

Te Ohu Kai Moana Trustee Ltd

Submission:

Re-Starting Aquaculture
Report of the Aquaculture Technical Advisory Group



16 December 2009

Introduction

1. Thank you for the opportunity to provide Te Ohu Kai Moana Trustee Limited's (Te Ohu's) response to the TAG report entitled "Re-starting Aquaculture" (the Report) that was released on 5 November 2009.
2. Te Ohu is the corporate trustee (Trustee) of the Maori Commercial Aquaculture Claims Settlement Trust (the Takutai Trust) entity which initially receives on behalf of Iwi Aquaculture Organisations (IAOs) any entitlements due to iwi under the Maori Commercial Aquaculture Claims Settlement Act 2004 (MCACSA). The MCACSA provides full and final settlement of Maori commercial aquaculture interests since September 1992 and provides for IAOs to receive assets equivalent to 20% of the water space rights created in coastal waters between September 1992 and January 2005, and 20% of any new space approved after the commencement of the Aquaculture reforms on 1 January 2005.
3. Te Ohu receives any settlement assets and allocates those assets to the appropriate IAOs regionally in accordance with any allocation scheme agreed by those IAOs. A principal role of Te Ohu is to assist IAOs to fully understand the business and activity of the various forms of aquaculture (which includes the regulatory regime) so as to facilitate informed agreement between IAOs on the allocation of settlement assets.
4. Consistent with this role Te Ohu has conducted a workshop attended by approximately 30 iwi representatives informing them on key aspects of the Report. We also convened a small technical group to assist in the preparation of this submission. Finally, we distributed a briefing paper and draft submission amongst the 57 iwi for their consideration and feedback.

Key issues for Te Ohu

5. The Report contains a number of useful recommendations for the Government to consider in seeking to provide a more suitable environment for the development of aquaculture in New Zealand. While we broadly support the recommendations contained within the Report there are many elements that require more details and further work with particular emphasis on:
 - the aquaculture fund and levy
 - the interface between fishing and aquaculture
 - the Maori Commercial Aquaculture Settlement.

Recommendations

6. The following is a summary of the Report recommendations and our response:

<i>Recommendation 1 - The government undertakes a targeted consultation process with iwi, regional councils, and industry during the development of policy and drafting of the legislation.</i>	<i>Agree subject to realistic timeframes</i>
<i>Recommendation 2 - The Prime Minister be invited to consider clarifying which Minister has overall responsibility for aquaculture.</i>	<i>Agree</i>
<i>Recommendation 3 - Establish an Aquaculture Agency (AQA) within the Ministry of Fisheries as soon as possible.</i>	<i>Agree and further work required</i>
<i>Recommendation 4 - Provide the Minister with powers to insert provision into regional coastal plans.</i>	<i>Agree only as a transitional measure</i>
<i>Recommendation 5 - Establish and administer an Aquaculture Fund.</i>	<i>Agree as a transitional measure</i>
<i>Recommendation 6 - Introduce an Aquaculture Levy to maintain the Aquaculture Fund.</i>	<i>Disagree</i>
<i>Recommendation 7 - AQA to develop an Aquaculture Development Strategy to set out the government's policy for aquaculture development.</i>	<i>Agree</i>
<i>Recommendation 8 - Provide national consistency through National Environmental Standard for aquaculture developed by AQA and MfE.</i>	<i>Agree and further work required</i>
<i>Recommendation 9 - Develop a specific policy on aquaculture within the New Zealand Coastal Policy Statement to better provide for aquaculture development.</i>	<i>Agree but strengthen wording</i>
<i>Recommendation 10 - Remove the prohibition on aquaculture outside AMAs, and remove all associated provisions including AMAs, Excluded Areas and Invited Private Plan Changes.</i>	<i>Agree</i>
<i>Recommendation 11 - Provide Aquaculture Zones as an optional planning tool with UAE test and settlement obligations applied at planning stage, with tendering as the default allocation mechanism.</i>	<i>Agree</i>
<i>Recommendation 12 - Deem existing AMAs to be Aquaculture Zones.</i>	<i>Agree</i>

<p><i>Recommendation 13 - Enhance council decision making on plans by:</i></p> <ul style="list-style-type: none"> ▪ <i>Requiring all Councillors and Commissioners hearing RMA matters be accredited under RMA section 39A.</i> ▪ <i>Requiring that at least one member of a hearings panel be an independent commissioner drawn from a list of approved experts.</i> ▪ <i>Maintaining a list of accredited independent commissioners who have particular expertise or experience in coastal matters, for use on planning hearings, consent hearings and Boards of Inquiry.</i> 	Agree
<p><i>Recommendation 14 - Enable a private plan change applicant to receive 80% of aquaculture space created by the plan change (in areas where pre-commencement obligations have been settled).</i></p>	Agree
<p><i>Recommendation 15 - Enable parallel processing of private plan changes and resource consents.</i></p>	Agree
<p><i>Recommendation 16 - Review section 144 of the RMA to ensure aquaculture matters can be called in.</i></p>	Agree
<p><i>Recommendation 17 - Review the appropriate role of the Minister of Conservation in the coastal marine area as part of Phase II of the RMA reforms.</i></p>	Agree
<p><i>Recommendation 18 - Integrate the shellfish water classification process into the new aquaculture regime by ensuring that it occurs in parallel to the RMA and UAE processes.</i></p>	Agree and further work required
<p><i>Recommendation 19 - Allow NZFSA to access the Aquaculture Fund to pay for the upfront costs of shellfish water classification.</i></p>	Disagree
<p><i>Recommendation 20 - Establish an aquaculture consent register under the Fisheries Act.</i></p>	Agree
<p><i>Recommendation 21 - Provide an ability to register a lease or sub-lease of a resource consent.</i></p>	Agree
<p><i>Recommendation 22 - Enable consents to be caveated so they cannot be sold without lender's approval, and link to Personal Properties Security Register.</i></p>	Agree
<p><i>Recommendation 23 - Cross-link the aquaculture consent register to the Personal Property Security Register.</i></p>	Agree
<p><i>Recommendation 24 - Provide a separate consent category for experimental aquaculture.</i></p>	Agree
<p><i>Recommendation 25 - Make approval for occupation explicit within</i></p>	Agree

<i>the coastal permit.</i>	
<i>Recommendation 26 - Provide a default minimum term of 20 years for aquaculture consents.</i>	<i>Agree</i>
<p><i>Recommendation 27 - Enhance coastal permit renewal by:</i></p> <ul style="list-style-type: none"> ▪ <i>Simplifying the renewal process;</i> ▪ <i>Making a new consent for an existing aquaculture activity a “controlled” or “restricted discretionary” activity as a default;</i> ▪ <i>Provide that an applicant for a new consent to continue an existing activity is deemed to have applied on the same basis as the terms and conditions of the original consent.</i> 	<i>Agree in part</i>
<i>Recommendation 28 - Use regulations to ensure all regional coastal plans are flexible enough to enable self-fed and supplementary-fed aquaculture.</i>	<i>Agree in part</i>
<i>Recommendation 29 - Provide that consents for aquaculture lapse in 3 years if not given effect.</i>	<i>Disagree</i>
<i>Recommendation 30 - Specify a standard set of information requirements for aquaculture consent applications (including UAE assessments).</i>	<i>Agree</i>
<i>Recommendation 31 - Encourage use of evergreen consents.</i>	<i>Agree</i>
<i>Recommendation 32 - Provide template consents for different types of aquaculture development.</i>	<i>Agree</i>
<i>Recommendation 33 - Enhance the standing of council hearings for resource consents by limiting the evidence that can be presented in appeals so that new evidence can be presented only with leave of the Court.</i>	<i>Agree but consider in Phase II, RMA reforms</i>
<i>Recommendation 34 - Provide councils with the ability to manage demand by using allocation mechanisms other than “first in, first served”.</i>	<i>Agree and further work required</i>
<i>Recommendation 35 - We recommend that the RMA is amended to provide a statutory test to trigger the consideration of alternative allocation tools. This test will be deemed into all coastal plans and will provide councils with the opportunity to override that part of the RMA which currently means that councils must accept and process well prepared applications.</i>	<i>Agree in principle</i>
<p><i>Recommendation 36 - We recommend that tools (including the following) be deemed into coastal plans by the amending legislation:</i></p> <ul style="list-style-type: none"> ▪ <i>Tendering (including weighted attributes tendering)</i> ▪ <i>Preferential allocation</i> 	<i>Agree in part and further work required</i>

<ul style="list-style-type: none"> ▪ <i>Balloting</i> ▪ <i>Combining applications and hearing them together</i> ▪ <i>Rules to change activity status once a threshold is reached</i> 	
<i>Recommendation 37 - That cost recovery for processing of resource consents and private plan changes, monitoring, and other council services continue.</i>	<i>Agree</i>
<i>Recommendation 38 - That coastal planning for aquaculture be paid for through an Aquaculture Fund administered by the Aquaculture Agency.</i>	<i>Agree</i>
<i>Recommendation 39 - That the Aquaculture Fund be maintained through the introduction of an annual Aquaculture Levy.</i>	<i>Disagree</i>
<i>Recommendation 40 - That the levy be set at a reasonable level of between \$100 and \$200 per hectare per annum. An appropriate basis for charging for offshore farms would have to be devised.</i>	<i>Disagree</i>
<i>Recommendation 41 - That this levy would replace coastal occupational charges for marine farmers, so section 64 of the RMA is amended so that obligations on marine farmers are removed.</i>	<i>Disagree</i>
<i>Recommendation 42 - That the levy is reviewed every 5 years by the Minister.</i>	<i>Disagree</i>
<i>Recommendation 43 - That the broader issue of coastal occupational charges for other occupiers of the CMA be considered as part of RMA Phase II.</i>	<i>Agree</i>
<i>Recommendation 44 - Ensure information held by the Ministry of Fisheries on fishing and fisheries resources is made available during the preparation of a coastal plan change and that regional councils are provided with the information.</i>	<i>Agree</i>
<i>Recommendation 45 - In relation to the UAE assessment during preparation of a plan change, align Fisheries Act and RMA processes (while retaining separate statutory decision-making) with respect to steps and timeframes for notification, submissions, hearings, and announcements of decisions.</i>	<i>Agree</i>
<i>Recommendation 46 - Repeal the High Court merit appeal on UAE decisions and replace with appeal provisions that match the equivalent RMA appeals, with provision for combined hearings.</i>	<i>Agree</i>
<i>Recommendation 47 - Provide that in an Aquaculture Zone where development has not reached any limits set in the plan, an aquaculture consent applicant does not need to address UAE on fishing, unless the plan provides otherwise.</i>	<i>Agree</i>

<p><i>Recommendation 48 - Provide a framework for negotiations between affected commercial fishers and aquaculture consent applicants, with a UAE assessment undertaken by MFish if agreement cannot be reached or where applicant chooses to go directly to a UAE assessment.</i></p>	<p>Agree</p>
<p><i>Recommendation 49 - That following a finding of the UAE on commercial fishing, parties involved in negotiating an aquaculture agreement be given three months to register an agreement, with the ability to apply for a one month extension if demonstrable progress has been made but further time is required to secure the agreement.</i></p>	<p>Disagree</p>
<p><i>Recommendation 50 - Provide for 20% of representative space available for aquaculture in Aquaculture Zones to be transferred to the trustee for allocation to iwi.</i></p>	<p>Agree</p>
<p><i>Recommendation 51 - Develop, in consultation with iwi and the trustee, the following options for providing 20% of space outside Aquaculture Zones:</i></p> <ul style="list-style-type: none"> • <i>Provide for 20% of space covered by a new resource consent (outside Aquaculture Zones) transferred to the trustee for allocation to iwi.</i> ▪ <i>Provide for a regional approach using alternative allocation tools</i> ▪ <i>Crown may provide for new space “up-front”.</i> 	<p>Agree and further work required</p>
<p><i>Recommendation 52 - Support the amendment in Aquaculture Legislation Amendment Bill (No.2) that enables applicants and iwi, with the assistance of the trustee where iwi support, to reach agreement on representative space.</i></p>	<p>Agree</p>
<p><i>Recommendation 53 - Consult with iwi and the trustee on a revised aquaculture regime before finalising the policy for legislative drafting.</i></p>	<p>Agree</p>
<p><i>Recommendation 54 - Work with regions to prepare them for transition to the new regime.</i></p>	<p>Agree</p>
<p><i>Recommendation 55 - Fast-track the transition process by deeming through legislation or regulation Aquaculture Zones (where the UAE has been undertaken) in selected regions.</i></p>	<p>Agree in principle and further work required</p>
<p><i>Recommendation 56 - Where applications are being processed under old aquaculture legislation, consider decisive action to transition them into the new regime.</i></p>	<p>Agree and further work required</p>
<p><i>Recommendation 57 - To address pre-moratorium applications “frozen” under s150B(2) of the RMA, either:</i></p> <ul style="list-style-type: none"> ▪ <i>Deem those applications that applicants wish to proceed as lodged on the first day of our new regime (rather than</i> 	<p>Agree</p>

<p><i>processed under the old legislation); or</i></p> <ul style="list-style-type: none"> ▪ <i>If some or all of these applications represent a major impediment to an effective re-start for aquaculture, consider extinguishing them by legislation.</i> 	<p><i>Disagree</i></p>
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Te Ohu comment on the Report's recommendations

<p><i>Recommendation 1 - The government undertakes a targeted consultation process with iwi, regional councils, and industry during the development of policy and drafting of the legislation.</i></p>	<p><i>Agree subject to realistic timeframes</i></p>
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Engagement with iwi and the trustee

7. We consider that further input and refinement of the policy proposals in the Report is required. Alignment with the Foreshore and Seabed (FSSB) review is necessary and the passage of the Aquaculture Legislation Amendment Bill (No.2) should proceed urgently.
8. Te Ohu wishes to record its strong objection to the process the Crown proposes to follow in respect of the TAG proposals. It is understood that there is no intention to consult or provide for any engagement between the Crown and iwi in respect of the policy the Crown adopts as a result of the TAG recommendations and the current consultation process (other than through the Select Committee, which is not accepted as being a true consultation process).
9. Te Ohu considers this is unacceptable, particularly given the need for the Treaty partners to engage over the best approaches to implementation of the settlement. More broadly, this approach is also short-sighted; it seems to assume that targeted collaborative work on the proposed Crown policy and draft legislation would cause delay. The experience of the last reform process in 2004 shows that the opposite is true: the lack of engagement at that time resulted in the adoption of a misconceived policy which has resulted in a five-year delay to the development of the aquaculture industry. A few months invested in targeted and meaningful engagement would be the best way of ensuring the same mistake is not made again.
10. In addition to collaborative work between the Crown, Te Ohu and iwi on satisfactory measures for the Maori Commercial Aquaculture Settlement we recommend that the Aquaculture CEO Forum (comprising representatives from the Ministry of Fisheries, Ministry for the Environment, Department of Conservation, Aquaculture New Zealand, regional councils, SeaFIC and Te Ohu) be actively involved in the wider policy issues and drafting to avoid the mistakes of the previous reforms.

Chapter 1 – Active role for government

11. A key thread running through the Report is that the current system provides few incentives for councils to initiate planning for aquaculture, and that this, along with no clear voice in Government as well as the lack of coordination between central and local government, has created a complex regulatory environment which has stifled innovation and growth in the aquaculture sector. Changing incentives and clarifying responsibilities between the various players was seen as leading to a more coherent and less risky regulatory environment. The TAG is of the view that a greater level of input from central government is required to achieve this end. Its recommendations and our response are summarised and clarified below.

<i>Recommendation 2 - The Prime Minister be invited to consider clarifying which Minister has overall responsibility for aquaculture.</i>	<i>Agree</i>
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12. Te Ohu supports the various recommendations that will allow central government to coordinate the development of aquaculture policy. We support the recommendation to appoint a Minister responsible for aquaculture but note that potential conflicts of interest with other Ministerial responsibilities need to be avoided.

<i>Recommendation 3 - Establish an Aquaculture Agency (AQA) within the Ministry of Fisheries as soon as possible.</i>	<i>Agree and further work required</i>
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13. We support establishing the AQA as a means of streamlining bureaucracy and reallocating resources to improve efficiency. However we consider further detailed work is required on the purpose of the proposed AQA to clarify its role and to avoid potential conflicts of interest. For example the role of advocating for aquaculture and providing technical advice as a regulator is in conflict with the role of applying for aquaculture space.

<i>Recommendation 4 - Provide the Minister with powers to insert provision into regional coastal plans.</i>	<i>Agree only as a transitional measure</i>
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14. We do not support the recommendation to provide a Minister with powers to insert provisions into regional coastal plans. The TAG report provided no details where these powers would justify being able to directly input into powers and bypass the RMA procedures that have recently undergone improvement. We consider that generally there are already sufficient options available for central government to exert influence over regional planning including applying for plan changes directly. Te Ohu could however

support the use of regulations (as a fall back for the transition) to provide certainty by clearly setting out the detailed rules for the transition in each region.

<i>Recommendation 5 - Establish and administer an Aquaculture Fund.</i>	<i>Agree as a transitional measure</i>
<i>Recommendation 6 - Introduce an Aquaculture Levy to maintain the Aquaculture Fund.</i>	<i>Disagree</i>

15. Te Ohu supports the Aquaculture Fund as a transitional measure to assist aquaculture planning. Te Ohu considers the Crown should establish this fund in a similar fashion to the funding assistance provided by the Ministry for the Environment for aquaculture planning to councils over the last several years.

16. We explain in more detail our concerns in relation to recommendation 6 in Chapter 5 of our submission.

<i>Recommendation 7 - AQA to develop an Aquaculture Development Strategy to set out the government's policy for aquaculture development.</i>	<i>Agree</i>
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17. We support the development of an Aquaculture Development Strategy for co-ordinating the government response to aquaculture. A clear government policy on aquaculture would support greater cooperation and integration between government agencies with responsibilities in aquaculture and also provide certainty and encouragement to the industry that aquaculture is a priority for government. However the ability of a non-statutory strategy to influence councils is questionable.

<i>Recommendation 8 - Provide national consistency through National Environmental Standard for aquaculture developed by AQA and MfE.</i>	<i>Agree and further work required</i>
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18. We support the development of a National Environmental Standard (NES) where it makes sense for aquaculture, for example in establishing environmental bottom lines for managing environmental effects. If this can be achieved it would provide certainty and assurance to the community regarding the required environmental performance of aquaculture. Establishing clear and consistent information requirements for resource consent applications through a NES would also be of significant value to the industry.

<i>Recommendation 9 - Develop a specific policy on aquaculture within</i>	<i>Agree but</i>
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<i>the New Zealand Coastal Policy Statement to better provide for aquaculture development.</i>	<i>strengthen wording</i>
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19. The NZCPS reference to aquaculture is very general. We support developing a specific policy on aquaculture in the NZCPS now and / or develop National Aquaculture Policy later. We also recommend using stronger statements such as "...councils shall *take into account* the following:" for the bullet points on page 23 of the Report.

Chapter 2 – Re-setting aquaculture planning

20. Treating aquaculture as fundamentally different from other activities which are assessed on the usual effects-based tests of the Resource Management Act (RMA) has been wholly inappropriate. The Report agrees and makes a number of specific recommendations. These, along with our response are summarised below.

<i>Recommendation 10 - Remove the prohibition on aquaculture outside AMAs, and remove all associated provisions including AMAs, Excluded Areas and Invited Private Plan Changes.</i>	<i>Agree</i>
<i>Recommendation 11 - Provide Aquaculture Zones as an optional planning tool with UAE test and settlement obligations applied at planning stage, with tendering as the default allocation mechanism.</i>	<i>Agree</i>

21. Te Ohu has for some time advocated the 'normalisation' of aquaculture within the planning regime and therefore applauds TAG's recommendation in this respect. The removal of the prohibition on aquaculture outside Aquaculture Management Areas (AMAs) is a positive step that will incentivise future aquaculture development. It incentivises rather than restricts applicants while still allowing councils and applicants to use the optional tool of Aquaculture Zones where it is expected aquaculture will be intensive and there will be strong competition for space. We support that the prohibition on aquaculture outside AMAs be removed as long as the other recommendations in this section follow.

22. As part of this we also support the development of Aquaculture Zones where there will be intensive aquaculture. It should be noted that for those regions where pre-commencement obligations have not been settled the current regulations should apply for the new regime i.e. in the event of a council initiated plan change, the current provision for additional new space (up to 40%) should be retained to address any outstanding pre-commencement space obligations. To enhance these provisions further, the option of more than 40% of new space could be considered to fulfill the Crown's settlement obligations via a council or Crown funded plan change.

<i>Recommendation 12 - Deem existing AMAs to be Aquaculture Zones.</i>	<i>Agree</i>
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23. We support the recommendation that existing AMAs should be deemed to be Aquaculture Zones to provide greater certainty to areas of existing aquaculture.

<p><i>Recommendation 13 - Enhance council decision making on plans by:</i></p> <ul style="list-style-type: none"> ▪ <i>Requiring all Councillors and Commissioners hearing RMA matters be accredited under RMA section 39A.</i> ▪ <i>Requiring that at least one member of a hearings panel be an independent commissioner drawn from a list of approved experts.</i> ▪ <i>Maintaining a list of accredited independent commissioners who have particular expertise or experience in coastal matters, for use on planning hearings, consent hearings and Boards of Inquiry.</i> 	<i>Agree</i>
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24. We support in principle the improvements to council decision-making processes but suggest these include wider matters than just aquaculture. This proposal should then be included in Phase II of the RMA review. The practical steps require clarification.

<i>Recommendation 14 - Enable a private plan change applicant to receive 80% of aquaculture space created by the plan change (in areas where pre-commencement obligations have been settled).</i>	<i>Agree</i>
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25. We support recommendation 14 regarding private plan changes where pre-commencement obligations are settled,

<i>Recommendation 15 - Enable parallel processing of private plan changes and resource consents.</i>	<i>Agree</i>
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26. The parallel processing of plan changes and resource consents is a progressive move and is supported by Te Ohu.

<i>Recommendation 16 - Review section 144 of the RMA to ensure aquaculture matters can be called in.</i>	<i>Agree</i>
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27. The TAG report refers to section 144. However Te Ohu understands that the relevant section should be section 142 which allows the Minister to call in matters of national

significance. We support a thorough review to check that aquaculture could be covered by the range of matters the Minister considers.

<i>Recommendation 17 - Review the appropriate role of the Minister of Conservation in the coastal marine area as part of Phase II of the RMA reforms.</i>	<i>Agree</i>
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28. We concur with this recommendation and that of the Select Committee on the Resource Management (Simplifying and Streamlining) Amendment Bill.

<i>Recommendation 18 - Integrate the shellfish water classification process into the new aquaculture regime by ensuring that it occurs in parallel to the RMA and UAE processes.</i>	<i>Agree and further work required</i>
<i>Recommendation 19 - Allow NZFSA to access the Aquaculture Fund to pay for the upfront costs of shellfish water classification.</i>	<i>Disagree</i>

29. While integrating the shellfish water classification is to be commended, further work on this process is required. It is unclear to Te Ohu why the costs of this process should be incurred upfront without certainty that the application will be approved. It could be that integrating the shellfish water classification process is an example of best practice. However further work would be required to ascertain existing arrangements between marine farmers, how NZFSA would undertake the work and the payment of costs.

Chapter 3 - Enhancing consents for aquaculture

30. Along with 'normalising' aquaculture within the planning regime, the Report makes a number of specific further recommendations which it believes will enhance resource consents for aquaculture. These recommendations and our response are as follows:

<i>Recommendation 20 - Establish an aquaculture consent register under the Fisheries Act.</i>	<i>Agree</i>
<i>Recommendation 21 - Provide an ability to register a lease or sub-lease of a resource consent.</i>	<i>Agree</i>
<i>Recommendation 22 - Enable consents to be caveated so they cannot be sold without lender's approval, and link to Personal Properties Security Register.</i>	<i>Agree</i>

<i>Recommendation 23 - Cross-link the aquaculture consent register to the Personal Property Security Register.</i>	<i>Agree</i>
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Register of Aquaculture Consents

31. Maximising the investment and lending certainty around resource consents for aquaculture is of particular importance for iwi organisations who, because of the sometimes complex nature of their own legal structures, often struggle to gain access to development capital. Te Ohu therefore supports proposals aimed at that objective. In particular, the development of a register of aquaculture consents, if operated according to appropriate rules, would appear to go a significant way to improving the value of such consents as a security and is therefore supported in principle.
32. Having said that, Te Ohu acknowledges the issues raised by SeaFIC in respect of the current fish farming register, lack of incentives to register and the need to ensure a register of consents includes appropriate measures to ensure registration occurs. While it is clear that linkage to the Personal Properties Security Register will be important, so that the lenders and investors can effectively have a 'one stop shop' for registering their interests in consents and associated infrastructure, Te Ohu notes SeaFICs concerns that the essential mechanism of caveating cannot be provided for through a register under the Fisheries Act. However we consider it may actually be possible to provide for caveating because at present, all that is legally required to transfer a consent is to lodge the appropriate notice of transfer with the relevant local authority. If it were provided that no transfer had legal effect until a notice of transfer was issued by the registrar, there is no obvious reason why a caveating system could not apply.
33. The key issue under this heading is that, in order to achieve the objective of maximizing the value of consents as security, it will be necessary to develop the proposed registration mechanisms in close consultation with lenders. The question that might be posed to them is 'what would it take for a mussel farm to be treated on a par, as a security, with a dairy farm?'

<i>Recommendation 24 - Provide a separate consent category for experimental aquaculture.</i>	<i>Agree</i>
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34. As research is fundamental to the future development of the industry, the creation of experimental aquaculture categories of consent is useful. It is not clear from the report that experimental aquaculture is able to be undertaken inside Aquaculture Zones. Though it is understood that the TAG proposed using the provisions in Aquaculture Legislation Amendment Bill (No.2), it is not clear from the Report what level of UAE assessment will be required for experimental aquaculture. We propose that the timeframe and allocation and processes be the same as in the Bill. However we support allowing the timeframes for experimental aquaculture to be extended subject to the agreement of the relevant iwi.

<i>Recommendation 25 - Make approval for occupation explicit within the coastal permit.</i>	<i>Agree</i>
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35. Making the approval for occupation explicit in the coastal permit is a matter of good practice, which should be encouraged, although, in the view of Te Ohu, occupation should be to the minimal level of exclusivity necessary to carry out the relevant aquaculture activity. For example, large-scale off-shore mussel farms require only a low level of exclusivity, with, for examples, recreational fishing vessels being free to pass between the widely spaced mussel lines (as long as they can do so safely). Finfish farms, on the other hand, require a higher degree of exclusivity because of the nature of the structures in the water.

<i>Recommendation 26 - Provide a default minimum term of 20 years for aquaculture consents.</i>	<i>Agree</i>
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36. Te Ohu supports the recommendation that the minimum consent term for aquaculture should be at least 20 years to encourage investment and sustainable development.

<i>Recommendation 27 - Enhance coastal permit renewal by:</i>	<i>Agree in part</i>
<ul style="list-style-type: none"> ▪ <i>Simplifying the renewal process;</i> ▪ <i>Making a new consent for an existing aquaculture activity a “controlled” or “restricted discretionary” activity as a default;</i> ▪ <i>Provide that an applicant for a new consent to continue an existing activity is deemed to have applied on the same basis as the terms and conditions of the original consent.</i> 	

37. Additional measures to enhance consent rights are supported by Te Ohu.

Renewal of consents

38. Te Ohu has some reservations in respect of the recommendations on this subject. Making renewal of consents a “controlled” or “restricted discretionary” activity would essentially give the consent the effect of a nearly perpetual occupation right, able to be displaced only by a plan change giving the activity prohibited status. There are two reasons to approach such a measure with caution. The first is the effect it would have on Māori customary rights and title, provision for which is currently under review with the likely repeal of the Foreshore and Seabed Act. The second is a possible inconsistency with the approach of the RMA, which has a clear preference for planned approaches to occupation and development, rather than ad hoc approaches through consenting.

39. We consider that a controlled or restricted discretionary status might be justified for consents within Aquaculture Zones, in respect of which a full planning process has been conducted to assess the suitability of the area for aquaculture activities, but do not consider it would be appropriate to give controlled status to consents outside such zones. If the controlled status

were applied to consents outside of Aquaculture Zones, it could act as a disincentive for councils to grant consent in the first place, knowing they can never subsequently 'get rid of' the activity except through a costly and time-consuming plan change. Te Ohu considers it is appropriate that there is greater degree of certainty with renewals within a zone than outside a zone. For example, it could well be that renewals could be subject to a controlled status within a zone and restricted discretionary status outside a zone. Of course these would be default settings that the council could vary with good reason through the resource consent process or a plan change. This is also an issue that needs to be dealt with in the transition.

40. Introducing such a differentiation between consents within Aquaculture Zones and those outside would create a real and useful incentive for planning to be undertaken, whether by councils or applicants. This would have advantages, both in the resource management context, but also for the Crown's ability to comply with the Maori Commercial Aquaculture Settlement.

<i>Recommendation 28 - Use regulations to ensure all regional coastal plans are flexible enough to enable self-fed and supplementary-fed aquaculture.</i>	<i>Agree in part</i>
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41. Further, the recommendation to ensure flexibility within coastal plans as to the types of aquaculture activities which may be undertaken is a positive step, reducing costs for councils and applicants alike as it will negate the need for significant future changes to plans. If this is provided before, then as research develops the industry is more likely to be able to move to higher value species without the need to constantly have planning regimes updated.

42. Te Ohu is unsure that directly changing plans by regulations will best achieve and secure agreement to a flexible regime in each region where water conditions could make this economic.

<i>Recommendation 29 - Provide that consents for aquaculture lapse in 3 years if not given effect.</i>	<i>Disagree</i>
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43. Te Ohu does not support this recommendation to reduce the lapsing period of resource consents for aquaculture from five to three years.

<i>Recommendation 30 - Specify a standard set of information requirements for aquaculture consent applications (including UAE assessments).</i>	<i>Agree</i>
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44. We support that a standard set of information requirements should be specified for aquaculture consent applications to improve the efficiency of the consenting and permitting processes.

<i>Recommendation 31 - Encourage use of evergreen consents.</i>	<i>Agree</i>
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45. We support an evergreen approach to review and renew resource consents for aquaculture. The proposals need more work to ensure that the original consent only dissolves from the moment any new consent commences and continues to run for its term should the new application be declined.

<i>Recommendation 32 - Provide template consents for different types of aquaculture development.</i>	<i>Agree</i>
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46. We support recommendation 32 to provide a template of consents for different stages and types of aquaculture consents.

<i>Recommendation 33 - Enhance the standing of council hearings for resource consents by limiting the evidence that can be presented in appeals so that new evidence can be presented only with leave of the Court.</i>	<i>Agree but consider in Phase II, RMA reforms</i>
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47. Te Ohu supports the recommendation but consider it has wider ramifications than just aquaculture consenting issues and should be dealt with as one of the issues in Phase II of the RMA reforms.

Chapter 4 – Allocating space for aquaculture

48. A positive effect of ‘normalising’ aquaculture is that approvals can happen faster and at a lot lower cost. The default is then having space allocated on a ‘first come, first served’ basis. The main recommendations of this part of the Report and our response include:

<p><i>Recommendation 34 - Provide councils with the ability to manage demand by using allocation mechanisms other than “first in, first served”.</i></p>	<p><i>Agree and further work required</i></p>
<p><i>Recommendation 35 - We recommend that the RMA is amended to provide a statutory test to trigger the consideration of alternative allocation tools. This test will be deemed into all coastal plans and will provide councils with the opportunity to override that part of the RMA which currently means that councils must accept and process well prepared applications.</i></p>	<p><i>Agree in principle</i></p>
<p><i>Recommendation 36 - We recommend that tools (including the following) be deemed into coastal plans by the amending legislation:</i></p> <ul style="list-style-type: none"> ▪ <i>Tendering (including weighted attributes tendering)</i> ▪ <i>Preferential allocation</i> ▪ <i>Balloting</i> ▪ <i>Combining applications and hearing them together</i> ▪ <i>Rules to change activity status once a threshold is reached</i> 	<p><i>Agree in part and further work required</i></p>

49. Tendering of authorizations within an Aquaculture Zone (the ability to apply for a resource consent over a given area) will both assist councils to recover some costs of the planning process as well as providing a measure for the value of settlement space. Te Ohu supports these recommendations, particularly the assurance for successful tenderers that they will in fact receive an exclusive right to apply for a resource consent in the area to which an authorisation applies.

50. A key concern that led to the earlier moratorium was the ‘gold rush’ for space, as consent applications could then be lodged with little preparation, which then tied up extensive areas for speculative and not developmental motivations. This possibility has been removed by subsequent RMA amendments, but a possibility for high demand remains, and its management needs to be considered. While the need for alternative mechanisms may be rarely needed, Te Ohu supports the availability of such provisions, and agree that they need to be deemed into plans to ensure they are available immediately when the new regime is enacted. We note, however, that further detail needs to be determined. For instance, if the council can use the provisions to refuse to accept consent applications, the status of existing applications for the space for which there is council concern needs to be determined. Are they to be put on hold? It is expected they would be placed on hold if the council considers there is a problem. However if so there could be a need to provide them with priority for

consideration in future under the alternative allocation tool subject to iwi getting 20% of any subsequent Aquaculture Zone (as per current law).

51. Te Ohu supports in principle the use of alternative tools for allocation of space, but does not support balloting being one of the tools. While this mechanism would provide regional councils a safe means of allocation, immune from judicial review in virtually all instances, it does not provide for equity, or for giving preference to applicants with, for instance, a better environmental management record. Further, balloting without a large fee for participation which would likely be a disincentive, would not provide a cost recovery mechanism.
52. Clearly further work on how and when alternative mechanisms might be instigated is required along with the tools themselves. Alternatives of weighted attribute tendering or inviting applications over areas and then assessing against each other, or requiring applicants to negotiate on overlapping areas are worth considering.

Chapter 5 – Cost recovery and charges

53. One of the more significant barriers to investment and innovation in the aquaculture sector, particularly in the post-moratorium period, has been the significant costs to all participants and the time taken to gain approval for aquaculture space. Developing the appropriate regional regulatory regime has been a costly process and many councils have been unwilling to commit ratepayer funds to what has been perceived as a benefit for the aquaculture industry. This led councils to favour the problematic Invited Private Plan Change (IPPC) route but this has proven a difficult process with only the Northland Regional Council taking significant steps towards an IPPC process and progress there requires the improved provisions in the Aquaculture Legislation Amendment Bill (No.2). The TAG's proposed charge regime will mean that councils which undertake aquaculture planning must directly face some costs. To recognize this but ensure that those benefiting pay an appropriate amount, the TAG has addressed cost recovery. Its recommendations and our response include:

<i>Recommendation 37 - That cost recovery for processing of resource consents and private plan changes, monitoring, and other council services continue.</i>	<i>Agree</i>
<i>Recommendation 38 - That coastal planning for aquaculture be paid for through an Aquaculture Fund administered by the Aquaculture Agency.</i>	<i>Agree</i>
<i>Recommendation 39 - That the Aquaculture Fund be maintained through the introduction of an annual Aquaculture Levy.</i>	<i>Disagree</i>

<i>Recommendation 40 - That the levy be set at a reasonable level of between \$100 and \$200 per hectare per annum. An appropriate basis for charging for offshore farms would have to be devised.</i>	<i>Disagree</i>
<i>Recommendation 41 - That this levy would replace coastal occupational charges for marine farmers, so section 64 of the RMA is amended so that obligations on marine farmers are removed.</i>	<i>Disagree</i>
<i>Recommendation 42 - That the levy is reviewed every 5 years by the Minister.</i>	<i>Disagree</i>
<i>Recommendation 43 - That the broader issue of coastal occupational charges for other occupiers of the CMA be considered as part of RMA Phase II.</i>	<i>Agree</i>

54. The TAG's proposals if wholly implemented will be a significant step change. To ensure this can be achieved we recognise there is a need for changes to the funding regime particularly in the transition. Te Ohu supports the cost recovery regime for consents processing, private plan changes and monitoring continuing.
55. The TAG proposed an Aquaculture Fund to provide assistance to councils for aquaculture for planning. As noted in recommendation 5 we support this and recommend that Government establishes this fund at a similar level provided by the Ministry for the Environment over recent years.
56. The TAG proposes that this fund be maintained by an aquaculture levy. The TAG does not attempt to analyse the nature of a levy that it proposes – it is silent on whether it is a resource rental, an occupation charge or has some other basis. Dodging the determination of the nature of the levy in legislation would inevitably lead to its determination through litigation, a costly and uncertain process. Te Ohu considers that every charge (or levy) needs a clear rationale for its collection and its use should be directed in line with that rationale.
57. The TAG mixes the provision of a service to new aquaculturalists with rental for the use of coastal space from existing aquaculturalists. We do not agree with this. Levying existing marine farmers to replenish the fund would effectively mean the existing industry would be funding development of new marine farms, which may well be in competition with existing farmers. It would usually also mean collecting revenue from one region and spending it in another. Both situations are inequitable.
58. However notwithstanding our objection to such levies should Government determine to introduce a levy it should not be imposed on space allocated and transferred to iwi under the MCACSA until such farms are producing commercially. In addition a levy is proposed it

should be structured so as to take into account the comparative profitability per hectare of oysters, mussels and salmon farming. This might also need to reflect regional differences.

59. Instead of the levy recommendation, Te Ohu proposes that the Government replenish the fund in part from those receiving benefits from the services provided by the fund. The device the Crown has for this would be by returning any tender money for its share on an Aquaculture Zone into the fund rather than into the consolidated account. Another option to replenish the fund would be for the Crown to establish a charge on successful new applicants outside zones that cumulatively over the period of a resource consent provides equivalent to the level of funding provided to assist that council for the planning work involved.
60. Another method to assist councils to meet the costs of planning for aquaculture could be to provide an amendment to s36 of the Act to recover the private benefit of planning costs from successful applicants over a reasonable time period (say 20 years). This has implications for all coastal occupation and should be considered in Phase II of the RMA reforms along with the matters below.
61. The TAG has also raised the issue of coastal occupation charges. We are wholly opposed to the current coastal occupation charges regime set out in s64A of the RMA being implemented on aquaculture.
62. Te Ohu agrees with some form of charge for the use of this space for aquaculture but considers this requires further work and needs to be closely integrated with the FSSB work currently being progressed. Phase II of the RMA reforms may provide an opportunity to reform this currently unusable coastal occupation charge regime and develop a tenable solution to coastal occupation charges for all activities in the coastal marine area, including aquaculture, that is also integrated with the Foreshore and Seabed reforms. It could also consider the possibility of legislating seaspace as rateable by all those occupying space.
63. Te Ohu supports in principle that the use of a resource for pecuniary gain should lead to consideration of some form of payment to the party with ownership or property rights to that resource. This would apply to a resource such as seaspace, irrespective of whether the currently legislated Crown ownership continues, or is modified as a result of the Foreshore and Seabed review.
64. Te Ohu considers that any changed regime will need to consider the cumulative effects of charging and design a suitable transition to ensure that the combination of all these charges is reasonable.

Chapter 6 – Streamlining interface between aquaculture and fishing

65. A key issue in supporting the development of the aquaculture industry will be the development of processes to effectively balance the rights of existing users with aquaculture

farmers wishing to utilise the coastal marine area. This is a particularly delicate issue in respect of commercial fishing, with iwi having significant commercial fishing interests derived in part from the Maori Fisheries Settlement and also through the Maori Commercial Aquaculture Settlement gaining 20% of any new aquaculture space. Iwi are in the special position of wanting to see both settlements maintained simultaneously but with development of one not occurring at the expense of the other. The Report focused on ways in which the RMA and fishing regulatory regimes could be streamlined and coordinated. If this can occur, significant time and expense currently involved could be lessened and earlier indications given on the likely success of any proposal (so that significant expense does not occur where plainly there is strong opposition from either environmental or fisheries perspectives). The recommendations and our response are as follows:

<i>Recommendation 44 - Ensure information held by the Ministry of Fisheries on fishing and fisheries resources is made available during the preparation of a coastal plan change and that regional councils are provided with the information.</i>	<i>Agree</i>
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66. Te Ohu supports the streamlining and combination (where appropriate) of the RMA and fishing application processes. Te Ohu considers the early provision of information by MFish to the parties involved is a key element in having these recommendations work successfully.

67. We note there could be sensitivities relating to access to and accuracy of fine-scale fishing data and where a limited number of fishers is involved, but consider that these difficulties will reduce over time as more data at this scale is recorded and there is greater experience in the use of the information.

<i>Recommendation 45 - In relation to the UAE assessment during preparation of a plan change, align Fisheries Act and RMA processes (while retaining separate statutory decision-making) with respect to steps and timeframes for notification, submissions, hearings, and announcements of decisions.</i>	<i>Agree</i>
<i>Recommendation 46 - Repeal the High Court merit appeal on UAE decisions and replace with appeal provisions that match the equivalent RMA appeals, with provision for combined hearings.</i>	<i>Agree</i>
<i>Recommendation 47 - Provide that in an Aquaculture Zone where development has not reached any limits set in the plan, an aquaculture consent applicant does not need to address UAE on fishing, unless the plan provides otherwise.</i>	<i>Agree</i>
<i>Recommendation 48 - Provide a framework for negotiations between affected commercial fishers and aquaculture consent applicants, with a UAE assessment undertaken by MFish if agreement cannot be reached or where applicant chooses to go directly to a UAE assessment.</i>	<i>Agree</i>

<p><i>Recommendation 49 - That following a finding of the UAE on commercial fishing, parties involved in negotiating an aquaculture agreement be given three months to register an agreement, with the ability to apply for a one month extension if demonstrable progress has been made but further time is required to secure the agreement.</i></p>	<p><i>Disagree</i></p>
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68. The UAE test must be preserved. As noted above wherever aquaculture is proposed iwi have at least two interests – the need to be able to effectively use the assets from the Maori Fisheries Settlement, as well as wanting to undertake aquaculture as the 20% beneficiary of any new aquaculture space under the Maori Commercial Aquaculture Settlement. Iwi are therefore looking to have a robust system that has integrity and promotes early agreements between the two interests – the aquaculture applicant and the quota owners.
69. Te Ohu supports the view expressed by TAG that the process for approval of aquaculture space outside Aquaculture Zones should encourage the parties (commercial fishers and applicants) to negotiate prior to any UAE test being required, rather than how the system generally operates, with such negotiation commonly only occurring following the UAE test whose process has involved lengthy delays and substantive costs.
70. The current regime allows AMAs to be established with fishing reservations (because of a UAE) and timeframes in which applicants (and iwi) are able to reach aquaculture agreements to satisfactorily mitigate those adverse effects.
71. The Report however proposes that an Aquaculture Zone cannot have reservations to protect fisheries interests in it. It proposes that a condition of approval of an Aquaculture Zone is that it have no undue adverse effect on fishing. That will mean that through the process of developing an Aquaculture Zone, if any undue adverse effects are identified, the area will be altered to ensure that within the Zone there is no UAE on fishers. The area deleted may however be optimal for aquaculture – provided the aquaculture applicants and the quota owners agree. It is recommended that MFish make this information available to aquaculture applicants should they request it.
72. Te Ohu considers that the Report does not go far enough in creating the conditions for a pro active option. There is a need to further ‘tune’ the proposals so that greater incentives are included to encourage applicants and commercial fishers to reach agreements rather than waiting for the default process.
73. The TAG recommendation in section 6.5 recommends that the Government engage with the seafood industry (including SeaFIC, Te Ohu and Aquaculture New Zealand) to advance proposals that would better incentivize applicants and fishers to reach agreement without the need for formal UAE process. Te Ohu considers this highly desirable given the multiple interests of iwi. In the time available however we have not had the opportunity to work jointly with SeaFIC and Aquaculture New Zealand. Set out below are some preliminary proposals that could be used for further refinement by officials and SeaFIC and Aquaculture New Zealand.

74. There will be some basic requirements that need to be provided for through statute. For private agreement there will need to be low transaction costs. Only those parties directly affected should participate in agreements and each party must have good information. The Ministry of Fisheries should provide, to aquaculture applicants on request, data on fishing including which fishstocks have substantive takes within any nominated zone, and what the total take of each of those fishstocks is within the wider region.
75. For every fishstock there are many quota owners (perhaps hundreds). Aquaculture applicants need to be able to, wherever possible, negotiate with an organisation that represents the fishstock quota owners – this is the Commercial Stakeholder Organisation – the CSO. The Ministry of Fisheries must provide the applicant with the name of the appropriate CSO. For this to be effective however the CSO must hold the mandate from quota owners to undertake this role. It is proposed that amendments to the Fisheries Act be provided for that to allow quota owners to voluntarily form a club, but that when an appropriate percentage of members of that club agree (say 90%), the remainder are bound by the same agreement. The threshold figure of 90% is proposed because it is currently the threshold in the statute now where there is a reservation in an AMA.
76. The statute should allow the negotiations to occur – it should not attempt to set out the range of considerations to be addressed or the range of solutions the parties can agree.
77. The Report does not address what role, if any, that iwi aquaculture interests would have in the UAE processes. Te Ohu recommends that the provisions included in the reported back Aquaculture Legislation Amendment Bill (No.2) should be used viz that the trustee with iwi or iwi alone (once allocation for the assets is agreed) are able to reach agreement with quota owners either by themselves or in conjunction with the applicant.
78. However there are suggestions that to further help incentivise early agreement between applicants and quota owners that the cost of the default option of the Ministry of Fisheries deciding on the UAE should be borne by the parties. This could be as follows:
- If the applicant does not seek early agreement, they bear all the costs of the MFish assessment
 - If the applicant and quota owners try but cannot reach agreement, the costs are charged in the following fashion:
 - If there is an UAE, the applicant bears all the costs (because the quota owners should not have been forced to agree where there are undue effects)
 - If there is no UAE, the applicant bears 25% and the quota owners bear 75% of the costs (because the applicant requires the process in order to proceed, there may have been an adverse effect on fishing interests less than the “undue” threshold but quota owners should not unreasonably withhold their agreement where there was no undue adverse effect).

79. Te Ohu is unsure about the efficacy of the incentive created by charging these costs, which will probably be minor compared with the costs of delay to the applicant and legal action that both parties may face. It may also be difficult for iwi and the trustee to participate as they may not be aware of the applicant's proposals. If iwi (and the trustee) were to be defined as included as one of the applicant parties (because iwi could be a beneficiary if the application is successful) Te Ohu would expect the Crown to meet the costs of the UAE assessment as part of meeting its obligations under the Maori Commercial Aquaculture Settlement.
80. If the pro-active options prove unsuccessful and the normal processes run, Te Ohu supports the RMA and UAE decisions being run in parallel but each retaining its separate statutory integrity including any appeals.
81. We are unsure whether the three month period with one month extension noted in the Report to reach agreement is practical. We suggest that six months be provided with the ability to extend this if all parties agree.
82. The Report provides on page 50 some useful suggestions for gaining the input of expertise for customary non-commercial perspectives. We support these noting that where an application may have an undue effect on customary non-commercial fishing the Crown obligation to assess the effects of an application remains and if ultimately a UAE is confirmed the application cannot proceed unless agreement is reached with the tangata whenua on mitigation measures.
83. The Report does not address the situation where an aquaculture proposal might impact on commercial species that are not in the Quota Management System (QMS). The current law provides that because iwi will receive 20% should the species be introduced into the QMS and therefore hold a contingent allocation, that the Asset Holding Companies of the iwi in the region should be consulted. We propose that this continue.

Chapter 7 – Maori Commercial Aquaculture Settlement

Introductory comments

84. The Report clearly envisages that any amendments to the aquaculture regulatory regime must continue to provide for the Maori Commercial Aquaculture Settlement. A key assumption that underscores the settlement is that iwi obtain 20% of representative space created since the commencement of the MCACSA.
85. The settlement was designed alongside the current regime, resulting in iwi obtaining 20% of areas within AMAs created by plan changes – which are presently the only available mechanism for allocating space to aquaculture. Aspects of the proposed regime would translate easily into the new regime, whereas others present a challenge.

86. It is critical for any proposed reform of aquaculture that the Maori Commercial Aquaculture Settlement be provided in a manner that befits a Treaty Settlement – it must be effective, cost efficient and able to be implemented in a manner that works satisfactorily for the recipients and the Crown for it to be durable. Because it is a Treaty Settlement, any impacts on other participants – industry and councils – will be the responsibility of the Crown but will nevertheless affect the attitudes and working relationships of these parties with iwi and the trustee. There must therefore be real care taken in developing the solutions for the Maori Commercial Aquaculture Settlement in a changed regime.
87. In this respect we note the TAG report comments on page 60 “the early preparation for the aquaculture regime led to the Waitangi Tribunal claim WAI 953 reported in *Ahumoana, the Aquaculture and Marine Farming Report (2002)*. The Tribunal found there had been inadequate consultation with Maori. There is a risk that is legislative review of aquaculture, concurrent with the Foreshore and Seabed review could be similarly challenged if Maori consider again that they have been inadequately consulted. We therefore recommend that the Government consults with Maori prior to drafting legislation”. We fully support this recommendation.
88. A great deal of detail needs to be provided for the Maori Commercial Aquaculture Settlement to be workable. We set out below some options that take the TAG recommendations further. These are not exhaustive and no doubt there can be variations and other options. More work is needed between iwi, the trustee and Government on the Maori Commercial Aquaculture Settlement before options are proposed in draft legislation.

Response to the TAG’s recommendations

89. The TAG’s recommendations and our response are summarized and expanded below.

<i>Recommendation 50 - Provide for 20% of representative space available for aquaculture in Aquaculture Zones to be transferred to the trustee for allocation to iwi.</i>	<i>Agree</i>
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90. Te Ohu supports the TAG’s recommendation that 20% of representative space in Aquaculture Zones be transferred to the trustee on behalf of iwi. The process leading to such a transfer would largely mirror the process that is currently in place for allocating space within AMAs to the trustee, but should be enhanced by enabling iwi and applicants to agree on the location of representative space. For this reason, and consistent with recommendation 52, we urge Ministers push for the passage of the Aquaculture Legislation Amendment Bill (No.2), which contains provisions to enable iwi and applicants to agree on the identification of representative space. With the progress being made to finalise interim AMAs in Tasman and Hauraki (Waikato East), these provisions are vital to making progress in implementing the settlement in those regions.

<p><i>Recommendation 51 - Develop, in consultation with iwi and the trustee, the following options for providing 20% of space outside Aquaculture Zones:</i></p> <ul style="list-style-type: none"> • <i>Provide for 20% of space covered by a new resource consent (outside Aquaculture Zones) transferred to the trustee for allocation to iwi.</i> ▪ <i>Provide for a regional approach using alternative allocation tools</i> ▪ <i>Crown may provide for new space “up-front”.</i> 	<p><i>Agree and further work required</i></p>
<p><i>Recommendation 52 - Support the amendment in Aquaculture Legislation Amendment Bill (No.2) that enables applicants and iwi, with the assistance of the trustee where iwi support, to reach agreement on representative space.</i></p>	<p><i>Agree</i></p>

91. Options for delivering on the settlement outside Aquaculture Zones – outlined in recommendation 51, are more challenging to develop and implement. As the Report notes, its proposals to remove the prohibition on aquaculture outside AMAs are likely to result in the majority of aquaculture happening in an adhoc and incremental fashion, rather than through Aquaculture Zones developed through planning processes.

92. The strong preference of iwi is to have access to space and be involved in the activity and business of aquaculture. Te Ohu therefore strongly supports the principle that the default mechanism for delivery on the settlement outside zones must be 20% of each consent granted for aquaculture. This is the most direct way of translating the arrangements for space within AMAs under the current regime to areas outside Aquaculture Zones as proposed – and ensuring that iwi have access to representative space as it is allocated in their region. While the establishment of an AMA allocates an area to aquaculture under the current regime (or an Aquaculture Zone under the proposed regime) so too would a resource consent outside an Aquaculture Zone under the proposed regime.

93. We agree that early dialogue between any applicant, the trustee and iwi will be necessary in order to provide some certainty for each before resources are committed to the application process. As noted, there is a range of situations that may face the parties in endeavoring to reach agreement on how to deal with the settlement as part of an application, including:

- choosing to work together to form a joint venture based on the total space created by the application.
- Iwi wishing to manage their share of the consented space separately:

- for the same type of farming enabled by the consented space they receive – where this is economic. This will mean the applicant, trustee and iwi will need to agree on representative space.
- for a different type of farming not enabled by the consented space they receive. This will still mean the applicant, trustee and iwi will need to agree on representative space. Iwi will then need to apply for a new consent.
- failing to agree on representative space, so the council identifies that space. This may allow:
 - both parties to have economic operations; or
 - the applicant to have economic operations but iwi to have uneconomic operations; or
 - both the applicant and iwi to have uneconomic enterprises.
- deciding they do not wish to work together, but iwi as a consequence receiving a small parcel of space that is not likely to be viable on its own (this may well be the case for most extensions).

94. The different potential outcomes may mean that iwi wish to depart from the default allocation of 20% of consented space and pursue other options for gaining access to representative space. For these reasons, and given the varied circumstances likely to occur between parties or within regions, Te Ohu considers the alternative approaches to delivery identified by the TAG are highly desirable and will likely be required for an effective settlement. As with many aspects of the proposed new regime, flexibility will be the key to achieving effective implementation of the settlement in a way that maximises the benefits to iwi, the aquaculture industry and communities.

Regional agreements

95. There are huge regional differences in the outlook for development of further new aquaculture space, making it impossible to design a 'one size fits all' approach to implementation of the settlement. Just as has proven to be the case in respect of pre-commencement space, regional solutions, developed by iwi, the trustee and the Crown working together (with industry support and assistance) are likely to provide the best way forward for implementation of the new space component of the settlement. Te Ohu therefore proposes that the new regime should go a step further than suggested by the TAG by establishing a process for the Crown and iwi (and councils, applicants and other industry players where appropriate), with the support of the trustee to work together to develop a plan and implement the settlement in respect of new space in their region. There would be two aspects to this process.

Regional settlement plan

96. The first would be provision for the Crown, in conjunction with iwi and the trustee, to develop a plan for the implementation of the new space component of the settlement in each region and to review that plan at regular intervals. The plan would be along the same lines as that provided for in ss.23 and 24 of the MCACSA, except that – as well as including an assessment of the progress that has been made to implementing the settlement in respect of new space – the plan would also require the parties to make an assessment of the likely scale of new aquaculture development in the region over the next, say, five years and to set out their agreements as to how the settlement will be implemented in respect of that.
97. The plan should give an indication of the area thresholds for each type of aquaculture in the region where iwi would expect to take the 20% space directly, and below which where such aquaculture is unlikely to be economic, a settlement entitlement will be registered. For example iwi might opt to simply stay with the default of taking 20% of consents (or negotiating a joint venture or some other arrangement with the applicant) in areas where little development is thought likely or perhaps where any development is likely to be of large-scale off-shore marine farms (in respect of which the settlement 20% is large enough to be of value). However in some regions, where further development of new space is clearly proposed, but is likely to be mainly by relatively small-scale extensions to existing mussel farms (in respect of which the settlement 20% of each would be of low value and difficult to operationalise), iwi might agree that each ‘sliver’ be added to the entitlement register (an aquaculture space bank). This pragmatic arrangement would allow economic development to occur without unnecessary delay and complexity.
98. Responsibility for an effective and durable settlement lies ultimately with the Crown. If iwi forgo small extensions that individually are uneconomic but cumulatively represent an economic asset when realized, there would be an obligation on the Crown to provide this space in the region (or its financial equivalent). Proactive action by the Crown in this respect is therefore justified.
99. The Minister should be required to carry out a mandatory review periodically – say every five years. Iwi do not want to be in a position where the Crown will only settle when all aquaculture options are allocated to other aquaculture parties. There should be other options for triggering the process such as iwi having the ability to request a review where they consider there are concerns for the availability of space, for example when a council requests the Minister to suspend the ability for consent applications to be lodged.

Delivery mechanisms

100. The Minister must then implement the measures agreed in the review to deliver the 20% to iwi in the region. These measures will provide for alternatives to the default mechanism. The provisions of the Māori Commercial Aquaculture Claims Settlement (Regional Agreements) Bill provide a model for this, by giving the Crown the discretion to deliver on iwi entitlements in respect of pre-commencement space in any way provided for in a regional agreement. Te Ohu considers that an open mind should be taken to the ways in which iwi might wish these entitlements to be delivered. For example, the Crown and iwi may agree that the Crown provide funding for either a settlement Aquaculture Zone or an application for

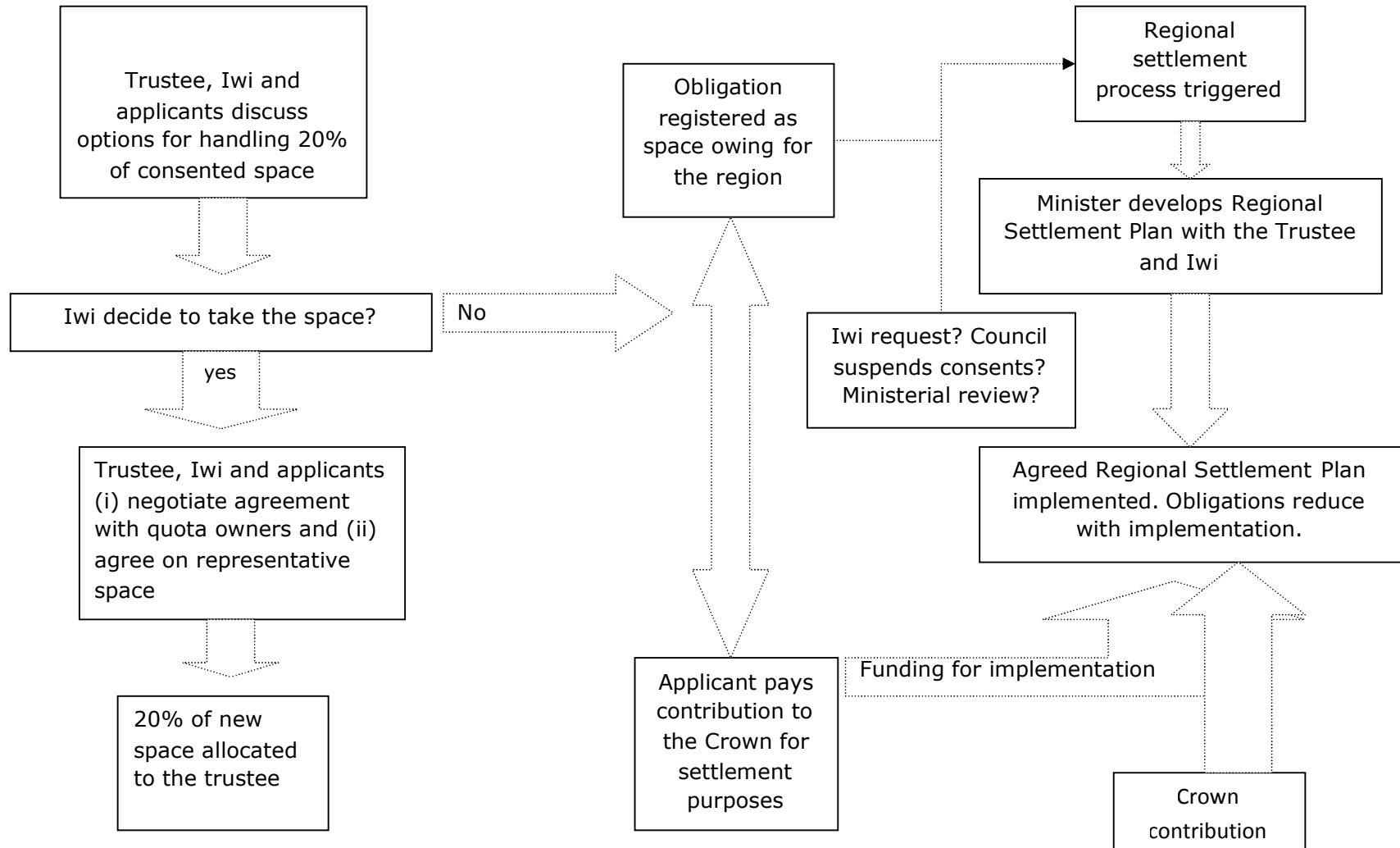
a resource consent over an economic area equivalent to the space entitlement for that species. Equally it might be that in some regions iwi and the Crown could agree to offset some or all of any mussel farming entitlement in that region by the Crown securing a resource consent for a finfish farm at a suitable location. Where the Crown and iwi agree that the Crown should pay a financial equivalent in lieu of space, then the “equivalent” should equal the value per hectare of the space itself. We consider this is appropriate where new space is not going to be an option for iwi.

101. If the Crown and iwi of a region can reach such an agreement, there is no reason why they should not be able to adopt it as a suitable mechanism to meet the settlement obligations.
102. The Crown could either deliver the settlement in retrospect or be proactive and use its powers to create space dedicated to providing for the settlement in advance. For example, the Crown might take the role of being a proponent for a private plan change, (or fund the trustee to do so), in return for which iwi would agree to have received their settlement entitlements until such time as the register no longer shows a credit.

Private sector contribution to settlement costs

103. The settlement is currently based on the provision of 20% of any AMA. The costs for providing AMAs rest with either the council or the private applicant. Where the council provides this, it receives 50% of any tender monies to recoup its costs. The private applicant must meet all costs including the planning costs for that 20% as part of the costs of gaining access to space in which iwi have an interest. We consider the same premise should apply in Aquaculture Zones and for resource consents where iwi will get economic space.
104. However, where 20% space is not taken because it is uneconomic, meaning the applicant gains 100% of the space, some mechanism is required for ensuring that these applicants still make an equitable contribution to the implementation of the settlement as they are gaining access to space in which iwi have an interest.
105. One option for this could be for the applicant to pay into a dedicated settlement fund held by the Crown that would support the implementation of measures set out in a regional settlement plan. We do not consider it would be appropriate for an applicant to have to pay the equivalent of 20% of the consented space – as though it were fully developed. Instead what might be more appropriate and equitable is a contribution that is 20% of the total cost of the consenting process – up to the time the regional council makes a decision. These funds could be held and used as a contribution to the costs of creating alternative new space in a region.
106. Our proposals are summarised in Figure 1. We recommend that officials work with Te Ohu and iwi to further develop a suite of settlement options.

Figure 1



Retaining proportionality

107. We support the TAG's suggestion that iwi should not be subject to the 'use it or lose it' provisions. We note that in discussions following the release of the TAG report, some parties have proposed that it is inappropriate for iwi to retain access to their 20% share of a consented area when the incumbent of the other 80% might lose theirs. There are a number of potential solutions that can be explored to resolve any potential imbalance created. One might simply be to consider issues of proportionality as part of any regional agreement, or in subsequent monitoring of that agreement. Another might involve the council tendering rights to apply for a consent to that space, with the iwi having the first right of access.

Additional matters not covered by the Report

Identification of interests

108. The issue of identifying with any certainty which iwi have interests in a region has already proven problematic for the trustee in relation to some regions. While the MCACSA presumes that iwi will agree their interests in regions fairly early on in the piece, the reality is that iwi have no incentive or likelihood of doing so until settlement assets are created in respect of that region. The difficulty – which will be heightened under the proposed regime – is that there are a number of agreements that might need to be concluded in order for such assets to be created, and the trustee has to be able to deal with the iwi it believes to have an interest in such arrangements without fear of challenge. By the same token, requiring full iwi agreement on who has interests (and possibly the extent of those interests) in a region before, for example, a representative space agreement can be concluded is likely to hold all parties up for months or years. Simply saying that Te Ohu should involve all iwi who claim an interest does not address the problem, as it is foreseeable that some iwi will refuse to be parties to arrangements that they see as reinforcing the contested claim of a rival iwi. Te Ohu therefore urges that the Crown work with it to develop a robust process for the trustee to form a view as to which iwi have prima facie interests in a region and to work with those iwi, while retaining its responsibility to act in the best interests of all potential beneficiaries, and retaining the right for any iwi to subsequently make a claim to an interest in the resulting settlement assets and to have that claim determined.

Iwi agreement process

109. There are two agreements that iwi in a region need to make with each other before they receive settlement assets from the trustee:

- the approximate 'headline' share of the settlement assets that each will receive (for example iwi A is entitled to 40% of an asset and iwi B is entitled to 60% of an asset). The Act envisages that this agreement – which results in a "settlement assets allocation entitlement", happens only once, as it is intended to bind iwi in relation to the allocation of all settlement assets into the future

- the manner in which each asset will be divided in accordance with the shares (for example, iwi A and B could simply share the income from the asset on a 40:60% basis but manage it jointly, or they could divide the space and manage it separately).

110. The earlier and more easily the iwi of a region can reach these agreements – in particular the first agreement - the more straight forward it will be for them to reach agreements with applicants. However there are likely to be some practical difficulties with the existing provisions, particularly if iwi wish to manage their share of the settlement assets separately.

111. First, it may not be possible to define areas of settlement space precisely according to settlement asset allocation entitlements, as the value of water space varies with area and productivity. Second, iwi may wish to make very different agreements for mussels than they would make for finfish as these are significantly different economic enterprises. Thirdly, iwi may wish to reach one agreement that incorporates multiple assets rather than have to agree on how to share each one.

112. We consider that the agreement process for iwi should be as practical as possible. The easier the process for iwi – the easier it will be for iwi to have a good basis for agreements with applicants.

<i>Recommendation 53 - Consult with iwi and the trustee on a revised aquaculture regime before finalising the policy for legislative drafting.</i>	<i>Agree</i>
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113. We reiterate our support of this recommendation and that Te Ohu actively participates in the development of the aquaculture regime before it is legislated.

Chapter 8 – Transition

114. A key part of any change will be the transition from the existing regime to the new regime. Ensuring this is as smooth and as simple as possible is critical to the success of any new regime. The progress made by some councils in seeking to develop aquaculture opportunities should also be supported as much as possible. For example, the aquaculture plan change process being undertaken by the Northland Regional Council. The TAG recommendations and our response to these transitional matters are as follows:

<i>Recommendation 54 - Work with regions to prepare them for transition to the new regime.</i>	<i>Agree</i>
<i>Recommendation 55 - Fast-track the transition process by deeming through legislation or regulation Aquaculture Zones (where the UAE has been undertaken) in selected regions.</i>	<i>Agree in principle and further work required</i>

<p><i>Recommendation 56 - Where applications are being processed under old aquaculture legislation, consider decisive action to transition them into the new regime.</i></p>	<p><i>Agree and further work required</i></p>
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115. Te Ohu considers that providing a ‘one size fits all’ approach to transitioning between the existing and future regimes will create a regime too complex to be effective. The needs of individual councils are significantly different with some councils being well prepared to manage aquaculture development, while others may require significant support and assistance to achieve the outcomes government is seeking. We recommend a transitional approach that is tailored to the needs of each individual council taking into account the existing regional coastal plan and the potential and desire for further aquaculture development in each region. A tailored and flexible approach would also enable existing processes, such as with the Northland Regional Council, to be supported and continued.

116. Providing additional central government support (both financial and technical) to councils will also assist in managing a smooth transition between the current and future regimes. Options such as deeming Aquaculture Zones through legislation or regulation could be progressed with individual councils where this is considered necessary. However this needs to be balanced with appropriate levels of consultation with iwi and local communities to ensure support for aquaculture development. The long term viability of aquaculture in a region requires a degree of social licence from the local community and unilaterally imposing Aquaculture Zones without some degree of local consultation will not engender long term community support for aquaculture.

<p><i>Recommendation 57 - To address pre-moratorium applications “frozen” under s150B(2) of the RMA, either:</i></p> <ul style="list-style-type: none"> ▪ <i>Deem those applications that applicants wish to proceed as lodged on the first day of our new regime (rather than processed under the old legislation); or</i> ▪ <i>If some or all of these applications represent a major impediment to an effective re-start for aquaculture, consider extinguishing them by legislation.</i> 	<p><i>Agree</i></p> <p><i>Disagree</i></p>
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117. Te Ohu does not have adequate information to be able to judge the merits or otherwise of the s150B(2) applications. The TAG obviously had a process in mind by which applicants could signal that they wanted their application to proceed. Te Ohu suggests that in that process the applicants be given the opportunity to rationalize and combine their application with other applicants to minimize overlaps.

118. Te Ohu does not support extinguishing s150B(2) applications by legislation as this is inequitable, particularly where applicants have gone to significant effort and cost to develop applications that were subsequently caught up in the moratorium. The existing rules within the RMA allowing councils to reject applications that are of insufficient quality to proceed

could be applied to these applications ensuring purely speculative applications do not proceed but allowing genuine applications the opportunity to progress.

Other matters not covered by the Report

119. In accordance with the directions given to the TAG by Ministers, the Report deliberately does not address Foreshore and Seabed issues. As iwi understand these are being progressed in parallel. Ministers have stated that Government will be making decisions on both at the same time and made plain that the final resultant regimes will work together to give satisfactory results for both. We consider this is critical.

Contact Details

120. As noted Te Ohu considers that we should be involved in further work with officials in the development of appropriate policy and drafting of legislation. To assist with this or if you require further information, please contact:

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