



Submission to

Ministerial Inquiry into Foreign Charter Vessels

7th October 2011

Mihimihi

He honore he korōria ki Te Atua. He maungārongo ki runga ki te whenua. He whakaaro pai ki ngā tangata katoa. Tihei mauri ora!

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Executive Summary

1. I welcome the opportunity to present this submission to the Ministerial Inquiry into Foreign Charter Vessels.
2. This submission concentrates on the Māori sector of the New Zealand Fisheries Industry and makes the following recommendations:
 - a. **Iwi and Māori sector of the fisheries industry**—that the Inquiry:
 - i. Recognise and affirm the contributions of iwi and Māori to the fisheries sector;
 - ii. Adopt a cautious approach to any policy interventions that may impact on the current and future value iwi can realise from the Māori Fisheries Settlement;
 - b. **New Zealand’s international reputation**—that the Inquiry:
 - i. Strongly affirms that FCVs should be held to the highest international human rights standards;
 - ii. Recognises that FCV conduct which does not uphold human rights standards exposes New Zealand’s standing in the international community and is inconsistent with iwi and Māori values.
 - c. **The role of FCVs in the New Zealand fisheries industry**—that the Inquiry:
 - i. Note the particular challenges experienced by iwi and Māori in the industry, including the fragmented nature of ownership resulting in capital constraints and many iwi having small holdings of quota that are uneconomic to support active fishing businesses;
 - ii. Support a policy framework that allows for iwi to access FCVs for so long as there are real capital constraints affecting iwi participation in the fisheries industry.
 - iii. That proactive steps are taken to support the Māori sector of the fisheries industry to develop.
 - d. **Legal and Policy Framework**—that the Inquiry:
 - i. Recommend that priority is placed on monitoring and enforcing FCVs upholding the highest international human rights standards;
 - ii. Recommend the formation of a monitoring partnership between the government, iwi and an international organisation to independently audit FCV conduct (with particular consideration of the SA 8000 framework);
 - iii. Recommend that the monitoring partnership is evaluated in three years, and if found unsatisfactory, render the applicable standards of conduct enforceable.

Introduction

3. In February 2011, I was proud to jointly present the petition requesting an inquiry into foreign fishing companies, foreign crewing of Joint Ventures, chartered and New Zealand fishing vessels, and its effects on sustainable fishing, employment, and the relevant communities within New Zealand. I now welcome the opportunity to engage with the Ministerial Inquiry into Foreign Charter Vessels.
4. I consider it is important for the Inquiry to consider the particular situation of the Māori Fisheries sector and the sector's current reliance on FCVs. My submission concentrates on the Māori fisheries sector with the objective of proposing policy interventions that respond to the unique characteristics and aspirations of iwi and Māori participants in the industry.
5. My paramount objectives for the fisheries industry are that our fish are sustainably harvested in a way that maximises job creation and returns as much income to the country as possible, and more specifically, I wish to see the spirit and purpose of the Māori Fisheries Settlement realised through the fulsome and fruitful return of Māori to the business and activity of fishing.
6. I consider we are making good progress towards, but are still some distance from achieving, this goal: iwi have been returned to the *business* of fishing, but we are yet to see the full potential of Māori participating in the *activity* of fishing, through greater ownership of vessels, greater employment of Māori throughout the industry and the like. I know that iwi will proactively achieve the second part of this goal over time, and we will see more New Zealand jobs created including for Māori.
7. Foreign Charter Vessels (FCVs) in my opinion have a role in the development journey of iwi as iwi increasingly grow their presence, and jobs for our people in the industry, but it is critical that FCVs are effectively managed and that the policy settings enable iwi and Māori to achieve their development aspirations and contribute to the economic development of New Zealand.

Background—Māori Fisheries Sector

8. The Māori Fisheries Sector is on a rapid development pathway largely due to the Māori Fisheries Settlement. In short order, Māori went from having a small presence to being the largest single player in the industry. As at 2002, the most recent available quantification, Māori are estimated to control up to 37% of total tradable fisheries quota assets of the domestic fishing industry¹ and as at 2010, have a confirmed asset value of \$1 billion.²
9. However, quantifying the sector in this way perhaps misrepresents the actual nature of Māori participation: the Māori fisheries sector is to some extent statutorily created and made up of 57 iwi, each holding parcels of quota many of which are too small to support an active fishing business and two large commercial entities (AFL and Sealords, each with a number of subsidiaries) which operate on a global scale.
10. To provide context to the nature and stage of the Māori sector, an overview of the Māori Fisheries Settlement is set out below.

¹ Te Puni Kokiri (2002) Māori in the New Zealand Economy, p29.

² Te Puni Kokiri and BERL (2011) The Asset Base, Income, Expenditure and GDP of the 2010 Māori Economy, p.12

Background—Māori Fisheries Settlement

11. The purpose of the Māori Fisheries Settlement was, and remains, to return Māori to the business and activity of fishing. Agreements on the quantum of the Settlement were reached respectively in 1989 and 1992, however the allocation framework was not concluded until 2004 and the Settlement is, in one sense, only in the seventh year of its full implementation.
12. The assets transferred by the Settlement include:
 - a. 60,000 tonnes of fishing quota.
 - b. \$150 million for the purchase of 50% of Sealord Products Ltd, New Zealand's largest fishing company. This company holds 25% of total allocated fish quota.
 - c. The transfer to Māori of 20% of the quota for new species entering the quota management system.
 - d. Regulations to recognise and provide for customary food gathering
13. The design features of the Settlement include:
 - a. **Full and Final**— the Settlement is a full and final settlement of iwi rights and interests in the fisheries resources, as such it binds future generations and cannot be revisited. Accordingly, priority should be placed on the durability and integrity of the Settlement.
 - b. **Layered governance**—as a full and final settlement, the highest standards of care are imposed on those administering the assets to ensure they can provide for the interests of current and future generations. The Māori Fisheries Settlement involves multi-layered governance of the various components of the Settlement package, which is depicted in Diagram 1 below. The key impact of multi-layered governance is that commercial decision making is concentrated in two professional boards, as depicted in Diagram 2 below;
 - c. **Centralised assets**—with the objective of creating sufficient scale to be a global presence in fisheries, the Settlement provides for Aotearoa Fisheries Limited (AFL) to hold inshore quota operated through active businesses and the 50% interest in the deepwater business Sealord. Both AFL and Sealord are charged with generating commercial return, which is distributed to Te Ohu Kaimoana (the Māori Fisheries Trust) and iwi through annual dividends. The structure for AFL and Sealord is presented in Diagram 2 below;
 - d. **Devolved iwi quota**—in recognition of the whakapapa based property rights to the fisheries resources, inshore and deepwater quota were (and still are) to be allocated to all iwi on the basis of two different formulas: inshore quota is allocated to iwi on the basis of their coastline and deepwater quota is allocated largely on the basis of iwi population, with some recognition of coastline entitlements. Iwi have the right to determine their own business model for the quota they own, and some iwi elect to trade in ACE whereas as others have active fisheries businesses of different types, including some partnership arrangements with AFL;
 - e. **Māori capability development**—with the objective of increasing individual Māori participation in the fisheries industry, the Settlement also created Te Pūtea Whakatupu, a statutory trust, charged with developing capability and leadership within the Māori community, with a particular focus on the fisheries industry. This

Trust, as well as Te Ohu Kaimoana have a number of programmes that directly grow the capability of Māori in the sector;

Diagram 1: Overview of Māori Fisheries Entities:

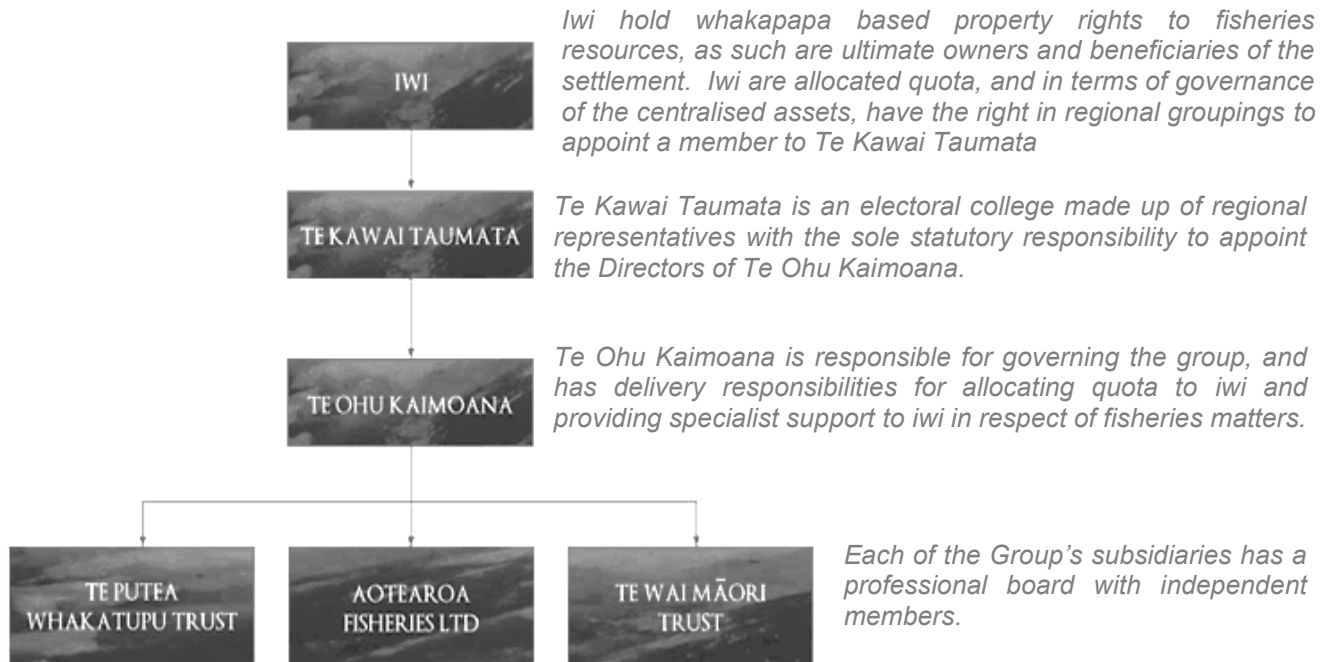
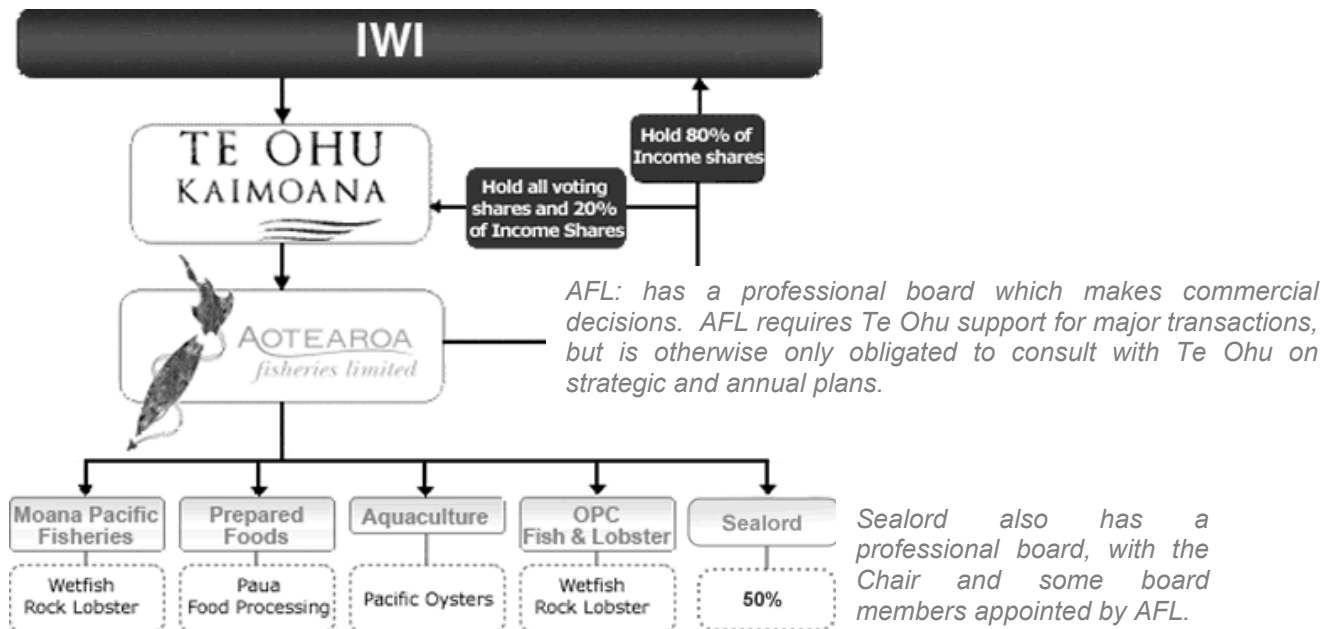


Diagram 2: AFL and Sealord Structure:



Recommendations

14. My recommendations are that the Inquiry:
 - a. Recognise and affirm the contributions of iwi and Māori to the fisheries sector;
 - b. Adopt a cautious approach to any policy interventions that may impact on the current and future value iwi can realise from the Māori Fisheries Settlement;

FCVs Impact on New Zealand Reputation

15. I consider that the presence of FCVs in New Zealand's fisheries industry has, if not effectively managed, a potentially significant impact on New Zealand's international reputation. New Zealand defines our presence in the international community as a principled defender of human rights, and any derogation from this moral platform will expose New Zealand to losing standing and being perceived as suffering from a legitimacy gap: in less polite terms, being seen as hypocritical.
16. It is therefore imperative that FCVs are held to international human rights standards and that New Zealand conscientiously monitors and enforces the conduct of FCVs to ensure these standards are met.
17. I also believe that iwi and Māori values require FCVs to uphold the highest of standards, particularly of manaakitanga. Manaakitanga is understood by the Māori Party as meaning the behaviour that acknowledges the mana of others as having equal or greater importance than one's own, through the expression of aroha, hospitality, generosity and mutual respect. Consistent with this value, I believe iwi and Māori are committed to ensuring that their values are upheld in the fishing of their ACE entitlements and expect the New Zealand government to ensure that international human rights standards are effectively guaranteed on FCVs operating within our EEZ.

Recommendations

18. My recommendations are therefore that the Inquiry:
 - a. Strongly affirms that FCVs should be held to the highest international human rights standards;
 - b. Recognises that FCV conduct which does not uphold human rights standards exposes New Zealand's standing in the international community and is inconsistent with iwi and Māori values.

Role of FCVs

19. Foreign Charter Vessels are used by all iwi to catch their deepwater entitlements, in my opinion, due to significant capital constraints arising largely from the structure of the Settlement, the limited time that has passed to grow the Settlement assets and the impact of macro-economic trends.
20. I consider that iwi should be permitted to continue accessing FCVs at this time, subject to effective management of FCVs, until the very real capital constraints experienced by iwi have been overcome. In parallel, I consider it is critical to protect and grow New Zealand

employment in all aspects of the fisheries industry, and that iwi should take a leadership role in generating employment opportunities.

21. The original ground on which FCVs were allowed into New Zealand was the capital constrained situation of the wider industry, and I believe that while iwi face real capital constraints there should be an allowance for iwi to access FCVs. I am particularly conscious that the Settlement is a full and final settlement that must provide value to current and future generations, I would therefore encourage the Inquiry to take a cautious approach to any policy interventions that would negatively impact on the value that can be realised from Settlement assets and the ability of iwi and Māori to make decisions about the use of their assets.
22. I consider the capital constraints affecting iwi have been created by the convergence of three trends:
 - a. The statutory framework of the Māori Fisheries Settlement that fragments ownership of deepwater quota;
 - b. The development journey of iwi; and
 - c. The broader structural changes to the New Zealand economy.
23. I discuss each of these trends in turn below and conclude the section with recommendations.

Fragmented Deepwater Ownership

24. Most, if not all, iwi have small deepwater holdings that are objectively uneconomic to fish independently, necessitating some form of ACE leasing arrangement. The small size of iwi holdings is a result of some Settlement quota being held in the centralised companies, and the remainder of the quota being devolved to 57 iwi, creating highly fragmented ownership.
25. The statutory framework results in all 57 iwi owning quota for all deep water species. The statutory allocation formula is as follows:

Section 141 Allocation of deepwater quota

When allocating deepwater quota to iwi, Te Ohu Kai Moana Trustee Limited must—

- (a) divide the total settlement quota for each quota management stock into two parcels, comprising 25% and 75% of the total amount respectively; and
 - (b) allocate to each iwi an amount from the 25% parcel on the same basis as the allocation of inshore quota; and
 - (c) allocate the 75% parcel to each iwi in accordance with the percentages specified
26. I understand that all iwi lease ACE to FCVs as that is the only way in which the value of Settlement derived assets can be gained. In my opinion, iwi use of FCVs is a matter of necessity resulting from the statutory framework rather than open choice, and I expect that when iwi have greater capital resources and there are more precedents for commercial partnering arrangements, we may see less reliance on FCVs.

Development Pathway of the Māori Fisheries Sector

27. The Māori Fisheries Sector is on a rapid development pathway as the Settlement has transformed Māori participation in the industry. In my opinion, the starting point for that development journey is informed by three real constraints or challenges:
 - a. Small holdings and limited cashflow;
 - b. The short period since the transfer of assets; and
 - c. The complexity of developing a new business model.

28. With an almost overnight transfer of a \$1 billion asset base to 57 iwi and one centralised company, it is important to understand that there is a development pathway in play. Iwi have had merely seven years to develop their businesses on a stable footing (since the 2004 Act confirmed the allocation arrangements), including developing business models, leadership capability and the exploration of competitive through to collaborative arrangements with other entities. Seven years is a very short period of time to reverse over 100 years of artificial under-development within the industry, and to define a kaupapa Māori way of economic development within fisheries. Equally, the distribution of \$1 billion of assets across over sixty entities means that holdings tend to be small and subject to real cashflow constraints.
29. Iwi and AFL also have statutory obligations to generate commercial return to enable dividends to be paid perpetually to the ultimate beneficiaries of the Settlement as well as being surrounded by expectations that Māori people will be grown into the industry and ensuring sustainable use of the resources. Iwi and Māori are, in my opinion, the originators of triple bottomline commercial thinking, however we, like the business community globally, are still in the process of implementing this holistic approach to economic development, including as it specifically relates to the fisheries industry.
30. I believe it is fair to represent the current status of the Māori Fisheries Sector as in the first stage of development in the contemporary era: iwi and Māori are working through how to best drive their fisheries assets to generate returns and outcomes that reflect their tribal aspirations.
31. In this context, I believe that FCVs fill a function at this time, but as the sector grows, and as trust and confidence grow amongst the participants, I look forward to seeing the real potential of capital growth and collaboration being realised. I hope this potential will be leveraged to increase the number of vessels in Māori ownership and the number of Māori employed within all levels of fisheries industry.

Convergent Trend—Structure of New Zealand Economy

32. Over the last sixty years, New Zealand's economy has been moving toward a services dominant structure: we have progressively seen a decline in manufacturing and processing across all sectors of our economy. In my opinion, the presence of FCVs in the fishing industry is simply a manifestation of macro-economic trends and the progressive restructuring of the New Zealand economy. As such, I encourage the Inquiry to consider the macro-trends and endeavour to identify policy interventions that have broader relevance to the wider economy.
33. Additionally, the rapid entry and development of the Māori economy is an important structural change to the New Zealand economy. The Māori economy now amounts to 5.9% of New Zealand's GDP, with an estimated asset base of \$36.9 billion (as at 2010). The primary sector is a substantial proportion of the Māori economy, with an estimated total asset base of \$10.6 billion.³ However, there is limited research into the development of the Māori economy and how to maximise contributions to the economic development of New Zealand. For example, in preparing this submission, I was unable to locate, even with the professional services of Parliamentary Library, data on the employment of Māori within the fisheries industry, the number of vessels owned by Māori or the amount of quota under various types of leasing arrangements. If we are to successively achieve the objective of Māori returning to the business and activity of fishing, it is critical that considered research, monitoring and analysis is dedicated to supporting this sector of our industry. I am

³ Te Puni Kokiri and BERL (2011) The Asset Base, Income, Expenditure and GDP of the 2010 Māori Economy, p.15

confident that as the Māori sector grows, there will be conscious and positive endeavours to create New Zealand employment and I would welcome government policy and initiatives to support this objective being met.

Recommendations

34. Accordingly, I recommend that the Inquiry:
- a. Note the particular challenges experienced by iwi and Māori in the industry, including the fragmented nature of ownership resulting in capital constraints and many iwi having small holdings of quota that are uneconomic to support active fishing businesses;
 - b. Support a policy framework that allows for iwi to access FCVs for so long as there are real capital constraints affecting iwi participation in the fisheries industry;
 - c. That proactive steps are taken to support the Māori sector of the fisheries industry to develop.

Legal and Policy Framework for Labour Conditions

35. As discussed above, I consider it is fundamental that FCVs uphold the highest standards of human rights for their crew, and I also believe that iwi and Māori expect that crew members are treated consistently with their values of manaakitanga, kaitiakitanga and whanaungatanga.
36. The current legal and policy framework appears to have broadly sound content through the Code of Practice, but implementation framework appears to be ineffective. I consider there are four key options available to the Inquiry individually or in combination:
- a. **Amend and extend the Code of Practice** to further specify the conditions that must be met by FCVs and New Zealand companies, for example, rendering 'subjective' language (eg adequate, suitable etc) into concrete and quantifiable conditions that must be satisfied;
 - b. **Adopt further international standards** and incorporate them into the Code of Practice or companion instrument. While New Zealand has acceded to most of the international instruments, there are some exceptions such as the Maritime Labour Convention and the Convention Concerning Work in the Fishing Sector which New Zealand is currently considering accession to, that rapid accession to could improve both the clarity of the policy framework as well as marking New Zealand's commitment to the treatment of foreign crews. In my opinion, accession would be an important symbolic statement of our commitment to international human rights standards that should be actively considered;
 - c. **Render the standards enforceable.** Currently, the Code of Practice is a non-binding instrument and there are limited enforcement mechanisms that apply to specific matters. Creating enforceable standards may improve compliance through the threat of legal action and associated liabilities; and/or
 - d. **Develop a monitoring/auditable framework.** Currently, monitoring of conduct on FCVs is limited and appears ineffective. I think there is merit in exploring a monitoring framework that provides for regular auditing of FCVs and New Zealand

companies to ensure standards are being satisfied. Specifically, I recommend that the SA 8000 model is comprehensively explored with a view to creating a partnership between the government, Iwi and SA 8000 for a standards and auditing framework applying to FCVs in New Zealand's EEZ. SA 8000 is a global, auditable standard for working conditions that was developed by Social Accountability International (SAI). A number of partnerships have been entered into by SAI to amend and adapt the framework to particular contexts and industries. If this approach was adopted, the outcome could be that FCVs were not permitted to operate in New Zealand's EEZ until they had been certified under the framework, and would have to undertake periodic auditing, with the certification and auditing costs borne by the FCV. Ideally, an SA 8000 model, developed under a government, Iwi, SAI partnership would incorporate international and domestic standards, as well as Iwi values and also generate New Zealand employment by training and funding New Zealand auditors of the framework.

37. In my opinion, the key to effectively managing FCVs and ensuring the highest standards of human rights are satisfied is focussing on the implementation of standards and I therefore encourage the Inquiry to place particular emphasis on the development of an audit based framework. While the articulation and adoption of standards in international and domestic instruments is important, these standards will only deliver outcomes to the extent that they are effectively implemented and enforced.
38. I recommend that the Inquiry consider the following staged approach:
- a. Within one year, develop an auditable monitoring framework, through a partnership between government, Iwi and SAI, that reflects domestic and international standards as well as Iwi values, and has the additional benefit of generating professional jobs in New Zealand;
 - b. Within one year, expedite accession to Maritime Labour Convention and the Convention Concerning Work in the Fishing Sector;
 - c. At three years after the first audit is completed, conduct a review of the monitoring framework and on the basis of that review, determine whether to render standards enforceable or otherwise increase the punitive aspects of misconduct.

Recommendations

39. Accordingly, I encourage the Inquiry to:
- a. Recommend that priority is placed on monitoring and enforcing FCVs upholding the highest international human rights standards;
 - b. Recommend the formation of a monitoring partnership between the government, Iwi and an international organisation to independently audit FCV conduct (with particular consideration of SA 8000);
 - c. Recommend that the monitoring partnership is evaluated in three years, and if found unsatisfactory, render the applicable standards of conduct enforceable.