and funding sources

- **Appointing**
  - Iwi appoint Te Ohu’s directors

- **Planning**
  - Iwi decide strategic priorities over 3 year timeframes by approving strategic plans
  - Board develops annual plans consistent with strategic plans and iwi comment / endorse

- **Reporting**
  - Te Ohu reports on achievement of agreed priorities and relevant costs

- **10 year Review**
  - Iwi review whether Te Ohu is achieving its purpose and consider whether any changes in the design are necessary.
Designing the business model

27. The core elements of a good business model make up our proposal. These include purpose, principles and values, governance, priorities and objectives, relationships, resources costs and sources of revenue (see figure 2 below). Ultimately, Te Ohu’s funding model will need to work in a way that supports these elements.

28. While we have explored each of these elements in some detail in this proposal, we recognise that the relationship between them will continue to be refined and adjusted reflecting the dynamic relationship that we expect Te Ohu and iwi will have.

29. Under the new governance model, iwi will control and influence what we do, and ultimately determine priorities, based on the benefits they seek and the available resources. However our relationship with iwi will not be limited to approval of strategic plans, board appointments and AGMs – we expect interaction between iwi and Te Ohu to drive our day-to-day activities.

Figure 2: Making the business model work

30. Te Ohu’s purpose, principles and goals and objectives (which are akin to “functions” as identified by the IWG) define Te Ohu’s “reason for being”. Through its governance arrangements (including agreement on priorities and resources through strategic and annual plans), iwi will decide which particular benefits they wish to obtain and therefore what Te Ohu’s priorities should be.
Working through the elements

Purpose

*Ka ora ki tai - ka hua ki uta*

*A bountiful ocean will sustain us*

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<td>• providing advice and facilitating collective action to enable iwi to advance their commercial and non-commercial interests in fisheries and aquaculture</td>
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31. This statement of purpose encapsulates Resolution 3, in which iwi agreed that Te Ohu be significantly restructured and “works on priorities agreed by iwi to protect and enhance the settlements including undertaking advocacy and policy advice for iwi”. Te Ohu’s policy advice is intended to enable iwi to advance their customary commercial and non-commercial interests in fisheries. All iwi agree that greater progress can be made faster where a collective position is agreed and jointly advanced - Te Ohu will advocate for iwi by acting as a collective voice.

Principles

| Operating principles and values | Te Ohu will adopt the IWG’s principles as its operating principles. These include: rangatiratanga, kotahitanga, durability, connection, concentration, diversity, performance (effectiveness and efficiency), transparency/accountability. |

32. Agreed principles or values should be a core part of Te Ohu’s new business model.

33. The IWG developed a set of principles to assess the merits of proposed changes to governance arrangements for settlement entities. The design of the new governance arrangements reflects these principles.

34. For example, the principle of concentration reflects the need to balance the individual and collective needs of iwi. The IWG envisaged that a restructured Te Ohu would advance the interests of iwi individually and collectively, but would always need to be aware of the need
to ensure that the two are balanced and the long-term collective interests of iwi are not undermined by those of individual iwi. For that reason, they proposed that Te Ohu’s directors be appointed on the basis of one iwi : one vote.

35. We have adopted and adapted the IWG’s principles as a set of operating principles for Te Ohu (see Table 1 below). These will guide the way we work with iwi to establish priorities and objectives, develop relationships with other parties (including the Crown) and identify how different activities should be funded.

Table 1: Operating principles

<table>
<thead>
<tr>
<th>Principle</th>
<th>Definition</th>
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<tr>
<td>Rangatiratanga</td>
<td>• Self-determination: iwi are able to make their own decisions</td>
</tr>
<tr>
<td>Kotahitanga</td>
<td>• Acting collectively for the benefit of all</td>
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</tbody>
</table>
| Durability        | • Distinct Maori fishing industry/sector that endures - maintains/grows value  
                       • Settlement generates benefits across the generations  
                       • Finding politically acceptable solutions that work for iwi and the Crown                                                            |
| Connection        | • Ensure recognition that customary rights include commercial and non-commercial aspects  
                       • Encourage and support alignment between iwi, settlement entities and beneficiaries  
                       • All Maori benefit from the settlement regardless of whether they affiliate to their iwi                                                   |
| Concentration     | • Make sure individual aspirations don’t undermine collective aspirations (balance between the individual/collective aspirations)            |
| Diversity         | • Cognisant of differences between iwi and beneficiaries and responsive to their aspirations  
                       • Respect and support the differences between individual iwi (including size, geography, aspirations, wealth and capability)   |
| Performance       | • Effective delivery of benefits at an appropriate cost  
                       • Deliver benefits in a way that is consistent with Maori values                                                                             |
| Transparency/Accountability | • Beneficiaries have access to information on our activities to base decisions on  
                        • Being held to account by beneficiaries                                                                                                    |
## Goals and objectives

<table>
<thead>
<tr>
<th>Goals</th>
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| Protect fisheries                          | • facilitate the achievement and maintenance of well managed sustainable fisheries and aquaculture  
                                           | • support iwi to manage their fisheries in a balanced way and facilitate cross-sector collaboration.                                                                                                      |
| Protect access                             | • ensure policies and proposals developed by the Crown local government, industry and other parties enable iwi to access their fisheries and marine space.                                                                 |
| Grow and strengthen capacity and capability | • support iwi and their members to participate in the management of their commercial and non-commercial fisheries and aquaculture assets  
                                           | • support iwi to meet the requirements of the Maori Fisheries Act and Aquaculture Settlement Act.                                                                                                        |
| Enhance fisheries and aquaculture         | • assist iwi to increase the benefits they obtain from their commercial and non-commercial fisheries and aquaculture assets.                                                                                  |

36. While iwi have agreed that Te Ohu should continue to exist to “protect and enhance the settlements,” Te Ohu will need clear goals and objectives to guide how it will do so.

37. Through our engagement with iwi, we asked what benefits they seek and what services Te Ohu should provide to help deliver those benefits. Based on our experience, we proposed four “focus areas” that could be used to consider how Te Ohu might best deliver benefits to iwi:
   a. **Protect fisheries**: fisheries will generate benefits to iwi in the long term if they are sustained.
   b. **Protect access**: fisheries will generate benefits to iwi in the long term if iwi can maintain access to them
   c. **Strengthen capacity**: iwi will manage their fisheries assets and benefit their members with the right resources and skills
   d. **Innovation (which we have revised as “enhance assets”)**: greater benefits from commercial and non-commercial fisheries can be generated through new ways of working. Examples include: finding ways to get better information through development of customary reporting tools, improving reporting by commercial fishers, developing new fisheries, trialling new harvesting methods that have a lower impact on the environment and reduce costs.
Protect fisheries and access

38. Iwi generally agreed that “protect fisheries” and “protect access” are Te Ohu’s core work areas. They involve advocacy on behalf of all iwi on all government policies that might materially affect Maori fisheries and aquaculture settlement interests. They also involve advocacy on behalf of iwi within industry organisations and to other sectors such as the recreational and environmental sectors. Particular initiatives iwi identified included:

- development of a management strategy for Maori
- design of the next iteration of the QMS
- protection of Treaty rights generally
- stopping the proliferation of protected areas (unless iwi want them)
- fixing the customary fishing regulations
- dealing with the effects of land-based activity on fishers, and the effects of mining in marine environments
- protecting Maori interests against recreational lobbyists
- fixing depleted species
- policy and advocacy on TACs/TACCs.

Grow and strengthen capacity and capability

39. Iwi identified a broad range of areas within which they wish to strengthen their capacity and capability. These included governance, fisheries science, participation in fisheries management, quota management, business management and support for implementation of the customary regulations through kaitiaki training.

40. Nevertheless, iwi expressed different views on the extent of any training Te Ohu should provide directly. For example governance training, which is offered in the market, was considered by some to be the responsibility of iwi to provide to their members.

41. Feedback from iwi identified that some areas of need should be covered by Te Putea Whakatupu (TPW) with Te Ohu’s role involving greater coordination and guidance to TPW on priorities. Others suggested that kaitiaki training is the responsibility of MPI as the Crown agency who has responsibility for implementation of the customary regulations, though others considered that iwi with assistance from Te Ohu should advance this.

42. Some considered that Te Ohu should help iwi to maximise returns on quota holdings through provision of scalable options. This is consistent with the role Te Ohu should have in developing tools and processes that all iwi can access. More importantly, some iwi consider that Te Ohu should carry out its core work in such a way that we support iwi to develop their own ability to participate in fisheries management and to advocate for themselves to industry and government. We explore this issue in more depth in the next section.

43. Iwi acknowledged that Te Ohu will continue to have responsibilities to finalise the allocation of settlement assets, and support iwi to ensure their governance arrangements comply with the Maori Fisheries Act. Addressing these matters should contribute to the development of capacity on the part of the iwi concerned.
Innovation/Enhance assets

44. During our regional hui, iwi expressed strong support for the expansion of initiatives such as customary reporting tools, pataka systems and improved options for management under the customary regulations that all iwi can access. Aspects of such initiatives, such as the joint development of improved customary regulations as well as scoping and trialling new tools and systems may be part of Te Ohu’s core role, but responsibility for implementation (including costs) will of course rest with iwi and through them hapu and kaitiaki who choose to use them. Our experience is that iwi provide the critical coordination and resourcing role for this.

45. Iwi also expressed different views about Te Ohu’s role in commercial innovation. For instance some considered Te Ohu should not be involved in such innovation - that should be the role of commercial companies and sector bodies. However some also considered that it is necessary for Maori to “keep ahead of the game” and pursue new initiatives that maintain “social license” - the confidence of the public that fisheries are well managed. In the absence of commercial action and recognising the broad interests of iwi and what is at stake, they considered there are times when Te Ohu may need to take the initiative to promote / pilot new initiatives that not only benefit iwi, but industry as a whole.

46. Some iwi have commented that Te Ohu should be future focussed and identify emerging opportunities for iwi (including identifying opportunities for iwi to exploit species that are currently of low value). Some also commented that Te Ohu should develop expertise in collaborative models for use by iwi (such as the Limited Liability Partnership model for commercial partnerships).

47. There appears to be broad agreement that Te Ohu’s role should include scoping and monitoring new opportunities and facilitating collective action by iwi to develop their assets – where agreed. Species that are a priority for development could be identified in a Maori fisheries strategy, or Te Ohu’s involvement in particular fisheries developments could be approved by iwi in Te Ohu’s strategic plans. Once ventures are ready to be implemented, Te Ohu’s role would diminish or cease.

Specifying goals and objectives for Te Ohu

48. We have discussed “focus areas”, “priorities” and “objectives” extensively with iwi. However at this stage, we consider it more helpful to refer to our key focus areas as goals, supported by objectives. The relative priority that should be given to each will be determined by iwi through strategic plans, and we expect them to change over time.

49. We expect “protect fisheries”, “protect access” and “grow and strengthen capacity and capability” to be core goals for us to varying degrees. Ultimately iwi will generate benefits from their fisheries (for example through commercial ventures) if they are demonstrably sustainable and accessible, and where they have the resources and skills to manage them.

50. In relation to “enhance assets” iwi have signalled a desire for us to monitor opportunities for growth, develop tools and “keep ahead of the game”, for example by analysing industry statistics for their implications for Maori.
51. However we acknowledge the need to be cautious about the extent to which we become involved in the development of commercial ventures as a result of any monitoring work we do. Such proposals for Te Ohu’s involvement will need to be carefully evaluated – to determine:

a. whether our involvement would be a core activity that benefits iwi collectively
b. if not, whether the costs should be recovered from those iwi who benefit
c. whether they warrant our involvement at all relative to other priorities iwi may have for us.

52. In light of the feedback we have received from iwi, we have adapted the original framework we discussed with them to reflect the relationship between our proposed goals in Figure 3 below.

Figure 3: Proposed goals and objectives

NOTE Size doesn’t equal proportion of effort. Priorities to be determined through strategic plans. Resourcing to reflect this determined through annual plans taking account of goals, progress and other competing demands – so each will vary year-to-year

53. Each goal will need to be supported by more specific objectives and activities that identify what Te Ohu will do. We set these out in Table 2.
<table>
<thead>
<tr>
<th>Goals</th>
<th>Objectives</th>
<th>Activities: what we will do</th>
</tr>
</thead>
</table>
| Protect fisheries          | • To facilitate the achievement and maintenance of well-managed sustainable fisheries and aquaculture  
                                 • To support iwi to manage their fisheries in a balanced way and facilitate cross sector collaboration                                                                                   | • monitor (act as the eyes and ears of iwi) by engaging with iwi, industry, central and local government and other fisheries sectors, science providers and eNGOs  
                                 • provide information, advice and support to iwi  
                                 • facilitate collective action as required  
                                 • develop ongoing partnerships between the sectors  
                                 • represent iwi                                                                                                                                                                                                          |
| Protect access             | • To ensure policies and proposals developed by the Crown, local government, industry and other parties enable iwi to access their fisheries and marine space                                                                 |                                                                                                                                                                                                                             |
| Grow and strengthen capacity and capability | • To support iwi and their members to participate in the management of their fisheries and aquaculture interests  
                                 • To support iwi to meet the requirements of the Maori Fisheries Act and Aquaculture Settlement Act                                                                 | • support iwi to participate in fisheries management processes and aquaculture policy development  
                                 • provide guidance to, and collaborate with TPW, iwi and AFL on scholarships and training  
                                 • collaborate with industry and government to ensure relevant training can be delivered to iwi  
                                 • provide practical support and advice to iwi on quota management  
                                 • provide advice on governance arrangements and facilitate coastline agreements                                                                                                                                 |
| Enhance fisheries and aquaculture | • Increase the benefits iwi obtain from their fisheries                                                                                                                                                                                | • identify opportunities to grow assets  
                                 • develop tools that all iwi can use to better manage their fisheries and aquaculture interests |

20
Strategic planning and priorities

• Te Ohu will collaborate with iwi to develop strategies to implement the goals and objectives by identifying:
  o what they wish to achieve collectively, both nationally and regionally
  o what role Te Ohu should play to assist them
  o what if any mandate needs to be given to Te Ohu to carry out its role.

54. Many iwi have called for the development of a “Maori Fisheries Strategy”, a “Maori Fishing Industry Strategy” or an “Iwi Fisheries Strategy”. Using the four goal areas we have discussed (see Figure 3), a strategy could identify:
  • What ‘sustainability” means from the point of view of iwi
  • What needs to be done to improve or enhance important fisheries
  • The benefits iwi seek to achieve from customary non-commercial or commercial fishing
  • Areas in which iwi wish to strengthen their capability
  • Potential threats that need to be managed (for example policies that might restrict access).

55. The strategy (or parts of the strategy) could be implemented regionally or nationally – depending on what is likely to be most effective for the particular issues and interests concerned. For example, it could establish priorities and objectives for different species groups such as deepwater (a fishery shared by all iwi) and inshore fisheries (where effort could be focussed regionally) to identify where management effort is required.

56. Many iwi told us that we should increase our support for the management of customary non-commercial fisheries. A component of a strategy should identify what benefits iwi seek from customary non-commercial fisheries and identify the key issues that need to be addressed to achieve those benefits.

57. A strategy should identify roles and responsibilities: what will iwi and Te Ohu each take responsibility for? We have discussed with iwi the different roles Te Ohu can play, such as:

What might strategies address?

Broad species groups
• which ones have good management regimes that only require maintenance?
• which ones require significant effort to achieve sustainability?

Customary non-commercial fisheries
• customary regulations?
• management tools?
• collaboration with other sectors?

Significant generic issues
• an iwi view of sustainability?
• evolution of the QMS?

What roles should Te Ohu and iwi play to develop and implement these strategies?
• monitoring trends in government, industry and other sectors that may affect the settlements
• providing information advice and support to iwi
• facilitating collective action
• representing iwi.

58. In addition to what and who, we expect development of the strategy to also identify how and when we better engage with iwi on particular issues, recognising the compressed timeframes available for analysis and feedback when reacting to government or industry proposals.

59. Iwi have told us they universally support the first three roles for Te Ohu for all fisheries and aquaculture. However they have different views about how or when we should represent them acknowledging our role could be different for different sectors (deepwater/inshore finfish/koura/paua/shellfish/eels/aquaculture), different regions and different issues over time.

60. Up to now, Te Ohu has had directors appointed to national fisheries bodies such as the Deepwater Group and Fisheries Inshore New Zealand. Historically Te Ohu has acted in such roles based on the fact it has held settlement quota before allocation and transfer to iwi. Te Ohu also acts as a representative/technical expert for iwi on the National Rock Lobster Management Group.

61. In our engagement process, some iwi proposed that Te Ohu continue to represent iwi in its role as a technical expert on all national fisheries bodies. Continuity on fisheries bodies is sensible as someone needs to retain an overview of what is going on around the country. Others have stated they are happy for Te Ohu to monitor, provide advice and facilitate collective action, however they wish to speak for themselves and represent their own interests.

62. Some iwi have asked: what are the respective relationships between Te Ohu, Iwi Leaders (ILG) and the Crown? Some have pointed out that the ILG has a direct relationship with the Crown, not Te Ohu. We are clear that the settlements are between iwi and the Crown. Our role is to provide technical advice and support.

63. These are matters that should be clarified in a strategy.
Governance

- 5 – 7 directors appointed by MIOs at an AGM
- Iwi will have access to various voting methods including electronic voting
- One MIO/one vote for each director position
- Director appointments to be based on merit in accordance with criteria to ensure the Board has appropriate skills
- Nominations committee of the board to call for nominees from iwi, assess fit with skills required and provide recommendations on nominees
- Nominees must have support from 2 MIOs
- Iwi able to vote on all nominees irrespective of recommendation or otherwise by Nominations Committee
- Directors have three year terms with no cap on the number of terms: rotation of 1/3 every year to maintain continuity while “refreshing”
- Removal of directors: Te Ohu must call a meeting of shareholders if at least 20% of MIOs request. Removal by simple majority of those who vote.
- MIOs approve the total pool for Board fees at an AGM
- Three year strategic plan to be approved by iwi at an AFM
- Board to approval annual plans and report to iwi against them

64. The above proposals, which were included in the IWG’s recommendations, were agreed to by iwi on 4 June 2015.

65. We have developed more detail around the process for MIOs to appoint directors and identified the skills the Board should have. We also propose there be no cap on the number of terms directors may serve on the board, and increase the number of iwi who can request Te Ohu to call a Special General Meeting.

Criteria for the appointment of directors

66. Criteria currently laid down in the Maori Fisheries Act for Te Ohu’s directors are:
- each of the directors must be Maori; and
- having regard to the purpose of Te Ohu Kai Moana, the directors of Te Ohu Kai Moana Trustee Limited must have commercial expertise and business skills, and be well versed in matters of tikanga Maori.

67. Te Ohu currently has responsibilities to:
- allocate and transfer Fisheries Settlement assets
- facilitate agreement on the allocation and transfer of Aquaculture Settlement assets
- undertake activities to protect and enhance the Settlements
• provide governance of the Te Ohu Group including appointment of directors to Te Putea Whakatupu Trustee Limited, Te Wai Maori Trustee Limited and Aotearoa Fisheries Limited.

68. After legislated changes giving effect to iwi decisions on the Review, Te Ohu will not have responsibility for governance of AFL – that will be in iwi’s hands directly; Te Ohu’s core purpose has also been confirmed to be to protect and enhance iwi interests in the settlements.

69. The criteria for directors laid down in the Act that must be achieved across the board in total are not detailed – however, there will be a number of core competencies required to act as an effective director on the Te Ohu board. These could be included in, for example, the company constitution or Director Position Description.

70. From our discussions with iwi, the skills held by the Te Ohu Board as a whole should include:
   • knowledge and understanding of tikanga Maori, fluency in Te Reo
   • knowledge and understanding of the Fisheries Settlements
   • deep networks within and across iwi and iwi organisations
   • networks within and across the primary sector including Government agencies
   • extensive networks across Government and opposition politicians
   • experience in the seafood sector
   • expertise in financial reporting and accounting, corporate finance, banking, and tax

71. In addition, each director should have significant governance experience and have the ability to work collaboratively on complex issues.

### The process for appointing directors

72. The IWG proposed that the directors must be merit-based on the appointment criteria laid down by the Maori Fisheries Act/constitution based on the recommendations of an Appointment Committee of the board of Te Ohu Kai Moana. Voting would be undertaken electronically prior to an Annual General Meeting of Te Ohu Kaimoana.

73. The IWG envisaged the use of independent assessors to assist the Appointment Committee in undertaking their tasks. It is envisaged that such an appointment process would also require the Appointment Committee to:
   • develop a Director Position Description
   • engage an independent assessor of the skill mix of the Te Ohu board members not included in the appointment process to assist the relevant weighting of criteria for particular appointment(s) (noting the possible model that has a staggered change of directors, for example one third of the board will be rotated every year)
   • oversee and manage the appointment process.

74. Because the role of the “Appointment Committee” is to manage the nomination process, including an assessment of candidates for iwi to appoint, we propose that the committee be renamed to be the “Nominations Committee”.

75. It is proposed that the following basic rules will apply to the process:
- It will be well notified with sufficient time available for each stage to ensure a robust process is followed.
- Any nominee for appointment must first be nominated by a MIO, be seconded by 1 additional MIO and meet the basic minimum requirements for appointment.
- All eligible nominees will be assessed, by reference to their curriculum vitae, by an independent assessor appointed by the Nominations Committee for that purpose.
- The Nominations Committee will, with reference to the independent assessor’s findings, provide a list of its recommended nominees suitable for appointment and this endorsement will be reflected on the voting forms.
- MIOs will then have the opportunity to vote for their chosen nominee (whether they have been recommended by the Nominations Committee or not). In our view, the ability of MIOs to vote for all eligible candidates will provide discipline to the process and help prevent “board capture”.

76. A diagram showing the proposed process is outlined in Figure 4.

Should the number of director terms be capped?

77. The IWG recommended that directors be appointed for three year terms, with a maximum number of three terms. The terms would be staggered so that some directors are appointed each year. This would ensure continuity is maintained while “refreshing” the Board. Te Ohu directors can currently be appointed for two terms of four years and AFL directors for three terms of three years. The IWG’s recommendation brings the terms of Te Ohu directors into line with those of AFL and the same length of terms as apply to MIO and AHC directors.

78. We have reconsidered whether the number of terms directors may serve should be limited. On the one hand, limiting the terms will require iwi to appoint new directors (rather than continually re-appoint existing directors) at the end of their three terms. On the other hand, with the ordered rotation of directors, iwi will have explicit opportunities to decide whether to re-appoint each director every 3 years as well as to ability to remove any director every year. In this light, we suggest it may be more appropriate for iwi to determine whether or not it is time for a director to move on, rather than implement a maximum continuous term. This is an approach that should be considered for the other settlement entities (see Part 2 of this paper).

Special General Meetings

79. The IWG recommended that where at least five iwi requested, a Special General Meeting should be organised and held. We held a focus group session on governance and participants commented they consider this threshold to be too low. We propose that 20% of iwi (12) to be a more appropriate threshold.
Figure 4: Proposed process for appointing directors to Te Ohu Kaimoana

- At least 3 months prior to vacancies arising (or as required in the case of extraordinary vacancies) all MIOs are notified of a vacancy having arisen and are provided details of the appointment process and closing date for nominations as well as where explanatory information may be obtained.
- Nominations Committee develops position description for director role that includes criteria for appointment.
- Nominations Committee appoints assessor.
- Assessor takes into account comments of Nominations Committee and MIOs and assesses CVs of eligible nominees against finalised weighted criteria.
- Nominations Committee provides MIOs with list of all eligible nominees and the recommendations of the external assessor as to those eligible nominees deemed best suited for appointment.
- MIOs vote for their preferred candidate for each director position to be appointed.
- Director/s appointed.
Estimated resources and costs

<table>
<thead>
<tr>
<th>Resources and costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Te Ohu will require skills and experience in policy, politics, facilitation, communications, advocacy, fisheries/aquaculture science and management, economics, law, government, Treaty of Waitangi, the Fisheries Settlement, Te Reo, tikanga Māori, fisheries allocation, financial management, investment and administrative support.</td>
</tr>
<tr>
<td>The majority of staff will focus on core fisheries/aquaculture work</td>
</tr>
<tr>
<td>It is estimated that Te Ohu’s operating costs will be $3.6 million per year on average from 2018 if it is to achieve its goals and objectives.</td>
</tr>
</tbody>
</table>

80. As we noted earlier in this paper, some things will change for Te Ohu in the future and some things won’t. The organisation’s focus on protecting and enhancing the settlement will continue and become Te Ohu’s core work area. Other aspects – including governance of AFL, emphasis on allocation of settlement assets, level of aquaculture activity, scholarships and implementation of the review - will disappear, reduce or be transferred elsewhere. Te Ohu’s future resource needs and our estimates of its future costs should be seen in that light.

81. To be effective, Te Ohu will need skills and experience in policy, politics, facilitation, communications, advocacy, fisheries and aquaculture, science and management, economics, law, government, the Treaty of Waitangi, the Fisheries Settlement, Te Reo, tikanga Māori and fisheries allocation. These are consistent with what iwi have told us.¹

82. The organisation will need sufficient scale to hold the expertise it requires and sufficient critical mass to ensure sound succession planning as staff move on. Staff should include the CEO, fisheries/aquaculture analysts, advisers and facilitators, a team leader or manager, communications expertise, direct support and a small corporate team to manage Te Ohu’s income and reporting.

What iwi have told us

Te Ohu should have the following expertise:
- tikanga Māori
- science and fisheries management
- the government system
- the commercial fishing sector
- the regime for managing customary non-commercial fishing
- understanding of the fisheries settlement and where we have come from.

Te Ohu should have the following skills:
- working with iwi
- policy analysis
- independent thinking (so as not to be captured by particular interests to the detriment of iwi collectively)
- leadership and facilitation (noting that this inevitably requires a “thick skin”)
- communications (it should be “top class”)
- forging strategic relationships
- networking within industry and government
- using political processes; influence and persuasion.

¹ “How might we be fit for purpose?” Te Ohu Kaimoana Transition Workshop, 16 October 2015

27
83. The IWG commented on the prospect of dismantling Te Ohu and creating a new organisation from scratch. They noted that if Te Ohu were to lose the capability and reputation it has built to date, the durability of the settlement and kotahitanga will be prejudiced. Iwi agreed to retain Te Ohu to advocate and provide policy advice on their behalf – albeit in a restructured form. To assist the organisation to transition into the new governance regime, we consider it vital to retain the skills of Te Ohu’s experienced staff, and to put in place a succession plan to bring on and train new staff who have the ability to work with iwi and gain the necessary technical expertise.

84. Te Ohu’s team will need to be able to operate efficiently and flexibly across all the areas we service. Based on our experience, we know that staff will need to juggle many different issues and communicate effectively to different audiences including iwi, government, industry and other stakeholders. We expect the proportion of effort to be given to each area will change over time to reflect iwi priorities – so flexibility will be key. Part of that will also be a sensible balance of in-house expertise that can ensure continuity of approach and consistent advocacy and contracting in of specialist expertise for particular issues.

85. We estimate that Te Ohu’s operating costs will be $3.6 million per year on average once amendments to the Maori Fisheries Act are enacted. This is a sizeable reduction in our current costs and represents a starting point, based on where we have come from.

86. We have estimated the proportion of effort that would need to be given to our four goal areas as a starting point (see figure 5).

Figure 5: Estimated proportion of effort

87. We expect when iwi take control through the new governance processes, resources and proportion of effort applied to different areas will be adjusted over time to reflect their priorities.

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2 Review of Maori Fisheries Entities: Existing and proposed governance arrangements: Iwi Working Group Stage One report to Te Ohu Kaimoana, May 2015, pp16 - 17
Proposed funding model

| Sources of revenue | • Services provided for the collective benefit of iwi should be funded as a core activity through income from the investment portfolio  
• The costs of services provided for the exclusive benefit of a group of iwi are recovered from those iwi  
• Costs of services delivered on behalf of a third party such as the Crown, Te Wai Maori and Te Putea Whakatupu are recovered from those parties. |

88. With estimated expenses of around $3.6 million, and estimated recoveries of around $600,000, $3 million remains to be generated to cover the costs of Te Ohu’s core activities (see Table 6 below).

Table 6

<table>
<thead>
<tr>
<th>Income needed to meet expenses</th>
<th>FY 2018 estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Core income</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Takutai Funding from MPI</td>
<td>318,000</td>
</tr>
<tr>
<td>Maori Fisheries Conference</td>
<td>100,000</td>
</tr>
<tr>
<td>Subsidiary cost recoveries</td>
<td>182,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,600,000</strong></td>
</tr>
</tbody>
</table>

89. The income Te Ohu currently receives through dividends from AFL, normally around $1.6 – 2.4 million (including Maori Authority Tax Credits), will no longer be available.

The portfolio as Te Ohu’s core source of funding

90. Through our engagement with iwi, two main funding options have been discussed: income from the portfolio, or a levy system. Iwi we have engaged with generally support the use of the investment portfolio as a core funding source. While a levy system could be difficult to implement to consistently raise this level of funding each year, iwi have asked us to take a closer look at the practicalities of such a system – at least to understand how it compares with the portfolio option.

91. Te Ohu currently holds substantial funds. These funds, along with those of Te Putea Whakaputu and Te Wai Maori, are held and managed in an investment portfolio. None of those funds were ear-marked to be allocated to iwi in the fisheries allocation model. All cash that was included in the allocation model has been allocated to all recognised MIOs.

92. The investment portfolio began with $5M capital that iwi and the Crown agreed to leave with Te Ohu as working capital, along with $11m “transition funds” provided to recognise that during the 5 year transition Te Ohu would not receive any dividend from AFL. These

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3 Te Ohu holds the cash (plus other Settlement assets including quota and AFL income shares) for the two iwi yet to be recognised as a MIO
funds were invested and increased over time plus Te Ohu Kaimoana gained charitable tax status and received repayments from IRD of tax previously paid over a number of years. While this recognition is a very satisfactory outcome (and the lessons from this informed the development of the Te Ohu templates for MIO deeds and AHC constitutions, so similar benefits can be gained by iwi in the future) there was no certainty at that time that we would gain charitable status.

93. Perhaps reflecting this uncertainty the Act, while including explicit measures as to how any funds held by Te Ohu must be distributed should Te Ohu be wound up[^4], included no legislated requirements, restrictions or directions as to how the Board could distribute any funds held while Te Ohu is still operating.

94. Using the portfolio income (subject to the transfer to reserves to maintain the real value of the portfolio) as our core income source, our total income can be estimated in summary form as follows:

Table 7: estimated income

<table>
<thead>
<tr>
<th>Income</th>
<th>FY 2018 estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portfolio income</td>
<td>3,700,000</td>
</tr>
<tr>
<td>Takutai Funding from MPI</td>
<td>318,000</td>
</tr>
<tr>
<td>Maori Fisheries Conference</td>
<td>100,000</td>
</tr>
<tr>
<td>Subsidiary cost recoveries</td>
<td>182,000</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>4,300,000</strong></td>
</tr>
<tr>
<td>Transfer to reserves – Portfolio income over 4%</td>
<td>(740,000)</td>
</tr>
<tr>
<td><strong>Income after transfer to reserves</strong></td>
<td><strong>3,560,000</strong></td>
</tr>
</tbody>
</table>

95. These estimates are based on the following assumptions:
   a. Trust equity and retained earnings at $74 million[^5]
   b. The portfolio remains intact
   c. The portfolio target return remains at 4.5% plus CPI (estimated for this model at 0.5%)
   d. Annual spending is limited to 4% of last 3 years average funds under management
   e. Earnings above 4% are added to funds under management to retain real value
   f. ACE income is NIL
   g. Takutai funding from MPI is approx. 50% of the 2016 financial year
   h. The Maori Fisheries Conference continues as a full cost recovery undertaking
   i. Costs recoveries from subsidiary trusts of $182,000.

96. Use of the portfolio as our core funding source has the following advantages:
   - **kotahitanga**: it provides certainty to Te Ohu and iwi that the resources required for Te Ohu to deliver collective benefits to iwi will be available – albeit there will be limits.
   - **rangatiranga**: all iwi are in a position to participate as they choose

[^4]: In the event that Te Ohu is wound up, the funds would be distributed to iwi based on percent each iwi represents of notional Maori Population as per Schedule 3 of the Maori Fisheries Act
[^5]: This is more than currently held and reflects assumptions on continuing to receive dividends from AFL.
• iwi with limited resources will not be faced with costs they can’t meet
• it does not place an administrative burden on Te Ohu
• it aligns with Te Ohu’s role as a trust established for the benefit of all
• it enables iwi and Te Ohu to implement longer term programmes with certainty.

97. Some may argue that use of the investment portfolio will not create sufficient incentives for Te Ohu to operate transparently or efficiently and provides fewer opportunities for iwi to hold Te Ohu to account. In our view, transparency and good performance will be assured through the direct role of iwi in the new governance processes (including approval of strategic plans and accountability through the Board). We also expect close working relationships between iwi and Te Ohu to enhance transparency.

How would a levy compare to the use of the portfolio?
98. Under a levy-based approach, iwi will need to agree what is the most equitable allocation of costs and each iwi will need sufficient resources to meet their share without significant burden. The basis for apportionment might be by equivalent share, population or the value of settlement assets (using average ACE values). Based on the need to levy $3 million, examples of the amount iwi would need to pay are set out below.

Table 8: levy scenarios - comparison of annual costs

<table>
<thead>
<tr>
<th>Iwi</th>
<th>equal share (1/58)</th>
<th>population</th>
<th>settlement quota (based on ACE values)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ngapuhi (15.79% population)</td>
<td>$51,700</td>
<td>$473,730</td>
<td>$155,000–169,000</td>
</tr>
<tr>
<td>Ngai Tahu (6.1% population)</td>
<td>$51,700</td>
<td>$183,300</td>
<td>$1 – 1.1 million</td>
</tr>
<tr>
<td>Ngati Maru (0.134% population)</td>
<td>$51,700</td>
<td>$4,020</td>
<td>$1,000 – 1,100</td>
</tr>
<tr>
<td>Te Atiawa ki Whakarongotai (0.073% population)</td>
<td>$51,700</td>
<td>$2,180</td>
<td>$5,300 – 5,800</td>
</tr>
<tr>
<td>Ngati Whatu (1.931% population)</td>
<td>$51,700</td>
<td>$57,900</td>
<td>$62,000 – 68,000</td>
</tr>
</tbody>
</table>

* Estimated total value: $33 – 36 million. Levy rate = 0.83 - 0.9c per $1 of value

99. It could be suggested that as a large proportion of the commercial settlement assets have been distributed to iwi on the basis of population (and population is a proxy for the non-commercial rights), this is the most appropriate basis for a levy. However, gaining agreement from all iwi that a particular methodology is equitable may prove problematic.

100. Different methodologies significantly affect what each iwi pays, and there is no particular method that stands out as the most appropriate. Finding a method or combination of methods that iwi agree is equitable will be difficult. The danger of a levy model is that some iwi may not pay. Uncertainty of income would affect the organisation’s ability to carry out its role and undermine its purpose for iwi.
101. If the funding source is the income from the investment portfolio, payment by iwi every year is not a concern. Nevertheless some iwi could claim that not having the investment funds distributed to them means there is an opportunity cost to them. While that may be the case, there is no requirement or guidance under the Maori Fisheries Act on how the funds should be distributed at this time and no explicit formula should the Board decide to do so (see paragraph 93).

102. On the other hand, the Maori Fisheries Act does contain provisions that, if Te Ohu is wound up, any residual funds held are distributed to iwi based on population. So if this form of funding is used, it could be portrayed that each iwi is indirectly contributing in proportion to their population. Some might claim that this level of contribution may not be consistent with the level of benefits they will receive each year. In any one year that may be true, but the nature of the work Te Ohu will undertake by addressing the highest priorities identified by iwi will ensure all iwi benefit over time.

103. The key context for deciding what funding model is most appropriate is that:

a. Kotahitanga and rangatiratanga are key principles
b. There is no uniformity of iwi in terms of population size, economic capability or benefits from or risks to their fisheries settlement interests over time or in any single year. This creates a range of fairness and equity issues when considering how to spread the costs of services provided by Te Ohu to iwi

c. The new planning and governance processes are where critical decisions should be made in relation to the relative priority of Te Ohu functions and urgency of particular services and, flowing from this, the total annual funding for Te Ohu in any year. The annual budget and the means to resource it should be a consequence of this process rather than a primary issue

d. The purpose of Te Ohu is to protect and enhance the settlements which requires a range of functions that have a governance and advocacy role as well as assisting with allocation of settlement assets. These types of functions are only able to be modelled into a levy based on arbitrary criteria (like population base or value of settlement assets or number of iwi) that do not align the level or nature of the services provided to the funding provided by each iwi

e. While Te Ohu will transfer its AFL shares to AHCs as part of the reforms, the other predominant existing source of funding (the endowment fund that all iwi have a legislated interest in) still remains.

104. There are tensions within the different models. The allocation of the cost of Te Ohu on a levy basis will emphasise the difference in size and economic capacity of a range of iwi that could cause divisions inconsistent with kotahitanga. Therefore we recommend Te Ohu’s core funding should be generated from the investment portfolio.
105. Resolution 4 from the 4 June Special General Meeting requires Te Ohu to recommend what, if any, role the RPS will play in our future funding model. We have not included the RPS in our proposed funding model. If iwi agree to our proposal to use income from the portfolio as the basis for Te Ohu’s core funding, the RPS will not be required. We recommend they be converted into shares and distributed to iwi.

106. The RPS were issued as part of the settlement of loans between AFL and the Treaty of Waitangi Fisheries Commission. The RPS were issued when Te Ohu was first being established. At that time, the funding Te Ohu needed to fulfil its functions was uncertain. The purpose of the RPS is identified in the Deed as “being in the nature of financial insurance for the Trustee”. Under the Deed, Te Ohu can redeem part or all of the RPS at an agreed value up until November 2019 subject to a number of conditions. After that time, they can be redeemed for full value.

107. There are some constraints on Te Ohu’s ability to redeem the RPS. The RPS is subordinate to any bank debt, so AFL is prevented from making any payments to Te Ohu under the RPS while it holds such debts.

108. In our view, there are four options for dealing with the RPS:

a. Retain within Te Ohu as continued insurance: this is not needed if Te Ohu is funded through income from invested funds. In that circumstance we consider the RPS have done their job
b. Negotiate a cash redemption for iwi: this would require AFL to access equivalent finance at an additional cost, reducing its value to iwi
c. Amend all documents and transfer the RPS to iwi. It is important to note that the terms of the RPS only contemplate a single owner being Te Ohu or a wholly owned subsidiary. In any event, transferring the RPS to 58 iwi is likely to be complicated.
d. Convert the RPS into shares and distribute them to iwi. In our view this is the most practical option with the benefit of removing a liability from AFL’s balance sheet, increasing its value to iwi.
PART 2: PROGRESS REPORT ON GOVERNANCE ARRANGEMENTS FOR AFL, TE WAI MAORI, TE PUTEA WHAKATUPU AND THE PROCESS FOR SALES OF SETTLEMENT ASSETS
Governance of Aotearoa Fisheries Ltd

Introduction

109. On 4 June 2015, iwi agreed that they should hold all AFL voting and income shares and a number of other matters as a consequence. Iwi largely adopted the recommendations of the IWG in relation to the governance of AFL. In this section, we set out in more detail how aspects of these governance arrangements might work.

The resolutions that affect AFL’s governance arrangements

110. The following resolutions – agreed to by iwi at the 4 June 2015 SGM - affect AFL:

<table>
<thead>
<tr>
<th></th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>That iwi hold all Aotearoa Fisheries Ltd (AFL) voting and income shares</td>
</tr>
<tr>
<td>6</td>
<td>That special resolutions for major transactions for AFL require at least a 75% majority voting threshold</td>
</tr>
<tr>
<td>7</td>
<td>That AFL continue to work with iwi to develop and implement policies on collaboration</td>
</tr>
<tr>
<td>14</td>
<td>That AFL continue to work with iwi from the Chathams to address key common issues on the Chathams and develop mutually beneficial commercial arrangements</td>
</tr>
<tr>
<td>15</td>
<td>That the Te Ohu Kai Moana Trustee Limited and Aotearoa Fisheries Limited Plans are adopted in full in accordance with the Review recommendations passed.</td>
</tr>
<tr>
<td>19⁶</td>
<td>That the alienation of assets by Aotearoa Fisheries Limited and/or Sealord be subject to, at the very least, a binding RFR to allow iwi to buy any of their assets if those companies wanted to sell them</td>
</tr>
</tbody>
</table>

111. Resolutions 2 and 6 will require legislative amendment and/or amendments to the constitutional documents of AFL to be made. As noted above, detailed work is underway to comprehensively deal with implementation of these resolutions.

112. Resolutions 7 and 14 are already being discussed and implemented by AFL – they are matters that are best not enshrined in legislation; the requirements for policies on these issues may, however, be included in the constitutional documents of the company.

What are the key elements of AFL’s governance arrangements?

113. The transfer of the income and voting shares of AFL from Te Ohu Kaimoana to iwi asset-holding companies (AHCS) will require fundamental changes to the governance of the company. The IWG in its report provided the following key features:

---

⁶ Note that this was a non-binding recommendation
<table>
<thead>
<tr>
<th>Governance</th>
<th>Special Protections</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Income and control shares transferred to AHCs based on allocation model</td>
<td>• Clear definition of major transactions and significant change in business focus</td>
</tr>
<tr>
<td>• Iwi appoint 5 - 8 directors</td>
<td>• Vote of 75% of shares for major transactions and significant changes in business focus</td>
</tr>
<tr>
<td>• Iwi vote for directors at an AGM based on shareholdings (iwi through AHCs), based on recommendations of an Appointment Committee of the Board</td>
<td>• Iwi approve total pool for Board fees at an AGM</td>
</tr>
<tr>
<td>• Director appointments to be based on merit in accordance with criteria to ensure Board has appropriate skills</td>
<td>• Regular reporting to iwi</td>
</tr>
<tr>
<td>• Appointments for 3 terms of 3 years with staggered terms (ensures continuity)</td>
<td>•</td>
</tr>
<tr>
<td>• Removal of directors: AFL must call a meeting of shareholders if 10% of shareholding including at least 5 iwi request. Removal by simple majority of those that attend</td>
<td>•</td>
</tr>
<tr>
<td>• Iwi approve total pool for Board fees at an AGM</td>
<td>•</td>
</tr>
<tr>
<td>• Regular reporting to iwi</td>
<td>•</td>
</tr>
</tbody>
</table>

114. We have taken a closer look at the recommendations of the IWG, discussed aspects at a focus group workshop with AFL and iwi and done some more detailed work on key aspects including:
   a. The skills required of directors
   b. Process for appointment of directors
   c. Directors’ terms
   d. Process for removal of directors
   e. Reporting and disclosure.

115. In the design of the new arrangements for AFL, we are mindful that many of the proposed changes would bring AFL’s governance more into line with many other New Zealand companies. However we shouldn’t forget that AFL’s origins in a Treaty settlement, and its unique shareholding structure, also make it different. The design must take these factors into account.

**Skills required of directors**

116. We have heard positive support from AFL and iwi for the proposal that the Board as a whole would have the following skills:

- knowledge and understanding of tikanga Māori
- knowledge and understanding of the Fisheries Settlements
- extensive networks within and across iwi and iwi organisations
- extensive networks within and across the primary sector including government agencies
- extensive networks across government and opposition politicians
- operational experience in the seafood sector
- expertise in financial reporting and accounting, corporate finance, banking and tax
• expertise in mergers and acquisition, deal making and transaction management
• expertise in international marketing and business.

117. While we don’t expect that every director would have all the above skills, each director should have significant governance experience with proven ability to work together on complex issues.

Directors’ terms

118. As we noted earlier, the IWG recommended that directors be appointed for three year terms, with a maximum number of three terms – as is currently the case for AFL. The terms would be staggered so that some directors are appointed each year. This would ensure continuity is maintained while “refreshing” the Board.

119. We have reconsidered whether the number of terms directors may serve should be limited. On the one hand, limiting the terms will require iwi to appoint new directors (rather than continually re-appoint existing directors) at the end of their three terms. On the other hand, with the ordered rotation of directors, iwi will have explicit opportunities to decide whether to re-appoint each director every 3 years as well as the ability to remove any director every year. As is the case for Te Ohu, we suggest it may be more appropriate for iwi to determine whether or not it is time for a director to move on, rather than implement a maximum continuous term.

Process for appointment of directors

120. AFL proposes the following overarching principles for the appointment of AFL’s directors:
• Shareholders (iwi/AHCs) have the ultimate authority and responsibility for appointment and accountability of the board of directors
• Directors are selected for their skills relevant to the purpose and goals of the company
• The process for nomination and selection is transparent
• Nominations, in the event of a vacancy, may be made by all shareholders
• The process for nomination, comparison and selection of candidates will be carried out to achieve, to the maximum extent possible:
  o Confidentiality
  o Efficiency
  o Minimum cost.

121. These principles are consistent with key issues we think are needed to underpin the appointment process:
• iwi wish to have more direct control over AFL – directors are to be appointed by Asset Holding Companies at an AGM
• The board of AFL must collectively have the mix of skills needed to take the company forward in the direction shareholders collectively determine is consistent with the purpose and goals of the company. The skills of any newly appointed director should complement those of the incumbent directors: candidates with the required mix of skills need to be identified/recruited through the process
To encourage high calibre candidates, the process should provide a level of confidentiality up to the point that candidates seek approval by AHCs collectively.

122. We have had discussions with iwi and AFL about how the appointment process might work. There appears to be general agreement that a nominations committee would have the following role in the process:
   • assess the overall skills competencies needed by the Board to address the strategic issues facing the company in at least the next 3 years
   • assess the skill mix of the incumbent directors
   • taking account of the skill mix of retiring directors and the skills needed going forward, develop the director position description for the particular appointment/s being considered (including any particular weighting of criteria)

123. The nominations committee would have the ability to contract an independent assessor to assist it, if it chooses.

124. All shareholders would have the right to nominate candidates but no shareholder would have the right to directly appoint a director.

125. In our discussions with iwi and AFL, different ideas about the make-up of the nominations committee have been put forward. For example
   • it would be made up of AFL board members (similar to many other New Zealand Companies) only, or
   • the committee should have the option of co-opting additional members as necessary, or
   • the nominations committee could include a number of iwi members appointed by iwi at an AGM.

126. Aspects of this process as a whole could be amended and combined in different ways. For example the nominations committee might include a number of iwi members appointed by an AGM. In that case, a shortlist of candidates (rather than the list of all candidates who wish to be considered) might be provided to the AGM along with the Board’s recommendation. Alternatively, a full list of candidates who wish to be considered by AHCs could be circulated prior to an AGM, along with the Board’s recommendations as to who they consider to be most suitable.

127. In our draft business model for Te Ohu, we have proposed a process for the appointment of Te Ohu’s directors. A similar process could be applied in the case of AFL:
   a. The nominations committee, made up of AFL board members, would carry out an assessment of the skills required by the board as directors near the end of their term (proposed to be one third of the directors each year)
   b. AHCs would be notified and invited to nominate candidates. Each nomination should be supported by two AHCs.
   c. The committee would carry out an assessment of all candidates, with the help of external assistance if required, and make a recommendation to the Board
   d. Prior to the AGM, AHCs would be provided with the list of all candidates, including those recommended by the Board, and others who wish to continue to seek approval from AHCs
e. AHCs exercise their vote and those directors elected have a three year term
f. All directors who are standing down continue until replaced by a new director appointed through this process

128. An outline of what the process could look like is illustrated in Figure 6.

129. A variation of the process would be for the nominations committee to run a process to recommend candidates to the Board for appointment mid-year. Those directors would hold office until the next AGM, when iwi would decide whether or not they should continue in office. Iwi could nominate directors in addition to this to be considered at the AGM. However we note this process is what is normally followed in the case of an extraordinary vacancy rather than an ordinary vacancy.

130. As the Board should have 5-8 directors at any time, it is not expected that an extraordinary vacancy caused by an incumbent director resigning mid-term will result in any governance difficulties for AFL. If however this caused quorum problems or the particular situation required the company to urgently have additional skills at a governance level, the process could also allow the nominations committee to select and co-opt a suitable candidate to fill an extra-ordinary vacancy. That director would be required to retire at the next AGM although they may stand for re-appointment, at which time iwi will get to vote on their appointment.

Process for removal of directors
131. It was proposed that any removal occur by way of ordinary resolution of shareholders at an AGM or SGM called for the purpose. Iwi who attended a focus group workshop considered that the IWG proposal that a minimum of 5 AHCs should be required to call an SGM to be too low and recommended instead that it should require the agreement of at least 10 AHCs holding more than 20% of shares to instigate this.

Operation of the Board
132. It was proposed that in addition to the above, the following rules apply:
- the Chair is elected annually by the board and there be no deputy chair
- directors’ fees in total to be approved by ordinary resolution at an AGM on the recommendation of the board (and allocated upon the recommendation of the board’s Remuneration Committee).

Reporting & disclosure
133. AFL proposed to retain the annual reporting requirements in its current company constitution with the following modifications:
- annual and interim reports should be published within 3 months of the relevant balance date
- the requirement to report and provide commentary against budget should be replaced with a requirement to report against the prior year, consistent with financial statements
- the annual report should contain commentary on the performance of the board and committee against the relevant code or charter.
Figure 6: Proposed process for appointing directors to AFL

Nominations Committee develops position description for director role that includes criteria for appointment

At least 3 months prior to vacancies arising (or as required in the case of extraordinary vacancies) all AHCs are notified of a vacancy having arisen and are provided details of the appointment process and closing date for nominations as well as where explanatory information may be obtained.

Nominations are made by AHCs

Nominations Committee appoints assessor if required

CVs of eligible nominees are assessed and recommendations made by the Nominations Committee to the Board

Board provides AHCs with their recommendations as to those eligible nominees deemed best suited for appointment, along with remaining nominees who still wish to be considered for appointment by AHCs

AHCs vote for their preferred candidate for each director position to be appointed

Director/s appointed
AFL has proposed to adopt a modified continuous disclosure policy to provide shareholders with relevant information. AFL has determined that a process akin to the NZX Listing Rules regarding continuous disclosure is unlikely to be appropriate for a relatively closely-held company with illiquid shares. Accordingly AFL proposes to develop a policy that takes into account the specific needs and circumstances of its shareholders including the need to balance the benefits of disclosure with the costs associated with disclosure of commercially sensitive information and the cost of managing the disclosure regime. Examples of appropriate disclosure may be:

- events likely to have a material impact on the business
  - changes in forecast earnings
  - changes in anticipated dividends
  - changes in executive management
  - changes in the board or shareholders
- major and material transactions
- proposals to acquire or sell assets that fall within the requirements of the Right of First Refusal Regime.

Further work is required to firm up these proposals.

Major and Material Transactions

Presently there is only 1 voting shareholder (Te Ohu Kai Moana Trustee Limited) which has meant that in effect all decisions regarding major or material transactions at AFL have been made by 1 entity (i.e. either approved by 100% of the shares or not approved at all). With the change to every iwi AHC holding shares which will include the ability to vote on them by shareholding. Accordingly, AFL proposes that the transactions noted on Table 9 will generally require special resolutions to be passed. Special resolutions are defined in the Companies Act as requiring 75% approval by shareholding.

Iwi who attended the focus group workshop considered that a 5% threshold defining a related party appears too low. Further work is required to determine the best limit.
### Table 9: Transactions and proposed decisions

<table>
<thead>
<tr>
<th>Transaction</th>
<th>Constitution</th>
<th>Definition</th>
<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Transaction</td>
<td>CI 49.1</td>
<td>As defined in the Companies Act S129. A major transaction is a transaction which involves acquiring or disposing of assets or acquiring rights or incurring liabilities or obligations with a value of more than 50% of company’s assets before the transaction.</td>
<td>Special resolution</td>
<td>Special resolution</td>
</tr>
<tr>
<td>Major Transactions Relating to Non Fishing Industry Assets</td>
<td>CI 49.2</td>
<td>Any Major Transaction that would result in AFL breaching the MFA S35(1)(c) which requires TOKM consent to any activity not related to fisheries, fishing, and fisheries related activities.</td>
<td>Not permitted</td>
<td>Not permitted</td>
</tr>
<tr>
<td>Acquisition or Disposal of Assets</td>
<td>CI 50.1(a)</td>
<td>Acquisition or disposal of assets that would change the essential nature of AFL’s business.</td>
<td>Ordinary resolution</td>
<td>Special resolution</td>
</tr>
<tr>
<td></td>
<td>CI 50.1(b)</td>
<td>Acquisition or disposal of assets that have value in excess of 50% of AFL’s shareholders’ funds before the transaction.</td>
<td>Ordinary resolution</td>
<td>Special resolution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Any transaction under CI 50.1 that is also a Major Transaction</td>
<td>Special resolution</td>
<td>Special resolution</td>
</tr>
<tr>
<td>Material Transaction with Related Parties</td>
<td>CI 51.1</td>
<td>A Material Transaction is a transaction with a Related Party in which AFL acquires or disposes of assets, borrows, lends, pays or receives money or enters into obligations, guarantees or indemnities, with a value in excess of 5% of AFL’s shareholders’ funds before the transaction.</td>
<td>Ordinary resolution</td>
<td>Special resolution</td>
</tr>
</tbody>
</table>

The transaction provisions in Clauses 49 to 51 of the constitution apply to all members of the AFL group including sub-companies to the extent enforceable by AFL and any series of linked transactions. The provisions do not apply to normal course of business banking arrangements. The prohibition on transactions that would result in investment in non-fishing industry related assets or businesses without Te Ohu consent is no longer required given the requirement that transactions that will change the essential nature of AFL’s business require approval by special resolution.
Governance of Te Putea Whakatupu
The resolutions that affect TPW’s governance arrangements

138. The following resolutions, agreed to by iwi on 4 June 2015, affect Te Putea Whakatupu.

| 10  | That Te Putea Whakatupu Trust/Te Putea Whakatupu Trustee Ltd continue with its directors increased to a maximum of 5 with a quorum of a majority of directors |
| 15  | That the Te Ohu Kai Moana Trustee Limited and Aotearoa Fisheries Limited Plans are adopted in full in accordance with the Review recommendations passed. |

Summary of key points in addition to the above

139. These resolutions mean that Te Ohu will continue to appoint directors on merit and that the board as a whole must have the requisite skills.

140. Appointments would be made for three-year terms, but with rotation of terms to maintain continuity while “refreshing”. For consistency with our recommendations on Te Ohu and AFL directors’ terms, the cap on the number of terms a director may fill could also be removed.

141. Court proceedings initiated by NUMA and Te Whanau o Waipareira Trust and undertakings given by Te Ohu require Te Ohu to undertake not to implement any of the proposals approved by iwi at the SGM with respect to TPW until that case is determined.

Governance of Te Wai Maori
The resolutions that affect TWM’s governance arrangements

142. The following resolutions, agreed to by iwi on 4 June 2015, affect Te Wai Maori.

| 11  | That Te Wai Maori Trust/Te Wai Maori Trustee Ltd continue with its directors increased to a maximum of 5 with a quorum of a majority of directors |
| 15  | That the Te Ohu Kai Moana Trustee Limited and Aotearoa Fisheries Limited Plans are adopted in full in accordance with the Review recommendations passed. |

Summary of key points in addition to the above

143. These resolutions mean that Te Ohu will continue to appoint directors on merit and that the board as a whole must have the requisite skills.

144. Appointments would be made for three year terms, but with rotation of terms to maintain continuity while “refreshing”. For consistency with our recommendations on Te Ohu and AFL directors’ terms, the cap on the number of terms a director may fill could also be removed.
What about the “Straw Tangata”?  

145. Iwi agreed to the following non-binding resolution:

| 17 | That notwithstanding that the “Straw Tangata” model proposed by the IWG is outside the scope of the resolutions that iwi can make in response to the review, that this model is supported by iwi and should be taken to the Minister for Primary Industries for implementation |

Summary of key points

146. This resolution, if implemented, would bring Te Putea Whakatupu and Te Wai Maori together with Te Ohu Kaimoana as one Trust.

147. This is outside the scope of the review, however measures that increase closer alignment (such as common directors) would be a step in that direction.
Simplifying the sale of settlement assets

The resolutions that affect the sale of settlement assets

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>That the disposal restrictions in the Maori Fisheries Act 2004 for settlement quota and income shares remain and that simpler trading processes are developed for iwi wishing to sell some of their assets to willing buyers within the iwi/Te Ohu Kai Moana Group pool.</td>
</tr>
<tr>
<td>13</td>
<td>That the current restrictions on the sale of ACE be increased from 5 to 15 years.</td>
</tr>
</tbody>
</table>

Simplifying the sale of settlement quota and income shares

148. The reviewer recommended retaining restrictions on the sale of settlement assets outside of the Maori pool to ensure the durability of the settlement and to protect collectively owned assets. The Iwi Working Group (IWG) agreed. The IWG also agreed that the process for selling assets within the Maori pool should be made simpler for iwi. A simpler process may be more efficient and enable iwi to shift their investment priorities as they see fit.

149. The IWG was of the view that it should not be necessary to require approval of 75% of adult members of an iwi, as currently required under the Maori Fisheries Act, for an AHC to sell fisheries settlement assets. Instead, the IWG recommended, the minimum requirement should be that the AHC obtain the approval of its MIO prior to any sale of settlement quota or AFL shares. MIOs would then be free to determine for themselves what if any additional thresholds they will apply to the sale of settlements quota and income shares - which is more consistent with rangatiratanga.

Proposed key conditions of the sale of settlement quota

150. Parties in any sale of settlement quota must always be -
   - Either a MIO’s AHC; or
   - An entity within the Te Ohu group

151. A key criteria is that the proposed sale must comply with the sales policy expressed in the annual plan of any MIO and its AHC or Te Ohu group entity.

152. The “willing buyer, willing seller” principle applies, subject to the policy being expressed in the Annual Plan of any MIO (and its AHC) and any Te Ohu group entity participating in the proposed sale of settlement quota.

153. The system should ensure the right checks and balances exist to ensure these requirements are met. There are three possible options:
   a. It could be left to iwi members to hold MIOs to account (perhaps through the courts) where a transaction is shown to be non-compliant
   b. Te Ohu can certify that the requirement is met
   c. FishServe could provide the same service (but with a fee).
154. Each has its pros and cons. The first option relies on iwi members holding MIOs to account through the provisions of their own constitutions and plans. However the action they take will be after a transaction has taken place. The second two options would ensure transactions are compliant before they occur.

155. The table provides a summary of the current process to sell settlement quota and sets out the proposed changes to simplify the process to sell the quota.
<table>
<thead>
<tr>
<th>CURRENT PROCESS TO SELL SETTLEMENT QUOTA UNDER THE ACT</th>
<th>PROPOSED CHANGES TO SIMPLIFY SALES PROCESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval from adult members required prior to selling settlement quota</td>
<td>Remove requirement from the Act for MIOs to seek approval from adult members to sell settlement quota.</td>
</tr>
<tr>
<td>MIO must notify proposal to sell settlement quota (including amount of quota and estimate of likely market value) to adult members and obtain prior approval by not less than 75% of adult members who vote either at an AGM (called for that purpose) or by postal vote.</td>
<td>Minimum requirement proposed is for the AHC to obtain the approval of its MIO prior to any sale of settlement quota and that the MIO has a notified policy that allows sales of settlement quota.</td>
</tr>
<tr>
<td>Approval obtained valid for up to 15 months (shorter for general approval to sell up to 10% of entire settlement quota value)</td>
<td>Provision retained in the Act: MIO annual plan must include sales policy for consideration by iwi members at AGM and exercise strategic governance over its AHC including the process to examine and approve the AHC annual plan that includes, amongst other things, any programme to reorganise the settlement quota held by AHC (or their subsidiaries) as buying and selling settlement quota.</td>
</tr>
<tr>
<td>Approval obtained is valid from the date on which it is given for a term not exceeding 15 months or if approval obtained to sell settlement quota up to a specified limit that must not exceed 10% of the total value of settlement quota by the AHC of the MIO for a term not exceeding 12 months.</td>
<td>Remove.</td>
</tr>
<tr>
<td>Offer of option to purchase to every MIO and Te Ohu group entity</td>
<td>Remove requirement that a MIO must first offer the settlement quota they wish to sell to every MIO and Te Ohu group entity.</td>
</tr>
<tr>
<td>A MIO may sell settlement quota only if it first offers every other MIO and Te Ohu group entity an opportunity to bid for the settlement quota.</td>
<td>Key principle of “willing buyer, willing seller” within the Maori pool applies.</td>
</tr>
<tr>
<td>The Act provides rules with respect to the bundling of assets — what can and can’t be sold together e.g. freshwater settlement quota cannot be sold with inshore or deepwater quota. The Act provides that a MIO must allow other MIOs and Te Ohu group entities to make single bids for the total bundle of assets and a set of bids to be made for lots covering all the assets in the bundle, including separate bids for individual settlement quota stock.</td>
<td>A MIO may therefore negotiate with another MIO or Te Ohu group entity and is not required to provide an opportunity to purchase to all other MIOs or Te Ohu group entities.</td>
</tr>
<tr>
<td>Propose to remove the prohibition on bundling freshwater quota with inshore and deepwater quota. No restrictions on bundling settlement quota under willing buyer, willing seller principle.</td>
<td>Propose to remove the prohibition on bundling freshwater quota with inshore and deepwater quota. No restrictions on bundling settlement quota under willing buyer, willing seller principle.</td>
</tr>
<tr>
<td>Procedure for selling bundle of assets</td>
<td>Rules concerning making bids are not applicable under willing buyer, willing seller principle.</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>The Act provides a process for how a MIO to deal with the bids the purchase bundle of assets as a single lot.</td>
<td>Remove.</td>
</tr>
</tbody>
</table>

**Procedure to determine right to purchase**

- If the assets offered for sale (in the first instance to all MIOs) are inshore settlement quota, the first option to purchase must be given to Te Ohu group entity and every MIO that holds a registered coastline entitlement for any inshore stock offered.

- In the case of freshwater settlement quota, Te Ohu Group entity and every MIO whose territory is wholly or partly within the relevant quota management area.

**Key principle of “willing buyer, willing seller” within the Maori pool applies.**

- Propose that a MIO will not be required to offer first option to purchase to a Te Ohu group entity and every MIO that holds a registered coastline entitlement for any inshore stock offered. Nor will a MIO be required to offer first option to purchase freshwater settlement quota to Te Ohu group entity and every MIO whose territory is wholly or partly within the relevant quota management area.

**Basis on which sale must proceed**

- The MIO must sell to a party that, having been offered the settlement quota because they hold registered coastline entitlement for any inshore stock offered, matches the highest bid unless it decides not to sell.

- If highest bids received from more than 1 party then the MIO may negotiate or conduct a second bidding process between or amongst the other bidders or withdraw the settlement quota from sale.

- If no party from the inshore or freshwater group matches the highest bid obtained from the all MIOs group the MIO must sell to the party that submitted the highest bid unless the MIO decides not to sell the quota.

- If there are two matching highest bids from the all MIOs group that are not matched by a party in the inshore/freshwater group the MIO may negotiate with those parties or conduct a second bidding process between or amongst those other bidders or withdraw the settlement quota from sale.

- Requirement to offer to all MIO and Te Ohu group entity to be removed.

MIO’s AHC or Te Ohu group entity negotiates sale of settlement quota shares with another MIO’s AHC or Te Ohu group entity. Confidential Commercial agreement between the parties.
### When sale of quota must be allowed

Te Ohu Kaimoana must allow a sale of settlement quota if it has determined that –
- In the case of a sale by a MIO that the two year period has elapsed and
- The 75% of adult members of the iwi who voted at the meeting or by postal vote have approved the sale of settlement quota
- The offer of option to purchase has been offered to all MIOs and Te Ohu group entities and first option to purchase given to inshore and freshwater groups
- MIO must provide documentation to Te Ohu, supported by statutory declaration if Te Ohu Kaimoana so requires, to establish the process has been followed.

### Two year restriction removed.

Remove provisions related to the vote by adult members and offer of option to purchase.

### Checks and balances

Propose that:
- a. Checks provided through the enforcement of plans and constitutional requirements by iwi members, or
- b. a MIO must provide Te Ohu (or FishServe) with documentation to establish the process has been followed by the parties, including:
  - approval by MIO/Te Ohu group entity board for sale of settlement quota
  - copies of annual plans showing the sales policy expressed
  - statutory declaration if Te Ohu (FishServe) so requires in support of the application from the MIO/Te Ohu group entity

### Recording the transfer of settlement quota

Te Ohu Kaimoana must include in the iwi register a record of all transfers of settlement quota to or by the asset holding companies or their subsidiaries.

Retain.

### Section 168 – Application to Te Ohu Group Entity

A Te Ohu group entity is prohibited from selling settlement quota it has acquired from a MIO(s) unless it passes a special resolution, in compliance with its constitutional documents, authorising it to exercise, in relation to settlement quota, either a specific power of sale or a general power of sale.

Propose removing.
Proposed process for the disposal of Aotearoa Fisheries Ltd (AFL) income shares by mandated iwi organisations

156. Parties in any sale of income shares must always be a MIO’s AHC.

157. The proposed sale must comply with:

- the sales policy expressed in the annual plan of any MIO and its AHC, participating in the proposal to sell AFL income shares
- “willing buyer, willing seller” principle applies subject to the policy being expressed in the Annual Plan of any MIO and its AHC participating in the proposed sale
- income shares cannot be gifted.

158. The table below provides a summary of the current process to sell the AFL income shares and sets out the proposed changes to simplify the process to sell these assets.

159. Please note that further work is required to develop a process for the exchange of settlement assets.
<table>
<thead>
<tr>
<th>CURRENT PROCESS TO SELL INCOME SHARES UNDER THE ACT</th>
<th>PROPOSED CHANGES TO SIMPLIFY INCOME SHARES SALES PROCESS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Approval from adult members required prior to selling income shares</strong></td>
<td>Remove requirement from the Act for MIOs to seek approval from adult members to sell income shares.</td>
</tr>
<tr>
<td>A MIO must notify proposal to sell income shares (including the proportion of the total value of income shares) and obtain the prior approval of at least 75% of the adult members who vote either at an AGM (called for that purpose) by postal vote.</td>
<td>Minimum requirement proposed is for the AHC to obtain the approval of its MIO prior to any sale of settlement quota and that the MIO and AHC have notified a policy that allows sales of income shares.</td>
</tr>
<tr>
<td><strong>Approval obtained valid for not more than 15 months</strong></td>
<td>Remove.</td>
</tr>
<tr>
<td>Approval obtained is valid from the date on which it is given for a term not exceeding 15 months.</td>
<td>Remove.</td>
</tr>
<tr>
<td><strong>Offer of option to purchase to every MIO and Te Ohu Kaimoana</strong></td>
<td>“Willing buyer, willing seller” so long as the parties to the sale are either a MIO.</td>
</tr>
<tr>
<td>If a MIO proposes to sell income shares and it obtains iwi approval those shares must be offered to Te Ohu and every other MIO.</td>
<td>A MIO may negotiate with another MIO and is not required to provide an opportunity to all other MIOs.</td>
</tr>
<tr>
<td><strong>Must accept the best price reasonably obtainable at the time of the sale</strong></td>
<td>Remove.</td>
</tr>
<tr>
<td>A MIO must accept the best price reasonably obtainable at the time of the sale, unless the offer permits the MIO to withdraw the income shares from sale.</td>
<td>“Willing buyer, willing seller” principle, negotiations between the parties. Confidential commercial agreement.</td>
</tr>
<tr>
<td><strong>Notice to AFL of Sale</strong></td>
<td>Retain.</td>
</tr>
<tr>
<td>A MIO must as soon as is reasonably practicable after the sale notify AFL of the sale and provide documentation to AFL to establish that the sale complied with the sales process.</td>
<td></td>
</tr>
<tr>
<td><strong>Disposal of income shares by Te Ohu Kaimoana</strong></td>
<td>Remove.</td>
</tr>
</tbody>
</table>
Te Ohu may sell income shares acquired from a MIO but only if a special resolution giving it power to sell and the shares are offered to every MIO and it accepts the best price reasonably obtainable at the time of the sale and it acts in accordance with the constitution of AFL.
APPENDICES
## Appendix 1: Recommendations made by the reviewer appointed to review Maori Fisheries Settlement Entities, made in March 2015

<table>
<thead>
<tr>
<th>Entity</th>
<th>Recommendation</th>
</tr>
</thead>
</table>
| **Te Ohu Kai Moana**          | **Recommendation 1:**<br>a. wind up Te Ohu Kai Moana, (and transfer its assets to iwi), or<br>b. significantly restructure Te Ohu Kai Moana, without AFL shares, as the pan- iwi entity to undertake advocacy and policy development and advice for iwi.  
| **Aotearoa Fisheries Ltd**    | **Recommendation 2:** Allocate the voting and income shares held by TOKMTL and as a consequence, enable iwi (through their AHCS) to appoint AFL’s directors.  
|                               | **Recommendation 3:** Consider establishing a Shareholders’ Council.  
|                               | **Recommendation 4:** Special resolutions for major transactions for AFL should require at least a two thirds majority voting threshold.  
|                               | **Recommendation 5:** That AFL and iwi find ways to ensure that AFL does not compete with iwi in the business and activity of commercial fishing.  
|                               | **Recommendation 6:** There should be rationalisation between Sealord and AFL operations to avoid them competing with each other.  
|                               | **Recommendation 7:** That iwi and AFL address the lack of fisheries sector operational experience on the AFL Board.  
| **Te Putea Whakatupu**        | **Recommendation 8:**<br>a. TPW should continue<br>b. a statutory corporate trustee should be appointed to manage the Trust, called Te Putea Whakatupu Trustee Ltd (TPWTL)<br>c. the trustee company should not be owned by TOKMTL but by at least FOMA, NZMC, Maori Women’s Welfare League and NUMA (allowing for others of the schedule 5 entities) and a representative body for iwi.

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7 The IWG interpreted this to mean the trustee (Te Ohu Kai Moana Trustee Ltd) and the trust (Te Ohu Kai Moana).
9 Ibid., paras 36, 37, 38 (summary); para 70 (main report)
10 Ibid., paras 227, 235 (main report)
11 Ibid., para 286 (main report)
12 Ibid., para 34, 35, 41 (summary)
13 Ibid., para 251 (main report)
14 Ibid., para 48 (summary); para 207 (main report)
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Te Wai Maori: Iwi should appoint three directors with a quorum of two.</td>
</tr>
<tr>
<td>10</td>
<td>Restrictions on asset sales: Retain restrictions on asset sales outside the Maori pool. Develop easier trading processes for iwi wishing to sell their fisheries settlement assets (in part or in whole) to willing buyers within the Maori pool.</td>
</tr>
<tr>
<td>11</td>
<td>The Chatham Islands: the continuing special case: AFL should take special steps to cooperate more fully with the Chathams’ iwi.</td>
</tr>
<tr>
<td>12</td>
<td>Recommendation 11: That AFL should take special steps to cooperate more fully with the Chathams’ iwi.</td>
</tr>
<tr>
<td>13</td>
<td>Recommendation 12: That AFL establish and fund a dedicated AFL/Chathams’ iwi taskforce to cooperatively address options for solutions to the competition between AFL and Chathams’ iwi and all other Maori fisheries issues arising on the Chathams.</td>
</tr>
<tr>
<td>14</td>
<td>Recommendation 13: That AFL engage with Chatham iwi and the island communities on health and safety issues associated with AFL fishing factories and facilities.</td>
</tr>
<tr>
<td>15</td>
<td>Recommendation 14: In the longer term, that a permanent Chatham iwi/AFL Fisheries Roopu be established to actively engage in the development of iwi (collective and individual) interests in fisheries, fishing and fisheries-related activities on the Chathams in a manner which can yield to AFL and the people of the Chathams continuing and meaningful benefit.</td>
</tr>
</tbody>
</table>

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15 Ibid., para 66 (summary)  
16 Ibid., para 73 (summary)  
17 Para 310 (main report)  
18 Ibid., para 307, 310, 311, 312 (main report)  
19 Ibid., para 307 (main report)  
20 Ibid., para 313 (main report)
| **Iwi Working Group** | *Recommendation 15:* That an Iwi Working Group, funded by Te Ohu Kaimoana, urgently work through all the findings, recommendations and design work.\(^{21}\) |

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\(^{21}\) Ibid., para 82, 83 (summary); para 257 – 259 (main report)
Appendix 2: Resolutions from the Special General Meeting, 4 June 2015

TE OHU KAI MOANA TRUSTEE LIMITED – GENERAL MEETING – 4 JUNE 2015

RESOLUTIONS

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Result</th>
<th>Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Review Resolutions</strong>&lt;sup&gt;23&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>That Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Limited be wound up and its assets be transferred to iwi</td>
<td>Failed</td>
</tr>
<tr>
<td>2</td>
<td>That iwi hold all Aotearoa Fisheries Limited (AFL) voting and income shares</td>
<td>Passed</td>
</tr>
<tr>
<td>3</td>
<td>That Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Limited be significantly restructured and works on priorities agreed by iwi to protect and enhance the settlements including undertaking advocacy and policy advice for iwi</td>
<td>Passed</td>
</tr>
<tr>
<td>4</td>
<td>That an amended funding model for Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Limited’s operations be approved by iwi at the 2016 Hui-a-Tau following detailed business modelling and consultation with iwi, such model to consider the role (if any) of Te Ohu Kai Moana Trust’s/Te Ohu Kai Moana Trustee Limited’s redeemable preference shares and all other funds held in its own right</td>
<td>Passed</td>
</tr>
<tr>
<td>5</td>
<td>That a shareholders council of AFL be considered</td>
<td>Failed</td>
</tr>
<tr>
<td>6</td>
<td>That special resolutions for major transactions for AFL require at least a 75% majority voting threshold</td>
<td>Passed</td>
</tr>
</tbody>
</table>

<sup>22</sup> This table refers to “iwi” rather than MIOs and RIOs however those present and voting at the TOKMTL General Meeting were those authorised representatives of the MIOs and RIOs.

<sup>23</sup> Pursuant to section 125(2) of the Maori Fisheries Act 2004, MIOs and RIOs voted on the Review resolutions.
<table>
<thead>
<tr>
<th>Resolution</th>
<th>Result</th>
<th>Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 That AFL continue to work with iwi to develop and implement policies on collaboration</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>8 That AFL continue to work with Sealord to develop and implement policies on collaboration</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>9 That iwi and AFL address the lack of operational experience on the AFL Board</td>
<td>Failed</td>
<td>7 iwi voted in favour, 49 iwi voted against</td>
</tr>
<tr>
<td>10 That Te Putea Whakatupu Trust/Te Putea Whakatupu Trustee Limited continue with its directors increased to a maximum of 5 with a quorum of a majority of directors</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>10A That 3 of the 5 directors of Te Putea Whakatupu Trustee Limited be appointed by the National Urban Maori Authority</td>
<td>Failed</td>
<td>4 iwi voted in favour, 52 voted against</td>
</tr>
<tr>
<td>10B That 2 of the 5 directors of Te Putea Whakatupu Trustee Limited be appointed by the National Urban Maori Authority</td>
<td>Failed</td>
<td>29 iwi voted in favour, 27 iwi voted against</td>
</tr>
<tr>
<td>11 That Te Wai Māori Trust/Te Wai Māori Trustee Limited continue with its directors increased to a maximum of 5 with a quorum of a majority of directors</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>12 That the disposal restrictions in the Māori Fisheries Act 2004 for settlement quota and income shares remain and that simpler trading processes are developed for iwi wishing to sell some of their assets to willing buyers within the iwi/Te Ohu Kai Moana Group pool</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>13 That the current restrictions on the sale of ACE be increased from 5 to 15 years</td>
<td>Passed</td>
<td>55 iwi voted in favour, 1 iwi voted against</td>
</tr>
<tr>
<td>14 That AFL continue to work with iwi from the Chathams to address key common issues on the Chathams and develop mutually beneficial commercial arrangements</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>Resolution</td>
<td>Result</td>
<td>Voting</td>
</tr>
<tr>
<td>------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>15 That the Te Ohu Kai Moana Trustee Limited and Aotearoa Fisheries Limited Plans are adopted in full in accordance with the Review recommendations passed</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
</tbody>
</table>

**Binding Audit Review**

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Result</th>
<th>Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 That, pursuant to s.106 of the Māori Fisheries Act 2004, Te Ohu Kai Moana Trustee Limited, Te Putea Whakatupu Trustee Limited and Te Wai Māori Trustee Limited not conduct a 4-yearly audit in 2016</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
</tbody>
</table>

**Non-Binding Review Resolutions**

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Result</th>
<th>Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 That, notwithstanding that the “Straw Tangata” model proposed by the IWG is outside the scope of the resolutions that iwi can make in response to the review, that this model is supported by iwi and should be taken to the Minister for Primary Industries for implementation</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>18 That a further review of settlement entities occur no later than 10 years from the date that the amended structural relationships arising from this review are in place to assess their scope, role, funding and governance arrangements including their individual continuance and/or retention of assets</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
<tr>
<td>19 That the alienation of assets by Aotearoa Fisheries Limited and/or Sealord be subject to, at the very least, a binding RFR to allow iwi to buy any of their assets if those companies wanted to sell them</td>
<td>Passed</td>
<td>Unanimous</td>
</tr>
</tbody>
</table>

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24 Pursuant to section 106(a) of the Maori Fisheries Act 2004, RMOs, MIOs and RIOs voted on this resolution.

25 These resolutions were voted on by MIOs and RIOs.