



MĀORI FISHERIES REVIEW

Draft legislative amendments

Version for iwi comment

Te Ohu Kaimoana

7 June 2017

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Part A: Introduction and background

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Purpose

1. The purpose of this paper is to provide iwi and the Crown with the Māori Fisheries Act amendments Te Ohu has drafted to implement the resolutions passed by iwi following the Māori Fisheries Review, and the explanation for those changes.
2. We are providing this draft to iwi for comment before finalising it and forwarding to the Crown. In doing so our intention is to enable implementation of the decisions that have already been made. We welcome any feedback iwi have by **Friday 7 July 2017** on the way their decisions are proposed to be reflected in the legislation.

Introduction

3. On 30 September 2016, we forwarded our report to the Minister for Primary Industries on the outcomes of the Māori Fisheries Review. Aside from matters relating to Te Pūtea Whakatupu, the report advised the Minister of the changes required to implement decisions iwi have made following the review, including legislative amendments.
4. In March 2017, iwi passed additional resolutions relating to Te Pūtea Whakatupu. Some of the resolutions require implementation through amendments to the Māori Fisheries Act 2004 (MFA).
5. A draft amended MFA has now been completed. The final draft will be used as a guide for officials and Parliamentary Counsel to ensure the decisions made by iwi are reflected appropriately in the final legislation.
6. We are providing the opportunity for iwi to review the draft amendments and this explanatory paper, and make comments if they wish before we send it to the Minister.
7. In the remainder of this part of the paper, we outline the principles and implementation approach we have taken. In Part B, we provide a guide to the legislative changes, based on the implementation plan included in the report to the Minister. Where relevant each section identifies:
 - a. the key resolutions affecting each entity or key issue
 - b. matters that need to be implemented through a legislative amendment
 - c. the draft amendments.
8. Some consequential amendments, for instance to ensure the current tax status of the entities is retained, are reflected in different parts of the MFA and we explain them in one part of our outline (see page 57). Other minor 'clean-up' amendments to the Act are being included at the same time and these are identified in the paper.
9. The detailed background to the amendments we provided to the Minister, including all resolutions iwi have agreed to, is included as **Appendix 1**.
10. A draft, fully amended version of the MFA is provided alongside this paper as a separate document.

Guiding principles

11. When members of the first Iwi Working Group (IWG) prepared their assessment of the reviewer’s recommendations, they developed a set of principles to guide their analysis of the merits of the proposed changes against the existing governance arrangements (see Table 1).

Table 1: principles developed by the first Iwi Working Group

Principle	Definition
Rangatiratanga	<ul style="list-style-type: none"> Self-determination: iwi are able to make their own decisions
Kotahitanga	<ul style="list-style-type: none"> Acting collectively for the benefit of all
Durability	<ul style="list-style-type: none"> Distinct Māori fishing industry/sector that endures – maintains/grow value Settlement generates benefits across the generations Politically acceptable
Connection	<ul style="list-style-type: none"> Ensures recognition that customary rights include commercial and non-commercial aspects Encouraging alignment between iwi, settlement entities and beneficiaries All Māori benefit from the Settlement regardless of whether they affiliate to their iwi
Concentration	<ul style="list-style-type: none"> Making sure individual aspirations don’t undermine collective aspirations (balance between individual/collective aspirations)
Diversity	<ul style="list-style-type: none"> Cognisant of differences in and between beneficiaries and responsive to their aspirations Respecting and supporting the differences between individual iwi (including size, geography, aspirations, wealth and capability)
Performance (effectiveness and efficiency)	<ul style="list-style-type: none"> Effective delivery of benefits at an appropriate cost Deliver benefits in a way that is consistent with Māori values
Transparency / Accountability	<ul style="list-style-type: none"> Beneficiaries have access to information on entities activities to base decisions on Entities can be held to account by beneficiaries

12. In carrying out their analysis, the IWG commented on:
- a. The tension between **rangatiratanga** and **kotahitanga**: iwi value their independence and aspire to make their own decisions over their assets. On the other hand, to protect their interests, there are times when iwi need to work together as one.
 - b. The need to maintain a balance between concentration and connection. To maintain an appropriate balance between rangatiratanga and kotahitanga, incentives are needed to minimise **concentration** and create **connection**. Iwi need to be connected to the entities working with them and on their behalf so that they can participate as they see fit, and be confident the entities are responsive to their needs and aspirations: our commercial operations should not ignore their origins in customary rights. Iwi are at different stages of their development and have different priorities. Incentives are needed for entities to be responsive to **diversity** - the different needs of individual iwi based on their size, geography, wealth and capability. One size does not fit all.
 - c. **Performance** should underpin any governance system to ensure that benefits can be delivered at an appropriate cost. **Transparency and accountability** are essential to ensure that beneficiaries receive the benefits they want, or can take action to address poor performance.
 - d. The governance arrangements underpin a full and final Treaty Settlement intended to benefit all Māori for all time. These benefits are intended to be intergenerational. The design of the entities and their governance arrangements should ensure **durability**.
13. As we have worked through the MFA to identify where amendments need to be made, we have had to consider the integrity of the whole Act and ensure the amendments reflect the decisions iwi have made. The IWG's principles provide guidance to the work we have done to translate the decisions iwi have made into legislative amendments.

Implementation plan and related amendments

14. In our report to the Minister, we identified three paths to implement the decisions iwi have made. These are summarised below.

The Māori Fisheries Act 2004

15. The Act provides for the fundamental building blocks of the settlement, such as the allocation model (the method for allocating settlement assets to iwi, the governance arrangements between iwi and the various fisheries settlement entities and the restrictions on the sale of settlement assets within the settlement pool), and the obligations of the Crown (including the settlement quantum of 20% of new fish-stocks introduced into the QMS). These can only be changed if Parliament amends the MFA.

Trust Deeds and Constitutions

16. Trust deeds and constitutions contain the rules for administration of relevant entities. The Act sets out the matters that must, at a minimum, be provided for in these documents. In most cases, the rules and processes are detailed in the constitutions and deeds and can be amended according to a process set out in each document without the need to go back to Parliament.

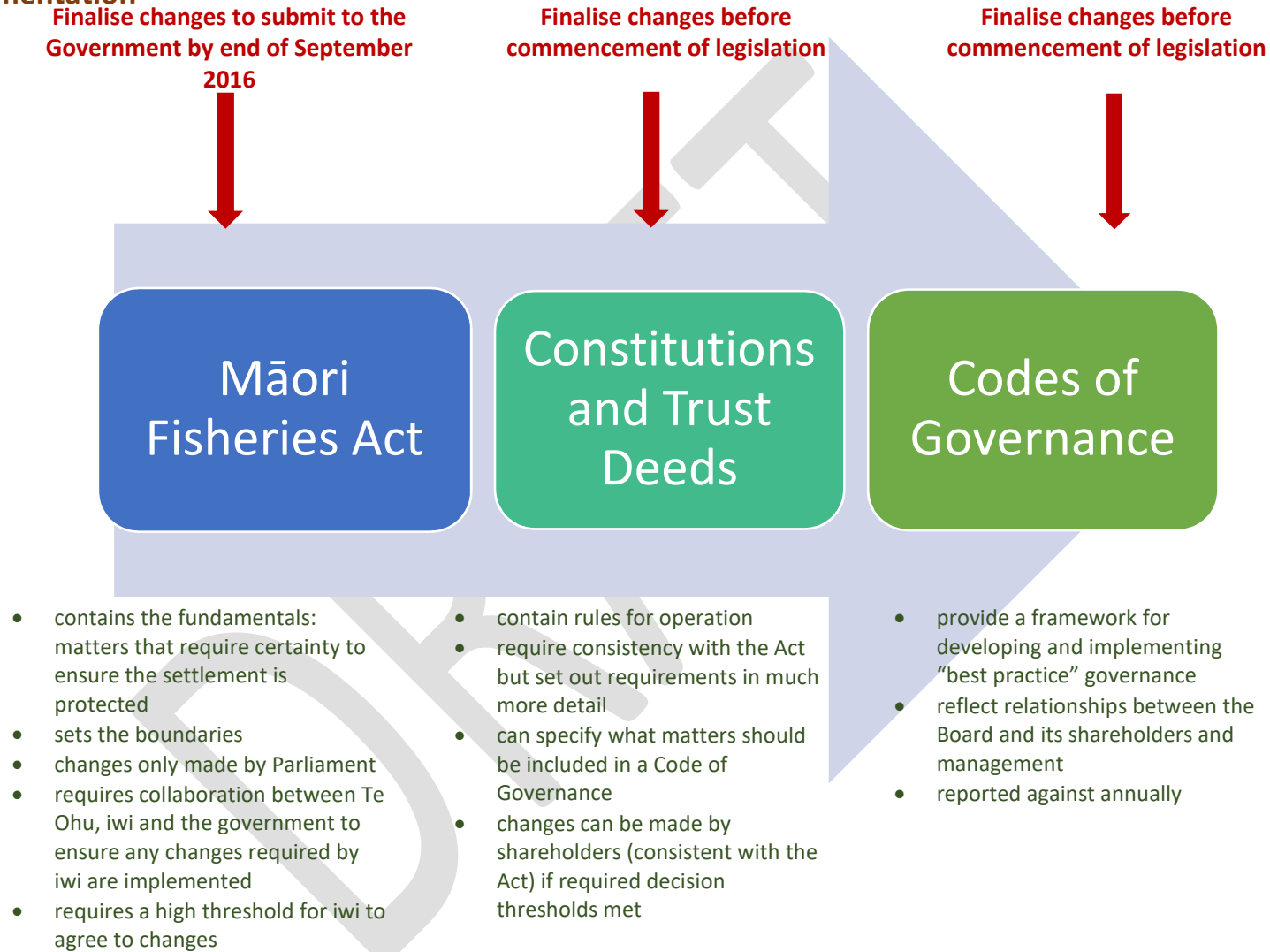
Codes of Governance

17. Codes of Governance or Charters can be used by Boards to set out their governance policies. They cover the Board's relationship with shareholders, Board procedures, Committees and their Terms of Reference, remuneration of directors, relationship with management and so on. Boards generally report against their Codes of Governance annually. AFL's constitution already requires the Company to prepare and publish a "Corporate Governance Code" and to report annually against it.
18. The relationship between the Act, the deeds and constitutions and codes of governance is summarised in Figure 1.

Implementation approach

19. As we reported to the Minister, the approach we have taken to design the implementation of the decisions iwi have made is to provide for as much flexibility as possible by enabling the detail of policies to be set out in constitutional documents and Codes of Governance within the clear boundaries set by the legislation. The detailed implementation plan we provided in our report is attached at **Appendix 2**.
20. In the remainder of this document, we outline the amendments that need to be made to the MFA. These amendments are the "fundamentals" of the future governance regime. Once it is amended, the MFA will provide the framework for constitutions, trust deeds and codes of governance to be updated.

Figure 1: Implementation



PART B: Outline of draft amendments to the Māori Fisheries Act

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Introductory parts of the Māori Fisheries Act including key concepts and definitions

Basis for amendments

21. The introductory parts of the MFA contain a list of contents, a preamble explaining the background to the MFA and a section specifying when the MFA comes into force. The draft amendments in these sections reflect the overall changes being sought.
22. **Part 1** of the MFA covers the purposes, key concepts and key iwi organisations. **Section 5**, “Interpretation” contains definitions. Where relevant these have been amended. For example “voting” and “income” shares will be removed from the MFA and be replaced with “ordinary shares”. Also note the definitions of “special resolution” which reflect the normal thresholds under the Companies Act. For Te Ohu a special resolution requires agreement of 75% of MIOs who vote (assuming 1 iwi: 1 vote) and for AFL it will be 75% by shareholding by virtue of the Companies Act. For both, there is a higher threshold for votes to implement review recommendations.
23. **Subpart 3** contains provisions around the functions and powers of mandated iwi organisations (MIOs) and asset holding companies (AHCs). These have been amended where necessary to reflect the new governance arrangements in which MIOs appoint the directors of Te Ohu Kaimoana, and AHCs appoint the directors of AFL.
24. As many iwi reach Treaty settlements with the Government, they must establish new Post Settlement Governance Entities (PSGEs). Many iwi wish to have these new entities replace their existing MIO, while retaining their existing AHC.
25. An amendment is needed to allow for the ownership of an existing AHC to be transferred to a new MIO recognised by Te Ohu, avoiding the need for iwi to establish a new AHC and incur the expenses of transferring settlement quota from the existing AHC to the new AHC (s16A-16G of the Act refers). Draft technical amendments have been made to provisions for a new MIO to replace an existing MIO to enable the shares in an AHC to be transferred to the new MIO (**section 16 (1) (a) and s 18E**).
26. Continuity of ownership of these entities is also provided for to protect the existing tax status of the entities (**section 18E**). Links are also made to the funding levy to be provided for later in the MFA (**section 23 (3)**) and references to Te Kāwai Taumata are deleted throughout. Other technical matters have been tidied up.
27. An outline of the sections in Part 1 that have been deleted, amended or added is set out below.

Introductory parts of the Māori Fisheries Act including key concepts and definitions

Part of the Act	Relevant sections	Nature of Amendment	Reason
Contents		Makes consequential amendments to contents	To reflect all resolutions and policy decisions
Preamble	Sections 16 – 22 of the preamble	Adds an explanation of the background to the review and basis for amendments	To document the reasons for change
Commencement	Section 2	Note comment that the Act will come into force some months after the date on which it receives the royal assent.	To enable Te Ohu to amend constitutions and trust deeds. Note one provision will need to come into force straight away (s211A) to enable the Redeemable Preference shares (RPS) to be unwound and issue of income shares to Te Ohu for eventual distribution to iwi (see section on “Other matters”, page 57).
Part 1: Purposes of Act, key concepts and key iwi organisations			
Outline of the Act	Section 4 (5) (h)	Amends to remove reference to Te Kāwai Taumata.	Iwi resolutions 2 and 3, June 2015: Te Kāwai Taumata (TKT) no longer required.
Interpretation	Section 5	Makes consequential amendments to definitions to reflect policy changes including: <ul style="list-style-type: none"> • a new definition for Aotearoa Fisheries Group (AFL) Group which includes its sub-companies • a definition for “charitable status” explaining it means the entity concerned is a charitable entity as defined under charities legislation • amend “general meeting” to clarify that recognised iwi organisations participate 	

Part of the Act	Relevant sections	Nature of Amendment	Reason
		<ul style="list-style-type: none"> define “notional iwi population” (for clarity) define “ordinary share” (<i>note “income share” is replaced with “ordinary share” throughout the Act</i>) amend “settlement assets” to include any share in AFL referred to in s68 or issued under the authority of s 211A (relating to the RPS) (ensures all shares are classified as settlement assets) amend “special resolution” in respect of Te Ohu Kaimoana to 75% of MIOs/RIOs entitled to vote and voting on the matter amend “sale” to include AFL shares amend “Te Ohu Kai Moana Group” to exclude AFL and its subcompanies (AFL will no longer be governed as part of the Te Ohu Group) delete definitions that are no longer relevant 	
Subpart 3 – Iwi Organisations			
Functions and powers of mandated iwi organisations (MIOs)	Section 12 (1)(b)	<ul style="list-style-type: none"> Amends by including a reference to attending, speaking and voting at meetings contemplated by the Act 	Links to direct control MIOs will have over Te Ohu Kaimoana
	Section 12 (c)	<ul style="list-style-type: none"> Deletes reference to process for appointing Te Kāwai Taumata 	TKT no longer required
Functions and powers of asset holding companies (AHCs)	Section 16 (1) (a)	<ul style="list-style-type: none"> Amends to enable ownership of an AHC to be transferred to a MIO that replaces a former MIO 	Clean-up: technical amendment to enable new MIOs to take ownership of the previous MIO’s AHC
	Section 16 (2) (a)	<ul style="list-style-type: none"> Deletes prohibition on a MIO entering into a transaction relating to or affecting its income shares unless the MIO has complied with s 69 – 72 Amended to include a requirement on AHCs who propose to enter into any transaction or exercise any power or right in relation 	Refers to sections that will be deleted to create a simpler trading process

Part of the Act	Relevant sections	Nature of Amendment	Reason
		to settlement quota AFL shares to act in accordance with a specific or general direction from the MIO as contemplated by Kaupaua 11 Schedule 7	Confirms AHCs must gain approval of their MIO before they can enter into a transaction involving their shares.
	Section 18A	<ul style="list-style-type: none"> Amends “specified income shares” to “specified ordinary shares” Amend “specified settlement assets” to replace “income shares” with “ordinary shares” 	
	Section 18B (5) (b) (ii)	<ul style="list-style-type: none"> Includes the option for shares in an AHC to be transferred to a new MIO 	Clean-up: technical amendment
	Section 18E (1) (b) (i) and (ii); section 18E (3)	<ul style="list-style-type: none"> Includes the option of transferring shares in the AHC to the new MIO 	Clean-up: technical amendment
	S18E (6)	<ul style="list-style-type: none"> Amended to include a provision stating that for the purpose of the Inland Revenue Acts, the new organisation must be treated as having held the specified settlement assets at all times since those assets were acquired by the existing organisation 	Intended to ensure continuity of ownership for tax purposes
Reorganisation of specified mandated iwi organisations	S 20 (3) (a)	<ul style="list-style-type: none"> Remove “specified in column 2 of Schedule 3” from the reference to notional iwi population as it is covered under the definition of “notional iwi population” in section 5 	Tidy up and clarification
	Section 22 (2) (b)	<ul style="list-style-type: none"> delete 	No longer necessary
	Section 22 (3)	<ul style="list-style-type: none"> included to state that for the purposes of the Inland Revenue Acts, the withdrawing group must be treated as having held the assets referred to in s 20 (3) (b) at all times since those assets were acquired by the joint mandated iwi organisation 	Provides for continuity of ownership for tax purposes

Part of the Act	Relevant sections	Nature of Amendment	Reason
	Section 23 (2)	<ul style="list-style-type: none"> Deletes requirement that only the JMIO can exercise voting rights in respect of appointments to TKT or a Committee of Representatives (no longer required) 	There will not be votes for TKT or Committee of Representatives
	Section 23 (3)	<ul style="list-style-type: none"> Includes references to sections identifying decisions on the implementation and payment of a levy where based on the notional iwi population 	
	Section 23 (4)	<ul style="list-style-type: none"> Adds a requirement on a JMIO and withdrawing MIO to notify Te Ohu Kaimoana of their agreed notional populations and provide for Schedule 3 to be read as such. 	To ensure the JMIO and new MIO have agreed proportions of the population specified in Schedule 3 for the JMIO
Recognised iwi organisations (RIOs)	Section 27 (da)	<ul style="list-style-type: none"> Clarifies that the functions of a RIO include attending, speaking and voting at any general meeting of Te Ohu Kaimoana 	Technical tidy that aligns with MIO rights
	Section 27 (e)	<ul style="list-style-type: none"> deletes provision for RIOs to vote on appointing or removing a member of TKT 	No longer required
Representative Māori Organisations	Section 29	<ul style="list-style-type: none"> deleted 	Consistent with Resolutions 2 and 3, June 2015 TKT and the Committee of Representatives will no longer exist.

Te Ohu Kai Moana

Resolutions

JUNE 2015

- **RESOLUTION 3:** That Te Ohu Kaimoana Trust/Te Ohu Kaimoana Trustee Ltd be significantly restructured and works on priorities agreed by iwi to protect and enhance the settlements, including undertaking advocacy and policy advice for iwi (binding).
- **RESOLUTION 17:** That, notwithstanding that the “straw tangata” model proposed by the IWG is outside the scope of the resolutions that iwi can make in response to the review, that this model is supported by iwi and should be taken to the Minister for Primary Industries for implementation (non-binding).

AUGUST 2016

- **RESOLUTION 4b:** That any surplus funds be distributed to iwi on an equal basis (non-binding).
- **RESOLUTION 5:** That TOKMTL (Te Ohu) seeks to amend the Māori Fisheries Act 2004 and the TOKM Trust Deed to also allow distributions, as directed by each MIO, to any charitable entity and/or for any charitable purpose (not just to a MIO or for fishing related purposes), within each MIO group structure to receive distributions (non-binding).
- **RESOLUTION 6:** That TOKMTL (Te Ohu) seeks to amend the Māori Fisheries Act 2004 to include a compulsory levy model (which charges iwi in proportion to population as set out in column 3 of Schedule 3 of the Māori Fisheries Act 2004) which does not apply immediately, but can be triggered by a vote of iwi at any time in the future (requiring approval of 75% or more of the MIO, representing at least 50% of the total notional iwi population in column 3 of Schedule 3), should iwi decide that this is the best on-going funding option (non-binding).

Basis for amendments

28. In September 2016, we reported that the following changes need to be made to implement the binding resolutions passed by iwi:
- a. Governance of AFL needs to be removed from Te Ohu’s duties and functions and its voting and income shares transferred to iwi
 - b. Te Ohu’s primary focus will be to protect and enhance the settlements
 - c. Iwi, through MIOs, need to directly control the appointment and removal of Te Ohu’s directors, approve Te Ohu’s strategic plans and pool of directors’ fees.
29. We have provided for these key changes as follows:
- a. **Section 34 (m)** is deleted to remove the duty of Te Ohu to appoint the directors of AFL

- b. **Section (35 (1) (f))** is deleted to remove Te Ohu's function as the voting shareholder of AFL
 - c. Te Ohu's future focus is already provided for through its purpose (**section 32**) and those duties and functions that will remain (**sections 34 and 35**)
 - d. Director appointments and approval of Te Ohu's strategic plan by MIOs is provided for (**sections 36 (1) (b) (ii) and 44 (2) (b)**).
30. As we said, consequential changes in governance processes are also needed, consistent with the recommendations of the first IWG and further engagement by Te Ohu. As a consequence the following matters must be provided for in the constitution:
- a. 5 – 7 directors for Te Ohu appointed by MIOs at an AGM (**s44 (2) (b)**)
 - b. MIOs will vote on the basis of 1 iwi:1vote (as above)
 - c. Iwi will approve three year strategic plans (as above)
 - d. A process for appointing directors (**s 44 (2) (ba)**)
 - e. Three year terms for directors, with the ability to be re-appointed (**section 44 (2) (da)**).
 - f. A process for removing directors
 - g. Approval by MIOs of the total pool of directors' fees at an AGM (**DC to include in matters for constitution**).
31. Some non-binding resolutions passed by iwi also require changes to the MFA to:
- a. Enable any surplus funds to be distributed to iwi on an equal basis
 - b. Enable distributions to be made by Te Ohu, as directed by each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure
 - c. Include a compulsory levy regime which charges iwi in proportion to population and which can be triggered by a vote of iwi at any time (requiring approval of 75% or more of the MIOs representing at least 50% of the population).
32. Any legislative changes should not compromise the charitable status of Te Ohu Kaimoana and other fisheries settlement entities.
33. Provision for a review of Te Ohu's funding is included in the regime for reviewing the overall structural arrangements, however that does not prevent Te Ohu from carrying out a funding review at other times. Note the review provisions are dealt with later in this document.

Distribution of surplus funds

34. Iwi will approve Te Ohu's strategic plans every three years. Within each planning cycle Te Ohu will need to monitor the funds available to Te Ohu to determine whether:
- a. it has sufficient funds to cover its work programme for at least the next three years, or
 - b. some of its accumulated funds are surplus to requirements and able to be distributed.
35. Te Ohu will need to develop policies to determine the point at which it can be satisfied it has surplus funds that can be distributed. As per the August 2016 resolution, such distributions would be made to iwi on an equal basis. They would also be able to be made, as directed by

each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure.

36. A new section on surplus funds has been incorporated in the MFA (**section 59C**). This is necessary to avoid confusion between the distribution of surplus funds, and Te Ohu's existing ability under s 35 (1) (g) (i) of the MFA to "apply the funds of the Trust by way of payments to mandated iwi organisations" to achieve Te Ohu's purpose. These latter may or may not necessarily include all iwi at any one time.

Key elements of a compulsory levy

37. Iwi have agreed that a levy model should be included in the MFA that can be triggered at any time in the future should they decide this is the best on-going funding option.
38. As iwi will need to consider what services a levy will be paying for, any levy option needs to be considered as part of Te Ohu's broader strategic planning cycle where decisions are made by iwi about Te Ohu's strategic objectives. That being the case, a structured process is needed to ensure Te Ohu can analyse the implications of a levy and present a proposal to iwi for consideration. These matters are provided for in **section 55 – 59B**.

Te Ohu Kaimoana: Outline of amendments

Part 2: Establishment and review of new entities			
Outline of this part	S 30 (b)	<ul style="list-style-type: none"> Reference to Te Kāwai Taumata deleted 	No longer relevant
Subpart 1: Te Ohu Kai Moana and Te Ohu Kai Moana Trustee Ltd			
Functions and duties	Section 34 (m)	<ul style="list-style-type: none"> Deleted to remove duty of Te Ohu Kai Moana to appoint directors of AFL 	Consistent with Resolutions 2 and 3, June 2015
	Section 34 (q)	<ul style="list-style-type: none"> Deleted as no longer required 	The section is spent.
	Section 35 (1) (f)	<ul style="list-style-type: none"> Deleted to remove Te Ohu's function as the voting shareholder of AFL 	
Trust Deed of Te Ohu Kai Moana	Section 36 (1) (b) (ii)	<ul style="list-style-type: none"> Amended to require Te Ohu to develop a strategic plan to be approved by MIOs and RIOs at an AGM at least every 3 years Note the strategic plan must indicate whether there would be a likely need for a funding levy 	Consistent with IWG (I) Recommendations supporting Resolutions 2 and 3, June 2015
	Section 36 (1) (c)	<ul style="list-style-type: none"> Amended to require Te Ohu to circulate drafts of the annual plan for comment prior to its adoption 	As above
	Section 36 (1) (d)	<ul style="list-style-type: none"> Inserted to require Te Ohu Kai Moana Trustee Ltd's constitution to provide that only MIOs and RIOs may vote and each iwi has one vote 	As above
	Section 36 (1) (f) (iii)	<ul style="list-style-type: none"> Deleted to remove provision for fees for TKT and the Committee of Reps (no longer required) 	As above
	Section 36 (1) (g) (ii) (A)	<ul style="list-style-type: none"> Amended to include the ability of a MIO to nominate an entity with charitable status to benefit members of the relevant iwi to receive their share of assets of Te Ohu Kai Moana on termination. 	Consistent with amendment being made to cover distribution of surpluses. Intended to protect the charitable status of Te Ohu Kai Moana.
	Section 36 (1A)	<ul style="list-style-type: none"> Inserted to provide that if the strategic plan is not approved by MIOs and RIOs at an AGM, the current strategic plan remains in force until 	Practical solution to potential problem

		a new plan is approved at a general meeting of Te Ohu Kai Moana Trustee Ltd	
Matters to be included in annual plan	Section 37 (d)	<ul style="list-style-type: none"> Deleted as budget for TKT no longer required 	
	Section 37 (e) (i); Section 37 (d)	<ul style="list-style-type: none"> Deleted reference to budget for reviews and audits under 114 (2) and (3) (a) and replaced with <i>new section 37 (d)</i> which requires a budget for a review under Subpart 6. 	Consequential amendment to review provisions (see sections 114 – 127)
	Section 37 (e) (ii)	<ul style="list-style-type: none"> Deletes reference to a budget for a committee of representatives 	
	New Section 37 (e)	<ul style="list-style-type: none"> Amends to require the annual plan to include the “pool of fees” that apply for directors of Te Ohu Kai Moana, Te Wai Māori and Te Pūtea Whakatapu Includes reference to alternate directors 	Consistent with IWG 1 recommendations supporting Resolution 2 and 3, June 2015
	New Section 37 (f)	<ul style="list-style-type: none"> deletes references to payments to “alternate members” of the Committee of Reps includes a reference to “alternate directors” of the trusts 	
Annual Report of Te Ohu Kai Moana Trustee Ltd	Section 38 (2) (a)	<ul style="list-style-type: none"> includes recognised iwi organisations amongst those to whom Te Ohu Kai Moana Trustee Ltd must report annually 	Clean-up
	Section 38 (2) (b)	<ul style="list-style-type: none"> deleted to remove members of TKT from those to whom Te Ohu Kai Moana Trustee Ltd must report 	
	Section 38 (3) (b) (ii)	<ul style="list-style-type: none"> deletes AFL from the entities whose activities Te Ohu Kai Moana must describe (as it is no longer part of the Te Ohu Group) 	Consistent with change of governance
	Section 38 (3) (e)	<ul style="list-style-type: none"> removes requirement to describe each sale of income shares sold under section 71 	Consistent with change of governance
	Section 38 (3) (i)	<ul style="list-style-type: none"> removes directors of AFL from the list of any appointments to be included in an annual plan 	Consistent with change of governance
	Section 38 (4) (b) (i)	<ul style="list-style-type: none"> amended to update reference to s 37 (1) (e) 	Consequential amendment

	Section 38 (4) (b) (ii)	<ul style="list-style-type: none"> deletes references to fees “expressed in bands of \$10,000”. 	Will now require specific fees rather than bands
	Section 38 (4) (c) and (d)	<ul style="list-style-type: none"> amended to include a requirement to include in the annual report that disclosures required of directors for any contract for service to Te Ohu Kai Moana, and any other disclosures required by any other Act 	Reflects best practice
Consultation and other reporting obligations	S 39 (1) (b)	<ul style="list-style-type: none"> includes recognised iwi organisations amongst those who should be provided with information listed deletes reference to TKT 	Clean-up Consequential amendment
Obligation to establish and maintain iwi register	S 40 (3) (g)	<ul style="list-style-type: none"> remove reference to the requirement to list the transfer or exchange of settlement quota 	Sales and exchanges will be registered through FishServe
Review of revenue requirements	S 41	<ul style="list-style-type: none"> deleted 	these provisions are spent and to avoid confusion they should be deleted.
	S 42	<ul style="list-style-type: none"> deleted 	as above
Allocation and transfer of surplus loan funds	S43	<ul style="list-style-type: none"> deleted 	as above
Constitution of Te Ohu Kai Moana Trustee Ltd	S 44 (2) (b); s 44 (2) (ba)	<ul style="list-style-type: none"> Amended to provide for at least 5 directors and not more than 7 Amended to require that each director must be appointed in accordance with procedures specified in the constitution of Te Ohu Kai Moana Trustee Ltd 	Reflects Resolution 3, June 2015 and the IWG recommendations that supported the resolution: number of directors; direct appointments by MIOs.
	S 44 2 (c)	<ul style="list-style-type: none"> Amend to provide that a vacancy need only be filled by directors if the number of directors has dropped below the minimum, but enable directors to fill a vacancy until the next AGM if they choose 	
	S 44 (2) (d)	<ul style="list-style-type: none"> Deleted to remove reference to Te Kāwai Taumata 	Consistent with above

	New s44 (2)(da)	<ul style="list-style-type: none"> Sets out 3-year term of office for directors and specifies directors are eligible for reappointment 	Consistent with above Wording simplified
	S 44 (2) (e)	<ul style="list-style-type: none"> Amended to remove legislated criteria and replace them with a requirement that Te Ohu notify a policy to MIOs identifying the skills, experience and attributes considered desirable for directors, individually and collectively. 	The fact that MIOs will vote for directors poses the question as to whether the legislated criteria are appropriate. Development of a policy in consultation with MIOs is more appropriate.
	S 44 (2) (fa)	<ul style="list-style-type: none"> Enables directors to fill a vacancy until the next AGM 	
	New s44 (2) (h)	<ul style="list-style-type: none"> Amended to enable directors to contract for services to Te Ohu Kai Moana Group and require them to fully disclose that fact to directors and require the disclosure to be made in the annual report of all payments (including expenses) Includes a requirement that all other directors must give prior approval to a director undertaking (directly or indirectly) any contract for services for Te Ohu Kai Moana Trustee Ltd 	Consistent with best practice. Ensures transparency – should be consistent across the trusts
	S 44 (2) (j)	<ul style="list-style-type: none"> Deleted to remove restrictions on the appointment of the chair and deputy chair of Te Ohu Kai Moana Trustee Ltd to other entities under the Act 	Removes restrictions on appointment to AFL or subtrusts. <ul style="list-style-type: none"> AFL is no longer part of the Te Ohu Kai Moana Group Consistent with the Straw Tangata
	S 44 (2) (k)	<ul style="list-style-type: none"> Amended to require a procedure to amend the constitution by special resolution (75% of MIOs and RIOS who vote) 	Reflects the change in governance
	S 44 (2) (m) (i) and (ii)	<ul style="list-style-type: none"> Amended to require notice to MIOS, RIOS and RMOs Deletes reference to Te Kāwai Taumata 	
	S 44 (2) (n)	<ul style="list-style-type: none"> Includes RIOS 	Clarifies what should already occur
	S 44 (3)	<ul style="list-style-type: none"> Deletes requirement for the constitution to provide for a specific power of sale in relation to income shares and settlement quota 	Consistent with future role of Te Ohu Kaimoana, which will not include ability to purchase and sell settlement assets

Appointment of directors	S 45 - 49	<ul style="list-style-type: none"> • Deleted to remove: <ul style="list-style-type: none"> ○ references to appointment by the Minister of Māori Affairs of the first directors of Te Ohu Kai Moana Trustee Ltd, which are now redundant ○ provision for Te Kāwai Taumata to appoint directors ○ 4-year term of office for directors ○ Restrictions on reappointment of directors ○ Restrictions on members of Te Kāwai Taumata becoming directors of Te Ohu Kai Moana Trustee Ltd ○ Provisions for the Minister of Māori Affairs or Te Kāwai Taumata to remove directors 	<p>Consistent with Resolution 3, June 2015 relating to direct appointments of directors by mandated iwi organisations, and supporting recommendations of the IWG (1) report.</p> <p>Directors have 3 year terms and can be reappointed (s 44 (2) (da))</p>
	New s45	<ul style="list-style-type: none"> • Included to provide a transition enabling directors appointed by Te Kāwai Taumata to remain in office until their terms expire or they are removed in accordance with Te Ohu Kai Moana Trustee Ltd's constitution 	Ensures continuity during the transition to the new regime
Effect of vacancy in membership of Te Ohu Kai Moana Trustee Ltd	S 50	<ul style="list-style-type: none"> • Amended to provide that if a vacancy occurs it doesn't affect functions and powers of Te Ohu as long as membership doesn't fall below 5 • But also enables remaining directors to fill a vacancy under s 44(2) (fa) 	
Access to iwi register	S 52 (1) (c)	<ul style="list-style-type: none"> • Deleted to remove reference to Te Kāwai Taumata 	
Rule-making procedures	S 54 (1) (a)	<ul style="list-style-type: none"> • restricts rules applying to settlement quota transactions to exchanges with non-settlement entities. 	Resolution 12, June 2015 Retention of restrictions on sales but simplification of sales process
Subpart 2 Te Kāwai Taumata	Sections 55 - 59	<ul style="list-style-type: none"> • Deleted to remove role and functions of Te Kāwai Taumata 	Consistent with Resolution 3, June 2015 and supporting recommendations of the IWG report re direct appointment of Te Ohu's directors by MIOs.
<i>New Subpart 2: Funding of Te Ohu Kai Moana Trustee Ltd</i>			

Applications of this subpart	S 55 (1) (a) and (b)	<ul style="list-style-type: none"> • Clarifies this subpart applies if: <ul style="list-style-type: none"> ○ A simple majority of MIOs/RIOs requests Te Ohu to initiate the levy funding process, or ○ The directors of Te Ohu are satisfied a funding levy is likely to be needed to enable it to perform its functions and duties efficiently and effectively in any of the years in which the levy would be payable 	Provides a mechanism for considering whether a levy is needed
	S 55 (2)	<ul style="list-style-type: none"> • The directors can only form a view on the above if a likely need for funding is indicated in an approved strategic plan 	
	S 55 (3)	<ul style="list-style-type: none"> • Provides that if the subpart applies, Te Ohu must prepare a proposal to impose a levy on MIOs and RIOs and send it to each organisation 	Provides for a detailed proposal to be developed for further consideration by MIOs/RIOs
Purpose of funding levy proposal	S 56	<ul style="list-style-type: none"> • The purpose of a funding levy proposal is to provide Te Ohu with sufficient funding, having regard to its likely other funding sources and likely reserves (if any), to enable it to perform its functions and duties, or such of them as are specified in the proposal, efficiently and effectively in the years for which the levy would be payable 	Clarifies the purpose of a levy
Funding levy proposal	S 57 (1) (a) – (h)	<ul style="list-style-type: none"> • Requires a proposal to specify: <ul style="list-style-type: none"> ○ the anticipated cost in each year in which the levy would apply ○ the maximum levy proposed in each year ○ the assumptions supporting the maximum levies including other funding sources, use of reserves, carry forward of previous levies and inflation ○ circumstances in which less than the maximum would be imposed in any year ○ the likely impact on the delivery of the current strategic plan if a levy proposal is not implemented ○ that the levy would be applied to each MIO/RIO according to their notional population ○ the intended due dates for payments and interest rate formula proposed to be applied to payments that are in default 	

		<ul style="list-style-type: none"> ○ any proposed methods of recovery of unpaid levies 	
	S 57 (2)	<ul style="list-style-type: none"> • a levy must specify the years to which it applies, with a maximum of 9 years. 	Assumed the maximum period would include three strategic planning cycles.
Notice of consideration and adoption of funding levy proposal	S 58 (1)	<ul style="list-style-type: none"> • Te Ohu must, not earlier than 20 working days after sending the proposal to MIOs/RIOs, convene a general meeting to consider the proposal 	
	S 58 (2)	<ul style="list-style-type: none"> • Provides that the proposal may be adopted without amendment 	
	S 58 (3)	<ul style="list-style-type: none"> • Requires Te Ohu to revise the proposal and convene a further meeting if any amendment is proposed by any MIO or Te Ohu and endorsed by an ordinary resolution of MIOs/RIOs 	
	S 58 (4)	<ul style="list-style-type: none"> • A resolution to adopt a levy proposal requires the approval of 75% of MIOs/RIOs representing not less than 50% population 	
	S 58 (5)	<ul style="list-style-type: none"> • If a resolution is not adopted, MIOs/RIOs must not requisition Te Ohu to initiate the levy funding process within 2 years after the failure of the resolution 	
Collection of levy	S 59 (1) (a) and (b)	<ul style="list-style-type: none"> • Te Ohu may recover any funding levy (including default interest) from the relevant MIO/RIO by: <ul style="list-style-type: none"> ○ deducting it from any amount Te Ohu owes to, or otherwise would be paying to the organisation, or ○ as a debt due in any court of competent jurisdiction 	
	S 59 (2) (a) and (b)	<ul style="list-style-type: none"> • A funding levy may provide that where the Crown, AFL or any other party owes money to a MIO or RIO that is in default of payment of a levy to Te Ohu, or owes money to the AHC of that MIO: <ul style="list-style-type: none"> ○ Te Ohu may request the Crown, AFL or other party to deduct all or part of the amount owed from the money payable to the organisation ○ The Crown, AFL or other party is not obliged to comply with the above request, but if it does so the debt owed by one or 	

		more of them is discharged to the extent of the amount paid to Te Ohu	
Subsequent funding levy proposals	S 59A (1)	<ul style="list-style-type: none"> Not earlier than 2 years before the expiry of a levy, Te Ohu must, if it wishes the levy to continue in its current or any amended form, prepare and distribute to MIOs/RIOs a further proposal 	
	S 59A (2)	<ul style="list-style-type: none"> Te Ohu may include the above information in a strategic plan. 	
Surplus levy funding	New s 59B	<ul style="list-style-type: none"> Provides that if Te Ohu holds levy funding in excess of what it needs it must be paid back to those who paid it on a pro-rata basis 	Ensures surplus levy funding is paid back on the basis upon which it was raised, as opposed to the way surplus capital should be distributed
Allocation and transfer of other surplus funds	New 59C (1) – (3)	<ul style="list-style-type: none"> Provides that if Te Ohu Kaimoana determines it has surplus funds (other than levy funding) it must allocate and transfer the surplus funds to MIOs on an equal basis. Distributions may only be paid to MIOs with charitable status or an entity with charitable status nominated by a MIO to benefit the iwi and its members ss (2) If there is a MIO that does not have charitable status and no nomination is made – Te Ohu must retain the allocated funds until it can comply with ss (2) 	

Aotearoa Fisheries Ltd

Resolutions

JUNE 2015

- **RESOLUTION 2: That iwi hold all AFL voting and income shares (binding).**
- **RESOLUTION 6: that special resolutions for major transactions for AFL require at least a 75% majority voting threshold (binding).**
- **RESOLUTION 19: That the alienation of assets by AFL and/or Sealord be subject to, at the very least, a binding RFR to allow iwi to buy any of their assets of those companies wanted to sell them (non-binding).**
- **RESOLUTION 12: That the disposal restrictions in the Māori Fisheries Act 2004 for settlement quota and income shares remain and that simpler trading processes are developed for iwi wishing to sell some of their assets to willing buyers within the iwi/Te Ohu Kai Moana Group pool (binding).**

RESOLUTION FROM AUGUST 2016

- **That the current legislative dividend requirement be removed from the Māori Fisheries Act, so as to allow shareholders to set the dividend policy (non-binding).**

Basis for amendments

39. The following changes need to be made to the MFA to implement the binding resolutions passed by iwi:
- a. All shares in AFL will become ordinary shares and have the same rights and benefits.
 - b. The voting and income shares held by Te Ohu will be converted to ordinary shares, and transferred to iwi through AHCs (**see section 60A and 64**).
40. Consequential changes in governance processes have been made, consistent with the recommendations of the first IWG and further engagement with iwi to support the following:
- i. AFL is to have 5 – 8 directors appointed by AHCs at an AGM
 - ii. AHCs will vote based on shareholding
 - iii. A process for appointing directors
 - iv. A three-year term for directors with the ability to be reappointed
 - v. A process for removing directors
 - vi. Approval by AHCs of the total pool of directors' fees at an AGM.
41. See **section 62** for relevant amendments. Please note that two other matters that were part of the proposals were:
- a. A provision that the constitution must not be amended in a way that affects the right or entitlements of the shareholders unless holders of at least 75% of the shareholders approve.

- b. A vote of at least 75% of shares for major transactions and significant changes in business focus (note – the requirement for a major transaction to be approved by special resolution is covered by the Companies Act.
42. These matters are covered by the Companies Act. The changes to the governance arrangements for AFL reflect a shift from a single voting shareholder (Te Ohu) to multiple shareholders (AHCs). For the most part, these changes mean the governance of the company will more closely align with that of a “standard” company and the decisions that are currently taken by Te Ohu will be made by AHCs as shareholders. These will include decisions on major transactions. In addition, the MFA currently provides that changes to the constitution that affect the rights and interest of income shareholders require the approval of the holders of 75% of income shares. Future decisions will be made by AHCs based on their shareholding.
43. A major transaction is a transaction which involves acquiring or disposing of assets or acquiring rights or incurring liabilities or obligations with a value of more than 50% of the company’s assets before the transaction¹. Iwi have resolved that special resolutions for major transactions for AFL should require at least a 75% majority voting threshold. This aligns with the definition of special resolutions under the Companies Act, along with the definition of major transaction. The Companies Act also enables the constitution of a company to require a higher threshold².
44. There may be circumstances in which iwi wish to establish a higher threshold where a decision has major implications for all iwi –bearing in mind that currently 75% of iwi hold less than 25% of the shares in AFL. Te Ohu will continue to work with AFL and iwi to identify the kinds of decisions that might require a threshold that is higher than the minimum, or transactions less significant than major transactions and reflect them in the company constitution before the amended legislation commences.

Right of First Refusal

45. Iwi agreed to a non-binding resolution that the alienation of assets by AFL and/or Sealord be subject to, at the very least, a binding RFR to allow iwi to buy any assets those companies wanted to sell. This resolution should be implemented through an amendment to the MFA, the company constitution and its code of governance.
46. The MFA will now require AFL’s constitution to include a policy on RFR, to be implemented through the Corporate Governance Code (**see section 62 (1) (i)**). The detailed procedures would be outlined in the Code, with the key concepts being:
- a. The RFR will include asset categories of quota, marine licence space, land and buildings and any business units.
 - b. Assets will be offered at market value to generate benefits for all shareholders.
 - c. If iwi can meet the market price, then iwi will be able to purchase the assets.

¹ S129, Companies Act.

² *special resolution* means a resolution approved by a majority of 75% or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question (s2, Companies Act 1993).

Minimum dividend requirement

47. Iwi agreed to a non-binding resolution to remove the requirement on AFL to pay a minimum dividend of 40% Net Profit After Tax (NPAT). This will require an amendment to the MFA. Iwi have agreed with AFL's proposal that the current dividend policy will continue in effect until the MFA is amended and will only be changed after that time if shareholders approve a different policy. A practical approach to accommodate this resolution is to provide in the legislation for shareholders to resolve in respect of any year that the requirement to pay 40% NPAT does not apply (**see section 76 (5)**).

Change of name

48. AFL is now trading under the name Moana New Zealand. We have drafted an amendment to recognise what happens if AFL changes its name (**see section 60 (3)**).

Other matters

49. All references to iwi in the part of the MFA that deals with AFL are to MIOs. We have drafted an amendment to make clear that references to MIOs in this part of the Act are to be treated as references to AHCs.
50. We have also:
- a. clarified that AHCs are required to act in accordance with the directions of the relevant MIO - as is provided for by Kaupapa 11 of Schedule 7 of the MFA (**see section 60B**)
 - b. added a provision to clarify, consistent with best practice, that any director or alternate director of AFL who undertakes any contract for services for any member of the AFL Group must obtain the prior approval of all other directors and make full disclosure in the annual report (**see section 62 (1) (j)**).

Trading AFL shares

51. The new simpler process for trading AFL shares is set out in **sections 68 – 74**. It includes the following:
- a. AHCs may sell their AFL shares to any AHC or AFL on a willing-buyer, willing-seller basis. The current provisions requiring approval of Te Ohu Kaimoana are removed.
 - b. The decision by the AHC must be in accordance with an authorisation from its MIO
 - c. A decision to sell will not be time-limited unless the MIO chooses
 - d. Te Ohu will not be permitted to buy AFL shares
 - e. AHCs must notify AFL of the sale by providing a properly completed transfer of shares document
 - f. AFL must maintain a register of shareholders and share transfers and can require evidence the transactions are authorised
 - g. AFL is to notify shareholders of any change in shareholding that is greater than 5%
 - h. Te Ohu is to maintain a public register of MIOs and AHCs to provide an independent and up-to-date source of information on parties who can trade AFL shares.
52. Enabling AFL to buy back its own shares and either hold them to re-sell, or cancel them is currently acceptable practice for limited companies (**see section 69 (2)**).

53. Protections should be retained and updated to cover any agreements a MIO/AHC has with a third party that could result in the sale of income shares to ensure they can only be sold to AHCs or AFL (**see section 72 (1)**).
54. In our report to the Minister, we commented that the prohibition on gifting should also be retained. As trading will be on a willing buyer, willing seller basis, it makes no sense to prohibit gifting as long as it takes place within the settlement pool.

DRAFT

Aotearoa Fisheries Ltd: legislative changes required

<i>Part 2, Subpart 3 -Aotearoa Fisheries Ltd</i>			
Establishment of AFL	S60 (2)	<ul style="list-style-type: none"> Deleted to remove the requirement for AFL to have voting and income shares 	Resolution 2, June 2015
	S 60 (3)	<ul style="list-style-type: none"> Inserted to provide that if AFL changes its name, all references in the Act to the company are to be treated as references to the company under its new name 	Provides greater flexibility for AFL and enables it to formally change its name to “Moana New Zealand”. Currently the company remains “AFL trading as Moana New Zealand”
Shares in AFL	New S 60A	<ul style="list-style-type: none"> Included to provide as follows: <ul style="list-style-type: none"> Voting shares in AFL are cancelled Income shares including those referred to in s 211A (relating to the RPS) are ordinary shares Protection of rights or actions taken by the holder of a voting or income shareholder prior to the change 	Resolution 2, June 2015 to enable iwi to hold AFL voting and income shares
Relationship of MIOs and AHCs in relation to AFL	New s 60B (1)	<ul style="list-style-type: none"> Included to clarify that existing references to MIOs in s 62 to 72 of the Act should be treated as references to the AHC required to hold the ordinary shares or a subsidiary to which ordinary shares have been transferred. 	Consistent with resolution 2, June 2015 and supporting IWG recommendations that propose AFL directors be appointed by AHCs.
	New 60B (2)	<ul style="list-style-type: none"> Confirms that AHCs must act in accordance with the directions of their MIO when exercising the rights and powers of a shareholder of AFL, as contemplated by section 69 and Kaupapa 11 of Schedule 7 	
	New 60B (3)	<ul style="list-style-type: none"> Clarifies 60B (2) does not require AFL to verify whether an AHC acts in accordance with a direction of their MIO but enables them to do so 	
	New 60B (4)	<ul style="list-style-type: none"> Clarifies that a failure of an AHC to comply with ss 2 does not invalidate any action taken by the AHC or AFL 	Assumes accountability is between the AHC and MIO
Duty of AFL	S 61 (2)	<ul style="list-style-type: none"> Deletes reference to s 35 (2) which prevents Te Ohu Kai Moana Trustee Ltd from holding a fishing permit or undertaking fishing 	No longer necessary given separation from Te Ohu Kai Moana Trustee Ltd

	S 61 (3)	<ul style="list-style-type: none"> Amends the approvals AFL must obtain to carry out other activities referred to in s 61 (2) (b) from an approval by Te Ohu Kai Moana Trustee Ltd to an approval by special resolution of its shareholders 	Consequential adjustment to the removal of control of AFL from Te Ohu Kai Moana to iwi
Constitution of AFL	S 62 (1) (a)	<ul style="list-style-type: none"> Removes the requirement that AFL's constitution contains a provision preventing it from passing a special resolution to approve any transaction that would be likely to have the effect of breaching s 35 (1) (c) 	No longer relevant given removal of control of AFL from Te Ohu Kai Moana to iwi
	S 62 (1) (ba)	<ul style="list-style-type: none"> Included to require that the pool of fees payable to directors must be approved by ordinary resolution of the company 	Consistent with IWG (I) recommendation that iwi approve the pool of directors' fees
	S 62 (1) (e)	<ul style="list-style-type: none"> Deletes provision enabling income shareholders to pass non-binding resolutions relating to management of the company 	No longer necessary given transfer of control of company to iwi. S 109 of the Companies Act will apply
	S 62 (1) (d)	<ul style="list-style-type: none"> Replaces income shares with "ordinary" shares 	
	S 62(1) (h) (i)	<ul style="list-style-type: none"> Amended to require AFL to establish a process for verifying that transfers of ordinary shares in accordance with s 69 and its constitution 	
	S 62 (1) (h) (ii)	<ul style="list-style-type: none"> Amended and simplified to require AFL to maintain a share register as required by the Companies Act 	Amended to be consistent with a normal company
	S 62 (1) (h) (iii)	<ul style="list-style-type: none"> Deletes requirement to record transfers only if they comply with sections 69 – 72 (relating to the current process for selling AFL income shares) 	Resolution 12, June 2015. No longer required given simpler process for trading settlement assets
	S 62 (1) (h) (iii) (new)	<ul style="list-style-type: none"> Requires AFL to notify all shareholders within one month of being informed of any transaction that has the effect of increasing or decreasing the shareholding of any shareholder by 5% or more of the total ordinary shares since the latest annual return 	
	Former s 62 (1) (i)	<ul style="list-style-type: none"> Deleted to remove requirement that if AFL is put into liquidation, distributions be made to income shareholders in proportion to their shareholdings at that time 	Resolution 2, June 2015; no longer necessary
	New s 62 (1) (i)	<ul style="list-style-type: none"> Includes a requirement that AFL must have, and notify to shareholders a policy for disposal of assets that gives priority to 	Consistent with resolution 19, June 2015 that AFL and Sealord be subject

		MIOs or AHCs to acquire them and specifying circumstances where the policy does not apply	to a binding RFR to allow iwi to buy the assets
	S 62 (j)	<ul style="list-style-type: none"> Deletes existing provision that the constitution must not be amended in a way that affects the rights or entitlements of the income shareholders unless the shareholders of at least 75% of the income shares approve 	Covered by the Companies Act
	New s 62 (j)	<ul style="list-style-type: none"> Requires the constitution to provide that any director or alternate director who undertakes directly or indirectly any contract for services for any member of the AFL group must obtain the prior approval of all the other directors, must make full disclosure to all other directors and the disclosure is also made in the annual report A similar provision must be included in the constitutional document of every subcompany 	consistent with best practice
	S 62 (1) (k) (i) and (ii)	<ul style="list-style-type: none"> Amended to enable AFL to issue ordinary shares and to acquire its own shares 	
	S 62 (1) (l)	<ul style="list-style-type: none"> Includes provision for any other matters required by the Companies Act 1993 	
Directors			
Directors of AFL	S 63 (1), (2) and (3)	<ul style="list-style-type: none"> Amends to require appointment of directors (including where there is an extraordinary vacancy) in accordance with AFL's constitution AFL must have no fewer than 5 and not more than 8 directors "as determined by its shareholders by ordinary resolution" 	
Restrictions on appointment of directors	S 64	<ul style="list-style-type: none"> Deleted 	Removal of Te Ohu Kai Moana from governance of AFL means restrictions on appointment to both no longer necessary
Directors of sub-companies	S 65	<ul style="list-style-type: none"> Deleted 	As above
Voting shares	S 66	<ul style="list-style-type: none"> Deleted 	Voting shares will cease to exist
Income shares	S 67	<ul style="list-style-type: none"> Deleted 	Income shares will become ordinary shares

Transfer of shares held by Te Ohu Kai Moana Trustee Ltd	New s 64 (1)	<ul style="list-style-type: none"> Requires all income shares held by Te Ohu Kai Moana Trustee Ltd that become ordinary shares under s 60A must be allocated to all iwi on a pro-rata basis and transferred by Te Ohu to MIOs no later than {date} (noting that the two RIOs will receive their shares once they become MIOs) 	Resolution 2, June 2015 – enables control of AFL to pass to iwi
	S 64 (2)	<ul style="list-style-type: none"> requires “all dividends and associated tax credits received by Te Ohu Kai Moana Trustee Ltd in respect of the shares referred to in subsection (1) [AFTER ENACTMENT DATE] must be allocated to all iwi on a pro rata basis and transferred MIOs at the same time as the relevant ordinary shares are transferred to them” (noting RIOs will receive theirs when they become MIOs) 	As above
	S 64 (3)	<ul style="list-style-type: none"> Included to clarify this section does not apply to any ordinary shares dividends or associated tax credits held by Te Ohu on trust under s 153 until the relevant iwi becomes entitled to receive them under that section 	
Additional ordinary shares	S 68	<ul style="list-style-type: none"> Amended to reflect change of income to ordinary shares and ensure additional shares are offered in proportion to what shareholders hold at the date of issue including those held in trust by Te Ohu Kai Moana Trustee Ltd pending transfer under s 130 	
Disposal of ordinary shares by MIOs	S 69	<ul style="list-style-type: none"> Amended to: <ul style="list-style-type: none"> clarifies MIOs may only sell their shares to another MIO in accordance with the process established in the constitution of AFL Amends other requirements as to whom MIOs may sell their shares to remove Te Ohu Kai Moana Trustee Ltd, and enable AFL to acquire its shares Allows AFL to verify that sales are between MIOs 	Resolution 12, June 2015 re simplification of process for trading settlement assets
Process for disposal of income shares by MIOs	S 70	<ul style="list-style-type: none"> Deleted to remove requirements on MIOs to notify a proposal to sell shares at a general meeting and gain approval 	As above

Disposal of income shares by Te Ohu Kai Moana Trustee Ltd	S 71	<ul style="list-style-type: none"> Deletes provision for Te Ohu Kai Moana Trustee Ltd to sell specified income shares 	Consistent with above; Te Ohu will not hold income shares (or ordinary shares) in AFL in future (unless held on trust for allocation to iwi)
Other constraints on disposal of ordinary shares	S 72	<ul style="list-style-type: none"> Amended to simplify the process for a third party to a specified transaction to require the sale of shares to other MIOs A specified transaction is a transaction with a third party or a series of transactions that could result in the sale of its ordinary shares or the iwi being disentitled to the income from the ordinary shares or the right to vote or other rights in respect of the ordinary shares for a period of more than 5 years A third party is defined as a party that is not entitled to hold ordinary shares 	
Remedy for breach of s 69 - 70	S 73	<ul style="list-style-type: none"> Amended for consistency with simpler sales provisions and removal of Te Ohu from governance 	
Exceptions to restrictions on disposal of income shares	S 74	<ul style="list-style-type: none"> Amended for consistency with simplified process 	
Transfer of assets			
Transfer of assets to AFL	S 75 (8)	<ul style="list-style-type: none"> Amended to provide that for the purpose of the Inland Revenue Acts, the value of the assets transferred under subsections (2) and (3) is included in the available subscribed capital of AFL or its sub-companies and “attributed to their ordinary shares” 	Intended to ensure that the available subscribed capital is retained once voting shares are cancelled and income shares become ordinary shares.
Payment of dividends	S 76 (5)	<ul style="list-style-type: none"> Included to provide an exception to the minimum dividend formula providing shareholders have so resolved. 	AFL/Moana resolution, August 2016
Circumstances when payments not required	S 77	<ul style="list-style-type: none"> Amended to remove redundant provisions 	

DRAFT

Te Pūtea Whakatupu

Resolutions

JUNE 2015 AND MARCH 2017

- **RESOLUTION 11: that Te Pūtea Whakatupu Trustee Ltd continue with its directors increased to a maximum of 5 with a quorum of a majority of directors (binding).**

JUNE 2015

- **RESOLUTION 17: That, notwithstanding that the “straw tangata” model proposed by the IWG is outside the scope of the resolutions that iwi can make in response to the review, that this model is supported by iwi and should be taken to the Minister for Primary Industries for implementation (non-binding).**

Basis for amendments

55. Following the High Court decision in *National Urban Māori Authority & Te Whānau o Waipareira Trust v Te Ohu Kai Moana Trustee Limited & Ors* CIV 2015-485-819 [2016] NZHC 1600, Te Ohu carried out a consultation process with NUMA, the Waipareira Trust and other urban Māori interests to develop an appropriate consultative process regarding the reviewer’s recommendations in relation to Te Pūtea Whakatupu. The consultation was aimed to address procedural flaws in the previous review process identified by the High Court. While the Court indicated the review process should continue, including Te Ohu delivering the resolutions passed by iwi at the Special General Meeting in June 2015, iwi formally confirmed those resolutions at the Hui a Tau in 2017.
56. Iwi also agreed to an additional resolution about an alternative appointing body for Te Pūtea Whakatupu directors. As the resolution may result in legislative amendment following the next Māori Fisheries Review, it is not included in the current amendment process.
57. The key changes iwi have agreed to relate to the number of directors and the quorum.
58. Consequential changes, consistent with changes to Te Ohu and Te Wai Māori, relate to:
 - a. Provisions covering the provision of services by directors to the Trust
 - b. Reduction in the number of years defined as a term from 4 to 3
 - c. The removal of the cap on the number of terms a director may serve
 - d. Removal of provisions restricting eligibility of directors for office if they hold other offices (note this does not relate to the requirements/criteria for appointment of directors).
59. Relevant draft amendments are in are set out in **Part 2, Subpart 4, sections 84 – 89**, set out below.

Te Pūtea Whakatupu: legislative changes

<i>Part 2, Subpart 4: Te Pūtea Whakatupu and Te Pūtea Whakatupu Trustee Ltd</i>			
Contents of trust deed	S 84 (1) (a)	<ul style="list-style-type: none"> Includes alternate directors as directors entitled to be paid fees and expenses in accordance with the annual plan of Te Ohu 	
Reporting obligations	S 86 (1) (b) (iv)	<ul style="list-style-type: none"> Amended to remove reference to bands of fees in \$10,000s as a matter to be reported on and to require reporting of breaches of the policy for allowances and expenses 	Specific fees should be reported
	S 86 (1) (b) (v)	<ul style="list-style-type: none"> Section requires separate reporting for contracts for service entered into by TPW or any of its directors. Amended to include alternate directors 	
Number of directors	Section 87 (2) (b)	<ul style="list-style-type: none"> Provides for a maximum of 5 directors and not less than 3 	
Terms of directors	Section 87 ((2) (d) (i)	<ul style="list-style-type: none"> Amended to reduce the length of a term from 4 to 3 years 	For consistency with other entities
	Section 87 (2) (d) (ii)	<ul style="list-style-type: none"> Amended to remove cap on the number of terms a director may serve 	For consistency with other entities
Contracts for services	Section 87 (2) (da)	<ul style="list-style-type: none"> Included to provide that any director who undertakes, directly or indirectly, any contract for services for Te Pūtea Whakatupu must obtain the prior approval of all the other directors, and make full disclosure in the annual report. 	Best practice For consistency with other entities
Extraordinary vacancies	S 87 (2) (e)	<ul style="list-style-type: none"> deleted 	Note needed.
Quorum	S 87 (2) (g) (i)	<ul style="list-style-type: none"> Amends to provide that the quorum is the majority of directors 	
Eligibility for office	S 89 (5)	<ul style="list-style-type: none"> Removes the restriction on who is eligible to be a director 	Consequence of separation of governance of AFL from Te Ohu Kaimoana, and resolution 17 (June 2015) relating to the Straw Tangata. Note this does not change the criteria for directors: section 88 is not amended.

	S 89 as a whole	<ul style="list-style-type: none">Deleted to remove restrictions consistent with other entities	Consistent with the rest. Directors would still need to meet the criteria.
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Te Wai Māori

Resolutions

JUNE 2015

- **RESOLUTION 10: That Te Wai Māori Trust/Te Wai Māori Trustee Ltd continue with its directors increased to a maximum of 5 with a quorum of a majority of directors**
- **RESOLUTION 17: That, notwithstanding that the “straw tangata” model proposed by the IWG is outside the scope of the resolutions that iwi can make in response to the review, that this model is supported by iwi and should be taken to the Minister for Primary Industries for implementation**

TECHNICAL AMENDMENT

- **TECHNICAL AMENDMENT: remove reference to the freshwater fish farming regulations from the definition of freshwater fisheries.**

Basis for amendments

60. The key changes iwi have agreed to relate to the number of directors and the quorum.
61. Consequential changes, consistent with changes to Te Ohu and Te Pūtea Whakatupu, relate to:
 - a. The provision of services by directors to the Trust
 - b. Reduction in the number of years defined as a term from 4 to 3
 - c. The removal of the cap on the number of terms a director may serve
 - d. Removal of provisions around eligibility of directors for office (note this does not relate to the requirements/criteria for appointment of directors).
62. Relevant draft amendments are in are set out in **Part 2, Subpart 5, sections 91-102**, set out below.

Definition of freshwater fisheries

63. The definition of freshwater fisheries is currently worded as follows:

***freshwater fisheries** means any fishery in freshwater in New Zealand excluding any sports fishery or unwanted aquatic life or activities conducted under the Freshwater Fish Farming Regulations 1983 (s 91).*

64. Neither the Draft Māori Fisheries Bill submitted by Te Ohu as part of *He Kāwai Amokura* nor the Māori Fisheries Bill introduced to Parliament included this exclusion. It is unclear from the Select Committee report why it was included later.
65. The purpose of Te Wai Māori is to:

*Hold and manage the trust funds on trust for and on behalf of the beneficiaries under the Deed of Settlement, in order to advance the Māori interests in **freshwater fisheries**, but not in a manner that could adversely affect the charitable status (if any) of the Trust (s 94).*

The exclusion limits the activities Te Wai Māori can advance on behalf of Māori. Assuming there is no good reason for this exclusion, we have drafted an amendment to the definition to remove reference to the Freshwater Fish Farming Regulations 1983 (**section 91**).

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Te Wai Māori: legislative changes

<i>Subpart 5 – Te Wai Māori and Te Wai Māori Trustee Ltd</i>			
Definition of freshwater fisheries	S91	<ul style="list-style-type: none"> Amend to remove exclusion for activities conducted under the Freshwater Fish Farming Regulations 1983 	There is no justification for this provision and it restricts the activities Te Wai Māori can support
Contents of trust deed of TWM Trust	S 96 (1) (a)	<ul style="list-style-type: none"> Amended to include alternate directors to those entitled to be paid fees, allowances etc 	
Reporting obligations	S 99 (1) (b) (iv)	<ul style="list-style-type: none"> Amended to remove reference to bands of fees in \$10,000s as a matter to be reported on 	Specific fees should be reported
	S 99 (1) (b) (v)	<ul style="list-style-type: none"> Section requires separate reporting for contracts for service entered into by Te Wāi Māori or any of its directors and any failure to comply with section 37 (f) 	
Constitution of Te Wai Māori Trustee Ltd	S 100 (2) (b)	<ul style="list-style-type: none"> Amended to enable a greater maximum number of directors (5) 	Resolution 11, June 2015
	S 100 (2) (d) (i) and (ii)	<ul style="list-style-type: none"> Amended to reduce the term of appointment from 4 to 3 years Amended to remove restrictions on the number of terms a director may serve 	Term amended for consistency with other entities in the Te Ohu Group Removal of restrictions reflects the greater control iwi will exercise of director appointments of Te Ohu – and provides for consistency with the Straw Tangata model (Resolution 17, June 2015)
Contract for services	Section 100 (2) (da)	<ul style="list-style-type: none"> Included to provide that any director who undertakes, directly or indirectly, any contract for services for Te Wai Māori must obtain the prior approval of all the other directors, and make full disclosure in the annual report. 	
	S 100 (2) (e)	<ul style="list-style-type: none"> Deleted (re extraordinary vacancies) 	Not needed
	S 100 (2) (g) (i)	<ul style="list-style-type: none"> Amends to provide that a quorum is a majority of directors 	Resolution 11, June 2015

	S 100 (2) (i)	<ul style="list-style-type: none"> Amends to replace reference to “Te Pūtea Whakatupu” with “Te Wai Māori” 	Corrects a drafting error
Eligibility for office of director	S 102	<ul style="list-style-type: none"> Removes restrictions on who may be a director of Te Wai Māori 	Removal of restrictions reflects: <ul style="list-style-type: none"> Removal of control of AFL from Te Ohu Iwi support for the Straw Tangata model (Resolution 17, June 2015)

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Future reviews

Resolutions

JUNE 2015

- **RESOLUTION 18: That a further review of settlement entities occur no later than 10 years from the date that the amended structural relationship arising from this review are in place to assess their scope, role, funding and governance arrangements including their individual continuance and/or retention of assets.**

AUGUST 2016

- **That a further review of TOKM's funding requirements occurs within 5 – 7 years from the date of TOKM's restructure.**

Basis for amendments

Audit and review provisions

66. At the time of the passage of the MFA, concerns were raised by some iwi and officials that the proposed settlement entities would not make sufficient progress towards achieving their purposes. Many feared that Te Ohu would not transfer settlement assets to iwi within an acceptable timeframe. As a result the final MFA provided that from the date of enactment, performance audits at years 4 and 8 would be required, as well as completion of a review of the governance arrangements for the entities before the end of year 11.
67. Now that the allocation of settlement assets is virtually complete, and iwi are moving to direct control of the AFL and Te Ohu Groups, there does not appear to be any merit in retaining the audit provisions. Iwi now have direct influence on the strategic plans of Te Ohu and on the appointment and removal of directors for each group. This creates stronger incentives for good performance, consistent with the principle of **rangatiratanga** and **performance**.
68. The changes in governance also mean the formal review provisions can be simplified. We have redrafted the process, which is outlined below:
- a. The next review is provided for under the MFA no sooner than 7 years and no later than 10 years after the amendments commence
 - b. The commencement date for the review is to be determined by special resolution of the relevant "principal company" (i.e. AFL or Te Ohu). This means a review might be carried out into one group of entities but not the other
 - c. If no resolution is passed the review does not proceed
 - d. Directors of each principal company are required to ensure an appropriate special resolution is put before each AGM at which it might be passed, and express their views on whether it should be passed
 - e. Subsequent reviews can be carried out no sooner than 6 years after the previous review, or no sooner than October 2035 if no review is conducted.
 - f. Costs of a review are met by the relevant principal company

- g. The principal company sets the terms of reference and provides them to MIOs, RIOS, RMOs, entities under review and the other principal company for comment within 20 working days
- h. The reviewer is appointed by the relevant principal company
- i. Once the reviewer has made their findings and recommendations, the principal company must call a special general meeting
- j. If 75% of MIOs representing no less than 50% of the population approve a resolution affecting the Te Ohu Kai Moana group and requiring a change to the MFA, Te Ohu must request the Minister to make the necessary amendments
- k. If 75% of AHCs representing no less than 50% population approve a resolution affecting the AFL Group which requires a change to the MFA, AFL must notify Te Ohu, who must request the Minister to make the necessary amendments
- l. Nothing in this subpart of the MFA prevents directors of Te Ohu or shareholders of AFL from initiating a review at any time, which need not be conducted in accordance with this subpart.

69. Greater detail is provided in the outline of changes to **Part 2, subpart 6, sections 114 – 127A** below.

Review provisions legislative changes

Subpart 6: Audits and Reviews			
Audits	S 104 - 113	<ul style="list-style-type: none"> deleted 	<p>The audit provisions in the MFA are no longer necessary:</p> <ul style="list-style-type: none"> direct control of AFL and Te Ohu will be in the hands of iwi when audit provisions were included, the primary concern of iwi was that Te Ohu would not move quickly to allocate
Requirement for review of entities	subtitle	<ul style="list-style-type: none"> deleted 	These sections have been deleted and replaced with a simpler review requirements (new s 114 – 118)
Review of entities	S 114	<ul style="list-style-type: none"> deleted 	As above
Funding of reviews	S 115	<ul style="list-style-type: none"> deleted 	As above
Committee of Representatives	S 116	<ul style="list-style-type: none"> deleted 	As above
Appointment procedure	S 117	<ul style="list-style-type: none"> deleted 	As above
Functions of Committee of Representatives (existing)	S 118	<ul style="list-style-type: none"> deleted 	
Appointment procedures (existing)	S117	<ul style="list-style-type: none"> deleted 	
Independent reviews (new)	s 114 (1)	<ul style="list-style-type: none"> requires independent reviews of the Te Ohu Kai Moana Group and AFL Group to be conducted in accordance with this subpart 	
	S 114 (2)	<ul style="list-style-type: none"> defines principal company as the Te Ohu Kai Moana or AFL, depending on which of the groups is to be reviewed 	

Initiation of reviews (new)	S 115 (1)	<ul style="list-style-type: none"> sets out the timeframe (1 October 2025 – 1 October 2028) within which each principal company should commence a review, providing there is a resolution to do so before 1 October 2028 	
	S 115 (2)	<ul style="list-style-type: none"> provides for the commencement date for each review to be determined by special resolution of the relevant principal company if no resolution is passed, the review does not proceed. 	
	S 115 (3)	<ul style="list-style-type: none"> requires directors of each principal company to ensure that: <ul style="list-style-type: none"> an appropriate special resolution is before every AGM at which it might be passed the notice of the meeting contains the views of the directors as to whether the special resolution should be passed. 	
	S 115 (4)	<ul style="list-style-type: none"> specifies the entities to which the review requirements apply 	
Subsequent reviews (new)	S 116	<ul style="list-style-type: none"> enables subsequent reviews to be carried out not earlier than 6 years after completion of the previous review (or not earlier than 1 October 2035 if no such review is conducted) subject to a special resolution. The scope of subsequent reviews is decided by the principal company 	
Costs of reviews (new)	S 118	<ul style="list-style-type: none"> the costs of each review must be met by the relevant principal company 	
Terms of Reference	S 119 (1)	<ul style="list-style-type: none"> amended to provide that the principal company must set the terms of reference which must include the date for commencement of the review and the date for reporting (which is amended to be no later than 9 months after the commencement date for the review) 	
	S 119 (2) (a) and (b)	<ul style="list-style-type: none"> Amended to provide that before finalising the terms of reference, the principal company must, for the purposes of consultation, provide the draft terms of reference to all MIOs, RIOs, RMOs and the other principal company and every entity under review Allows for 20 working days for written comments to the principal company Removes Te Kāwai Taumata from those to whom draft Terms of Reference should be provided 	

Procedure and remuneration of committee of representatives	S 120	<ul style="list-style-type: none"> Deleted 	The committee will no longer exist.
Reviewer	S 121	<ul style="list-style-type: none"> Amended to require the reviewer to be appointed by the principal company 	
Scope of Review	S 122 (1)	<ul style="list-style-type: none"> Amended to refer to the review conducted under s 115 	
	New s 122 (d)	<ul style="list-style-type: none"> Includes the desirability or otherwise of winding up the settlement trusts or AFL in the scope of the review. 	
	New s 122 (1A)	<ul style="list-style-type: none"> Requires any review conducted after the first review (or after 2035 if there is no earlier review) to consider and report on the matters specified in the special resolution in respect of that review 	
	S 122 (2) (a)	<ul style="list-style-type: none"> Deletes Te Kāwai Taumata members from the definition of “governance arrangements” 	Consequential to governance changes
Further relevant considerations	S 123	<ul style="list-style-type: none"> Deleted. Refers to audit reports. 	Audits as currently provided for under the MFA will cease to exist
Limits to recommendations that may be made	S124 (2) (a) and (b)	<ul style="list-style-type: none"> Includes ability for reviewer to make findings re changes to the restrictions on the disposal of settlement quota but not recommendations. Amended to remove Te Ohu Kaimoana and include AFL as parties who may acquire settlement quota Provides for a subsequent review if findings made that the interests of the beneficiaries would be better served by changes to the restrictions on settlement quota, at a time determined by Te Ohu Kaimoana without the need for a further special resolution. 	Consequential amendment
	S 124 (3)	<ul style="list-style-type: none"> Amended to include relevant section references 	
	S 124 (4)	<ul style="list-style-type: none"> Amended to include RIOs 	
Procedure after completion of review	S 125 (1)	<ul style="list-style-type: none"> Consequential amendments made to section references and parties to whom reports will be presented: replaces committee of representatives with principal company 	

Report on review	S 125 (2) and (b) and (c)	<ul style="list-style-type: none"> • Amended to include RIOS • Deletes reference to Te Kāwai Taumata • Replaces committee of representatives with principal company • Requires a review report to be presented to the other principal company 	
Consideration of review report by entity under review	S 126 (b) and (c)	<ul style="list-style-type: none"> • Replaces “Te Ohu Kai Moana Trustee Ltd” with “both principal companies” • Amended to include RIOS and delete Te Kāwai Taumata 	
Consideration of review report	S 127 (1)	<ul style="list-style-type: none"> • Amended to require the principal company to make provision for certain matters on the agenda for a general meeting • Amended to enable comments to be included from RIOS, RMOs or the other principal company • Removes references to Te Kāwai Taumata 	
	S 127 (2)	<ul style="list-style-type: none"> • Amends to set out requirements for a general meeting of Te Ohu Kai Moana 	
	S 127 (3)	<ul style="list-style-type: none"> • Amended to apply this section (including the 75% iwi, 50% population threshold) resolutions affecting an entity in the Te Ohu Kai Moana Group 	
	S 127 (4)	<ul style="list-style-type: none"> • Included to provide that if a general meeting is held by AFL and resolution is passed (75% of shareholders representing 50% of the population) in respect of the matters under review, AFL must implement the resolution unless it is inconsistent with the MFA or any other enactment 	
	S 127 (5)	<ul style="list-style-type: none"> • Included to provide that if a resolution at a meeting of Te Ohu Kai Moana is passed (75% iwi representing 50% population) and affects AFL by requiring amendment to its constitution or changes to its operation or governance, AFL must put the matter before its next general meeting and implement if it is passed (75% shareholders representing 50% population) unless it is inconsistent with the MFA or any other enactment 	

	S 127 (6)	<ul style="list-style-type: none"> Included to provide that if a resolution is passed but is not able to be implemented because it is inconsistent with the MFA, AFL must notify Te Ohu Kai Moana Trustee Ltd who must request the Minister to make the necessary amendments. 	
Other reviews not precluded	S 127A	<ul style="list-style-type: none"> Included to clarify that nothing in this subpart prevents directors (or presumably beneficiaries) of Te Ohu or shareholders of AFL from initiating a review at any time, which need not be conducted in accordance with this subpart. 	

DRAFT

Simpler trading processes for settlement quota

Resolutions

JUNE 2015

- **RESOLUTION 12: that the disposal restrictions in the MFA 2004 for settlement quota and income shares remain and that simpler trading processes are developed for iwi wishing to sell some of their assets to willing buyers within the iwi/Te Ohu Kai Moana Group pool.**
- **RESOLUTION 13: that the current restrictions on the sale of ACE be increased from 5 – 15 years.**

Basis for amendments

70. A simplified process for trading settlement quota is set out in **Part 4, Subparts 1 – 3, sections 158 - 176**. This is outlined below:
- a. A MIO, through its AHC, may sell settlement quota to any other MIO's AHC, Te Ohu Group or AFL on a willing-buyer, willing-seller basis
 - b. The decision to sell must be permitted by the MIOs constitution and comply with the process specified these (this may require a resolution each time or the MIO may adopt a policy. The choice is for the MIO – consistent with rangatiratanga
 - c. FishServe must be satisfied the transaction is between AHCs, Te Ohu Group or AFL and that the sale has been subject to a special resolution of the MIO (note in practice this will require the MIO to provide FishServe with all appropriate documentation to support the transfer)
 - d. Te Ohu will be required to maintain a public register of all MIOs and AHCs.
71. Existing protections and remedies for breaches has been be updated to reflect this process. For example, protections exist to ensure that if a Te Ohu Group entity or a MIO sells or relinquishes control over a subsidiary or sub-company of an AHC that holds settlement quota, the quota must be treated as the property of Te Ohu or the MIO as appropriate. Remedies also exist for breaches of the sales requirements.

Timeframe for ACE sales

72. The extension of the maximum time for sales of ACE is to be extended from 5 to 15 years, consistent with the resolution agreed to by iwi (**see section 167 (1) (b)**).

Exchanges

73. The MFA provides a regime to enable iwi to exchange settlement quota for other quota of the same market value including:
- a. settlement quota for other settlement quota
 - b. settlement quota for normal quota.

74. Exchanges within the pool of settlement quota for settlement quota, and settlement quota for normal quota can now be covered by the simplified sales process. That means such exchanges can be carried out as long as they meet the requirements for a sale of settlement quota, outlined earlier.
75. The current process for MIOs or AFL to exchanging settlement quota for normal quota held by a non-settlement entity will remain because:
- a. iwi have not resolved to remove it
 - b. the process retains an option for iwi
 - c. measures will remain to ensure that if iwi wish to exchange settlement quota for normal quota outside the settlement pool, the overall value of the “settlement pool” is not diminished.
76. As a consequence, Te Ohu’s role in respect of exchanges outside the pool will remain to ensure they involve quota (or a mix of quota) of the same market value.

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Simpler processes for trading settlement quota

Part 4 Settlement quota interests, sales and exchanges of settlement quota and related restrictions			
Outline of this part of the Act	S 155 (e)	<ul style="list-style-type: none"> Deleted requirement re a procedure for selling bundles of assets 	No longer required
	New s 155 (f) (now ss (e))	<ul style="list-style-type: none"> Amended to remove provision for Te Ohu Kai Moana to makes for sales of settlement assets 	No longer required
Interpretation	S 156	<ul style="list-style-type: none"> deleted 	No longer required
Subpart 1 – registration of settlement quota interests			
General restriction on transfer of settlement quota	S 158(1) (a) and (d)	<ul style="list-style-type: none"> Amended to remove the requirement to make sales of settlement quota subject to authorisation of Te Ohu Kai Moana Trustee Ltd Clarifies settlement quota must not be transferred except to another MIO, an entity within the AFL Group or any other person by way of approved exchange (ref amended s 161 (1) (a)) Specifies transfers may happen in accordance with an approved exchange for non-settlement quota 	Removes role of Te Ohu in sales of settlement quota: resolution 12, June 2015
	S 158 (2)	<ul style="list-style-type: none"> Amended to provide for applications to transfer settlement assets to be submitted to Ministry of Fisheries by the transferor and transferee jointly on prescribed form 	Removes role of Te Ohu as per Resolution 12, June 2015
Quota may be treated as settlement quota	S 159(1)	<ul style="list-style-type: none"> Amends to provide that a MIO may declare quota owned by the AHC to be settlement quota 	Removes requirement for Te Ohu approval, consistent with Resolution 12, June 2015
	S 159 (2)	<ul style="list-style-type: none"> Deletes requirement for a MIO to notify the proposal to iwi members and gain approval at a general meeting 	Consistent with Resolution 12, June 2015
	S 159 (3)	<ul style="list-style-type: none"> Deleted to remove need to specify certain information in a public notice 	Consequence of amendment above
Application for registration	S 160 (1) (b) and (c)	<ul style="list-style-type: none"> Amended/deleted for consistency with s 159 by removing role of Te Ohu Kai Moana Trustee Ltd in decisions made by MIOs to declare quota as settlement quota 	
	S 160 (2)	<ul style="list-style-type: none"> Amended for consistency with above 	

Subpart 2 – Restrictions on, and procedures for disposal of settlement quota			
Restrictions on disposal of settlement quota	S 161 (1) (a) (ii) and (iii)	<ul style="list-style-type: none"> Amended to enable sales of settlement quota to an entity within the AFL group (note this removes ability for Te Ohu to purchase) Amended to clarify a sale may take place by way of approved exchange for non-settlement quota as contemplated by s 173. 	
	S 161 (1) (b)	<ul style="list-style-type: none"> Deleted to remove prohibition of gifting settlement quota 	
	S 161 (2)	<ul style="list-style-type: none"> Deleted to remove prohibition on sales earlier than 2 years after the date of first transfer to a MIO by Te Ohu Kai Moana Trustee Ltd 	
	New S 161 (2)	<ul style="list-style-type: none"> Amended to replace Te Ohu Kai Moana Group to AFL Group 	
	S 161 (3)	<ul style="list-style-type: none"> Amended to provide for the situation in which Te Ohu has approved a new MIO 	Clean-up: consistent with technical amendments in s18 enabling the transfer of shares in an AHC to a new MIO
	S 161 (4)	<ul style="list-style-type: none"> Deleted to remove reference to the existing rules covering sales of settlement quota 	
Effect of prohibited sale of settlement quota	S 162 (1)	<ul style="list-style-type: none"> Amended to clarify that a MIO may only sell its settlement quota if expressly permitted by its constitutional document and the transaction complies with the requirements of the document 	
	Remainder of s 162	<ul style="list-style-type: none"> Deleted to remove need to gain approval from iwi members, and to remove timeframes for validity of approval 	
Option to purchase			
Offer of option to purchase	S 163	<ul style="list-style-type: none"> Deleted to remove requirement to offer settlement quota to all MIOs and Te Ohu Kai Moana Group 	
Procedure for selling bundle of assets	S 164	<ul style="list-style-type: none"> deleted 	

Procedure to determine right to purchase	S 165	<ul style="list-style-type: none"> deleted 	
Basis on which sale must proceed	S 166	<ul style="list-style-type: none"> deleted 	
Other constraints on disposal	S 167 (1) (b)	<ul style="list-style-type: none"> amended to provide that a transaction that could result in an iwi being disentitled for a period of more than “15” (rather than 5) year to the income from the ACE arising from that quota, or the control or use of the ACE arising from that quota 	Implements resolution 13, June 2015 to enable ACE sales contracts for up to 15 years.
	S 167 (3)	<ul style="list-style-type: none"> provides that a third party who exercises a right to sell etc has to comply with processes as if they were a MIO 	Ensures such sales remain within the settlement pool. (should AFL be subject to 167?)
Application of this subpart to AFL Group (amended title)	S 168	<ul style="list-style-type: none"> amends title to replace Te Ohu Kai Moana Group with AFL Group 	
	S 168 (1)	<ul style="list-style-type: none"> provides if an entity within the AFL Group acquires settlement quota, s 162 and 167 apply to it as if it were a MIO 	Ensures consistent treatment of settlement quota within the pool
	S 168 (2)	<ul style="list-style-type: none"> deleted to make consistent with simplified sales process 	
When sale of settlement quota must be allowed	S 169	<ul style="list-style-type: none"> deleted to remove Te Ohu Kai Moana Trustees role in sales process. 	
<i>Subpart 3 – exceptions to the application of subpart 2</i>			
		<ul style="list-style-type: none"> deleted 	
Quota sold to wholly owned entities		<ul style="list-style-type: none"> deleted 	
Settlement quota sold to wholly owned entities	S 171	<ul style="list-style-type: none"> deleted as unnecessary with simplified process 	
Small parcels of settlement quota			

Rationalisation of small parcels of settlement quota	S 172	<ul style="list-style-type: none"> deleted as unnecessary with simplified process 	
Quota exchanges			
Exception for quota exchanges	S 173 (1)	<ul style="list-style-type: none"> amended to state sales provisions do not apply to exchanges of the same market value with a party that is not a MIO or part of the AFL Group 	Note such exchanges can take place between parties who are MIOs or members of the AFL group.
	S 173 (2)	<ul style="list-style-type: none"> deleted 	
	S 173 (3)	<ul style="list-style-type: none"> clarifies exchanges may be made with parties other than those entitled to hold settlement quota 	
	S 174 (6)	<ul style="list-style-type: none"> reference to rules made under s 176 (3) 	
Additional rules	S 176 (1)	<ul style="list-style-type: none"> amended to delete “sales” from activity Te Ohu Kai Moana Trustee Ltd may make rules about 	
	Former S 176 (2) (a) – (f) and (i)	<ul style="list-style-type: none"> deletes provisions relating to sales and leaves rules for exchanges 	

Other matters including retaining the current tax status of entities

Resolutions

MARCH 2016

- **RESOLUTIONS: That the Redeemable Preference Shares held by Te Ohu in AFL should be cancelled, converted into ordinary shares and distributed to iwi.**

Basis for amendments

Redeemable preference shares (RPS)

77. The RPS were issued as part of the settlement of loans between AFL and the Treaty of Waitangi Fisheries Commission. The RPS were issued when Te Ohu was first being established and were structured so that Te Ohu could call on them if required. At that time, the funding Te Ohu needed to fulfil its functions was uncertain. The purpose of the RPS is identified in the Deed as “being in the nature of financial insurance for the Trustee”.
78. The conversion of the RPS to shares reduces AFL’s liabilities, increasing its equity and therefore value to its iwi shareholders. To convert the RPS into ordinary shares, the MFA will:
- Enable AFL to issue income shares to Te Ohu Kaimoana once the MFA is passed
 - Once the MFA commences (several months later), all income shares will become ordinary shares (including 20% of income shares belonging to Te ohu plus those issued in satisfaction of the RPS)
 - Te Ohu will transfer its ordinary shares to iwi.
79. This process is provided for first in **section 211A**, then by **section 64** (see earlier section on AFL).

Retaining current tax status

80. It is important to retain the current tax status and benefits of the settlement entities as the MFA is amended. This means there is a need to retain continuity of ownership and available subscribed capital. **Sections 154 (1) and (2) (c) and (d), and 211 (3)** are intended to cover these matters.

Part 3: Allocation and transfer of settlement assets			
Subpart 1- Allocation and transfer of settlement assets			
Allocation of surplus funds	S 138 (5)	<ul style="list-style-type: none"> This section as stands refers to surplus funds that may be forecast 5 years after the commencement of the original Act. 	Comment note added that provision is historical and could be deleted
Income shares	S 139	<ul style="list-style-type: none"> Deleted as income shares cease 	
Subpart 4 - Miscellaneous			
When settlement assets must be held in trust	S 153 (1) (a)	<ul style="list-style-type: none"> Clarifies Te Ohu may exercise all the rights of a shareholder in respect of AFL shares yet to be allocated to iwi who have not met allocation requirements 	Provides for Te Ohu to exercise these rights in lieu of iwi who will ultimately be allocated the shares
	S 153 (1A)	<ul style="list-style-type: none"> Included to provide that Te Ohu Kai Moana Trustee Ltd must hold in trust for each iwi all dividends and tax credits to which section 64 (2) applies until they are distributed as contemplated by section 64 (3) 	Note s 64(2) provides that dividends etc that accrue to Te Ohu Kai Moana Trustee Ltd between enactment and commencement of the Amendment Act be held for distribution to iwi along with Te Ohu Kai Moana's ordinary shares.
	S 153 (2)	<ul style="list-style-type: none"> Adds that Te Ohu Kai Moana Trustee Ltd to withhold from any dividends held in trust under 1A the reasonable costs incurred in administering the shares and dividends 	
Status of settlement assets	S 154 (1)	<ul style="list-style-type: none"> Amended to ensure the value of settlement assets transferred to iwi by Te Ohu as a result of the Amendment Act, as well as from a JMIO to a withdrawing MIO, is included in the available subscribed capital of the company, trust or other body to which the assets are transferred 	Protects from tax liabilities Include transfers pursuant to s18E
	S 154 (2) (c) and (d)	<ul style="list-style-type: none"> Is included to ensure that transfers of assets from a MIO to a new MIO, or from a JMIO to a withdrawing MIO do not attract income tax, GST, gift duty, any tax duty levy and any other charge provided under the Inland Revenue Act or any other act. 	Protects from tax liabilities

Part 5 - Dispute Resolution			
Subpart 1- Procedure for resolution of disputes			
	S 180 (1) (i)	<ul style="list-style-type: none"> deleted reference to clauses of former Schedule 8 relating to the appointment of TKT 	
Part 6 – transitional and miscellaneous provisions, repeal and amendments			
Subpart 3- Miscellaneous provisions			
Application of Inland Revenue Acts and other enactments	S 211 (3)	<ul style="list-style-type: none"> Included: “For the purposes of the Inland Revenue Acts, mandated iwi organisations and asset holding companies must be treated as having held, at all times the voting and market interests that arise under s 60A or that are received directly or indirectly from a joint mandated iwi organisation under section 22 or from Te Ohu Kaimoana Trustee Ltd under section 64”. 	included to ensure continuity rules are maintained when their income shares become ordinary shares, and when they receive ordinary shares from Te Ohu.
Aotearoa Fisheries Ltd issue of income shares to Te Ohu Kai Moana Trustee Ltd	S 211A	<ul style="list-style-type: none"> Included to enable AFL to issue income shares to Te Ohu Kai Moana Trustee Ltd in satisfaction of the exercise of a put option in respect of RPS held by Te Ohu. Note the transfer is to occur before a specified date to ensure that transfer takes place before income shares become ordinary shares 	Intended to satisfy the resolution the RPS be cancelled and converted to ordinary shares. It was put to the Hui a Tau 2016 by Te Ohu Kaimoana which was passed by iwi
	S 211A(2)	<ul style="list-style-type: none"> Included to ensure the income shares transferred in satisfaction of the put option become ordinary shares and are transferred to iwi along with the other ordinary shares. 	
Te Kāwai Taumata dissolved	S212A (1) – (3)	<ul style="list-style-type: none"> Included to clarify Te Kāwai Taumata will cease to exist No member entitled to compensation Assets rights and liabilities are assets rights and liabilities of Te Ohu Kai Moana Trustee Ltd 	Resolutions 2 and 3, June 2015

Amendments to Schedules of the Māori Fisheries Act

Basis for amendments

81. With the change in governance arrangements, Te Kāwai Taumata will no longer have a role. Schedule 8, which deals with Te Kāwai Taumata is now redundant and we have deleted it in the draft.

Technical amendments

82. Additional technical amendments to the MFA are desirable to provide greater clarity and prevent unnecessary litigation and cost to iwi and Te Ohu.

MIO constitutions – electoral provisions

83. One such provision concerns the election of directors or trustees to mandated iwi organisations. Kaupapa 1 of Schedule 7 of the Act requires that all adult members of an iwi must have the opportunity to elect the trustees of the MIO. It does not specify that all adult members must have the opportunity to elect all trustees and the provision is unclear as to whether it is sufficient that all adults of the iwi have the ability to elect one trustee of the MIO. While the constitutions of many MIOs favour an approach that enables iwi members to elect one trustee (e.g. based on their affiliation to hapū or recognised marae), it could be argued that the MFA requires them to enable all adult members to have the opportunity to elect all trustees. It should be noted that Crown policy in respect of post-settlement governance entities (PSGEs) allows an electorate approach to elections of officeholders, if that is chosen by an iwi. Ensuring that the MFA's provisions align with this policy would be useful.
84. We have drafted an amendment to **Kaupapa 1 and 2 of Schedule 7** to ensure that all existing MIOs, including PSGEs, comply with the MFA.

Restrictions on directors of AHCs

85. The MFA currently provides that no more than 40% of the directors of a MIO can also be directors of their AHC, any subsidiary of an AHC and any fishing enterprise it establishes in accordance with the MFA. This provision was intended to ensure a level of independence in the governance of the AHC.
86. Te Ohu is aware that for many iwi, the costs of obtaining additional directors on their AHCs is prohibitive. It also conflicts with the principle of rangatiratanga and its imposition on iwi should be reconsidered.
87. We have drafted an amendment to delete this requirement (**Kaupapa 10, Schedule 7**)

SCHEDULES

Schedule 7 – Kaupapa applying to constitutional documents of mandated iwi organisations

	Clause (2)	<ul style="list-style-type: none"> Amended to provide that kaupapas 1, 2 and 3 do not apply to the extent that another Act makes other provision for the specific MIO 	Assume this relates to legislation setting up a PSGE that is also a MIO. Check that we need this.
Kaupapa of iwi representation			
Kaupapa 1	Clause (1)	<ul style="list-style-type: none"> Amended to provide that adult members of an iwi must have the opportunity to “participate in the election of one or more of the directors...etc” 	Clean-up: technical clarification
Kaupapa 2	Clause (a) (i)	<ul style="list-style-type: none"> Amended to provide that adult members of an iwi have voting rights in elections for “some or all of” the directors etc in accordance with the constitutional documents of a MIO 	Clean-up: technical - clarifies the law
	Clause (a) (iii) and (iv)	<ul style="list-style-type: none"> Deletes requirement for iwi members to have voting rights in relation to the disposal of income shares and settlement quota 	Consistent with simplification of sales process. Note iwi can still retain these processes it is just not mandatory
	New Clause (a) (iii)	<ul style="list-style-type: none"> Includes “any other matter specified in the constitutional documents as a matter on which they have voting rights. 	
Notification of meetings			
Kaupapa 4	Clause (3)	<ul style="list-style-type: none"> Deletes reference to meetings called about disposal of income shares or conversion and disposal of settlement quota 	
Accountability			
Kaupapa 7	Clause (2) (iv) (F)	<ul style="list-style-type: none"> Amends “income share” to “ordinary share” 	

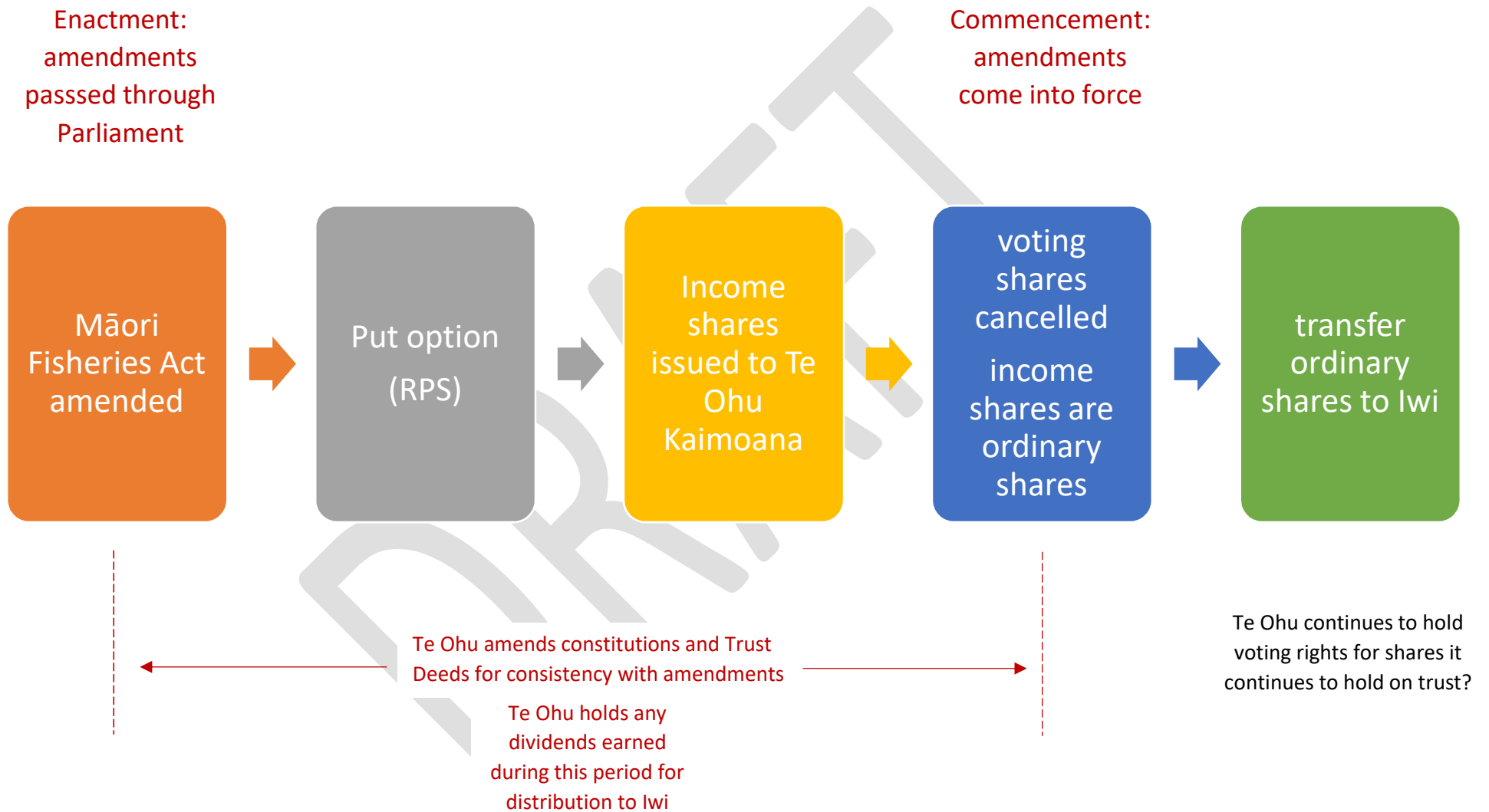
	Clause (2) (v) (D)	<ul style="list-style-type: none"> Includes AFL 	
	Clause (2) (vii)	<ul style="list-style-type: none"> Includes “any directions given or continuing under s 16 (2) (a) or 60B (2) to an AHC or any subsidiary 	Relates to requirement for AHCs to take direction from their MIO. Provides transparency in relation to such directions
	Clause (2) (b) (ii)	<ul style="list-style-type: none"> Requires reporting on the policy of the MIO in respect of sales and acquisitions of ordinary shares in AFL 	Ensures iwi members are informed (given removal of the provision that iwi members must vote on a proposal to sell settlement assets including shares)
	Clause (2) (b) (iii)	<ul style="list-style-type: none"> Amends policy to “policies” 	Consequential amendment
Kaupapa 9	Clause (2)	<ul style="list-style-type: none"> Amends to “ordinary shares” 	
Governance			
Kaupapa 10		<ul style="list-style-type: none"> Deleted to remove the restriction on the number of office holders of a MIO who can serve as directors, trustees or officeholders of an AHC, subsidiary of an AHC or fishing enterprise 	Costs of obtaining additional directors is prohibitive for many iwi Imposition conflicts with principle of rangatiratanga
Kaupapa 11	Clause(aa)	<ul style="list-style-type: none"> Included to require every MIO to exercise strategic governance over, and “direct the exercise of the rights of a shareholder in AFL held by any of its AHCs or their subsidiaries” 	
Schedule 8: Te Kāwai Taumata			
		<ul style="list-style-type: none"> deleted 	No longer relevant

Timing of implementation once the MFA amendments are passed

88. We have drafted the amendments in such a way that the primary changes iwi seek do not occur until a specified “commencement date”. A timeframe of several months between enactment and commencement will enable Te Ohu to amend the constitutions and trust deeds of each entity before the new governance arrangements kick-in.
89. The only exception relates to the issue of income shares to Te Ohu Kaimoana in satisfaction of the “put option” for the RPS. This means that when all other changes commence, Te Ohu will be able to allocate and transfer all the ordinary shares it holds to iwi (aside from those held in trust for iwi who have yet to meet the allocation requirements) (see Figure 2).
90. As noted earlier, we have drafted the amendments to ensure Te Ohu to retains the voting rights in ordinary shares it holds on behalf of iwi who have yet to meet the requirements for allocation. This will ensure Te Ohu can exercise its trustee responsibilities in respect of those iwi.

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Figure 2: Timeline for implementation of the legislative amendments



APPENDICES

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APPENDIX 1: Background to the draft amendments

From Part C of the Report to the Minister for Primary Industries, September 2016

Changes sought by iwi

Introduction

67. This part details the changes iwi seek as a result of the 2015 Review and the processes that supported their decision-making.

The 2015 Review

68. The 2015 Review required an assessment of the performance of Te Ohu Kai Moana, AFL, Te Pūtea Whakatupu and Te Wai Māori, the benefits they have delivered and the consistency of both with the purposes of the MFA. Ultimately, an assessment was required to be made of the effects of the governance arrangements on these outcomes.

69. In May 2014, a Committee of Representatives was appointed under the MFA¹ to set the terms of reference for the Māori Fisheries Review and appoint the reviewer². The review was carried out in the latter part of 2014 and early 2015. The Committee of Representatives received and distributed the reviewer's report on 6 March 2015.

70. The following conclusions can be drawn from the reviewer's report:

- a. Iwi want a much closer relationship with their entities (particularly AFL)
- b. iwi are ready to directly control the centrally held assets including AFL and Te Wai Māori, as well as Te Ohu (should they choose to retain it)
- c. restrictions on the disposal of settlement assets outside the Māori pool should remain, however iwi should be able to quit their fisheries assets within the Māori pool if they do not wish to invest in their development.

71. The reviewer recommended major changes to the governance arrangements established under the MFA:

Entity	Reviewer's recommendations
Te Ohu Kaimoana	<p><i>Recommendation 1:</i></p> <ol style="list-style-type: none">a. wind up Te Ohu Kaimoana³ (and transfer its assets to iwi), orb. significantly restructure Te Ohu Kaimoana, without AFL shares, as the pan-tribal entity to undertake advocacy and policy development and advice for iwi.⁴

¹ s117

² s118

³ Interpreted as the trustee (Te Ohu Kai Moana Trustee Ltd) and the trust (Te Ohu Kai Moana).

⁴ Castle, T (2015) *Taia Kia Matariki: Make sure the net is closely woven. Independent Review of Māori Commercial Fisheries Structures under the Māori Fisheries Act 2004*, paras 5, 10, 14 (summary)

<p>Aotearoa Fisheries Ltd</p>	<p><i>Recommendation 2:</i> Allocate the voting and income shares held by TOKMTL and as a consequence, enable iwi (through their AHCs) to appoint AFL’s directors.⁵</p> <p><i>Recommendation 3:</i> Consider establishing a Shareholders’ Council.⁶</p> <p><i>Recommendation 4:</i> Special resolutions for major transactions for AFL should require at least a two thirds majority voting threshold.⁷</p> <p><i>Recommendation 5:</i> That AFL and iwi find ways to ensure that AFL does not compete with iwi in the business and activity of commercial fishing.⁸</p> <p><i>Recommendation 6:</i> There should be rationalisation between Sealord and AFL operations to avoid them competing with each other.⁹</p> <p><i>Recommendation 7:</i> That iwi and AFL address the lack of fisheries sector operational experience on the AFL Board.¹⁰</p>
<p>Te Pūtea Whakatupu</p>	<p><i>Recommendation 8:</i></p> <ol style="list-style-type: none"> a. TPW should continue b. a statutory corporate trustee should be appointed to manage the Trust, called Te Pūtea Whakatupu Trustee Ltd (TPWTL) c. the trustee company should not be owned by TOKMTL but by at least FOMA, NZMC, Māori Women’s Welfare League and NUMA (allowing for others of the schedule 5 entities) and a representative body for iwi d. the schedule 5 organisations who wish to participate should each have one share in TPWTL with no distribution rights and that those shares be held by the boards of those organisations; e. iwi should design a representative body to hold between three and five shares in TPWTL also without distribution rights f. these organisations by a majority vote should appoint five directors of TPWTL who must each have knowledge of and are able to represent the interests of Māori who reside in urban areas of NZ and otherwise have skills, knowledge and experience directly relevant to urban Māori g. a quorum of directors to transact business should be three.¹¹
<p>Te Wai Māori</p>	<p><i>Recommendation 9:</i> Iwi should appoint three directors with a quorum of two.¹²</p>

⁵ Ibid., paras 36, 37, 38 (summary); para 70 (main report)

⁶ Ibid., paras 227, 235 (main report)

⁷ Ibid., para 286 (main report)

⁸ Ibid., para 34, 35, 41 (summary)

⁹ Ibid., para 251 (main report)

¹⁰ Ibid., para 48 (summary); para 207 (main report)

¹¹ Ibid., para 66 (summary)

¹² Ibid., para 73 (summary)

Restrictions on asset sales	<p><i>Recommendation 10:</i></p> <ol style="list-style-type: none"> a. Retain restrictions on asset sales outside the Māori pool b. Develop easier trading processes for iwi wishing to sell their fisheries settlement assets (in part or in whole) to willing buyers within the Māori pool.
The Chatham Islands: the continuing special case	<p><i>Recommendation 11:</i> That AFL should take special steps to cooperate more fully with the Chathams' iwi.¹³</p> <p><i>Recommendation 12:</i> That AFL establish and fund a dedicated AFL/Chathams' iwi taskforce to cooperatively address options for solutions to the competition between AFL and Chathams' iwi and all other Māori fisheries issues arising on the Chathams.¹⁴</p> <p><i>Recommendation 13:</i> That AFL engage with Chathams' iwi and the island communities on health and safety issues associated with AFL fishing factories and facilities.¹⁵</p> <p><i>Recommendation 14:</i> In the longer term, that a permanent Chathams' iwi/AFL Fisheries Roopu be established to actively engage in the development of iwi (collective and individual) interests in fisheries, fishing and fisheries-related activities on the Chathams in a manner which can yield to AFL and the people of the Chathams continuing and meaningful benefit.¹⁶</p>
Iwi Working Group	<p><i>Recommendation 15:</i> That an Iwi Working Group, funded by Te Ohu Kaimoana, urgently work through all the findings, recommendations and design work.¹⁷</p>

Establishment of the Iwi Working Group

72. Given the short timeframe between release of the reviewer's recommendations and the requirement to hold an SGM, Te Ohu Kaimoana appointed an Iwi Working Group (IWG) as a sub-committee of the Te Ohu Kaimoana Board, supported by key Te Ohu staff¹⁸. Its purpose was:

- a. to analyse the recommendations and any other findings contained within the review and to assess its consequences for the beneficiaries; and
- b. to inform iwi of the recommendations and findings and their consequences, and seek iwi views on them.

¹³ Para 310 (main report)

¹⁴ Ibid., para 307, 310, 311, 312 (main report)

¹⁵ Ibid., para 307 (main report)

¹⁶ Ibid., para 313 (main report)

¹⁷ Ibid., para 82, 83 (summary); para 257 - 259 (main report)

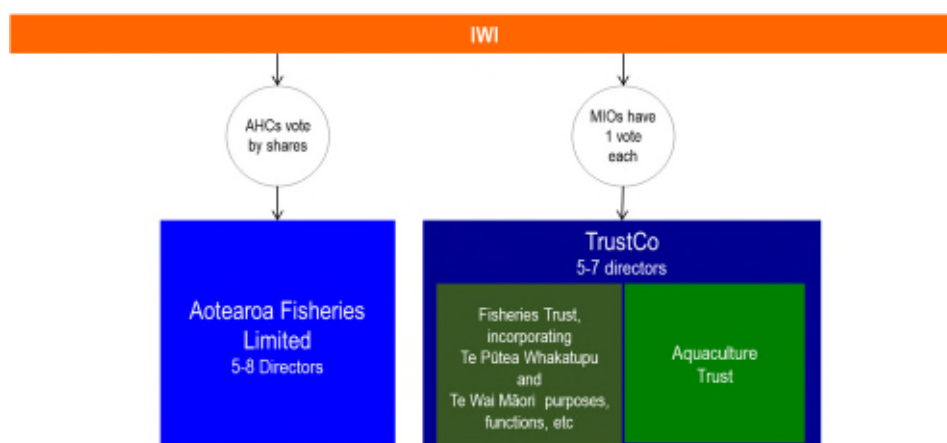
¹⁸ S 127 of the MFA requires a general meeting of Te Ohu Kaimoana to be held within 60 working days. The reviewer recommended the establishment of an iwi working group to undertake the detailed work required.

73. The key tasks of the IWG were:
- a. analysing the review report recommendations and developing information about the pros and cons of the proposals for discussion with iwi
 - b. refining the review report recommendations into resolutions that can be voted on at the SGM
 - c. communicating kanohi ki te kanohi with iwi about the recommendations and consequences of the recommendations and seeking feedback on any measures proposed by the IWG
 - d. encouraging iwi to participate and ultimately vote at the SGM
 - e. where required, identify improvements to the reviewer's recommendations.
74. Te Ohu recognised that the timeframes for the work of the IWG would be compressed, due to the statutory requirements of the MFA, and that its work would need to be completed in two stages. The first would involve analysis of the review report, presentation and discussions with iwi, feedback on discussions and recommended responses to better inform Te Ohu Kaimoana in the development of its plan to iwi. The second stage would involve refining recommendations and resolutions which, if the IWG's recommendations are accepted by iwi, may be proposed by mandated iwi organisations (MIOs) at the SGM.
75. The IWG commenced its work on 16 March 2015. It completed the first stage of its work and submitted a report that formed the basis of Te Ohu Kaimoana's plan, prepared in accordance with s 126 of the MFA.
76. The IWG developed a set of principles as the basis for considering the reviewer's proposed governance arrangements alongside the existing arrangements (**see Appendix 4, Annex 1**). These included the principles of rangatiratanga, kotahitanga, durability, connection, concentration, diversity, performance and transparency/accountability. As the IWG acknowledged, some of the principles are in tension, and their challenge was to design any new governance arrangements in a way that provided the right balance.

A "Straw Tangata"

77. The IWG developed proposals for discussion with iwi, based on the adoption and/or modification of the reviewer's recommendations. They labelled their first proposed arrangement the "straw tangata".
78. In their straw tangata model, the IWG explained that if they had the chance to design the governance arrangements now – given the experience of the last ten years, they would favour a much simpler model that consists of two main central entities (see Figure 5 below).

Figure 5: Straw Tangata



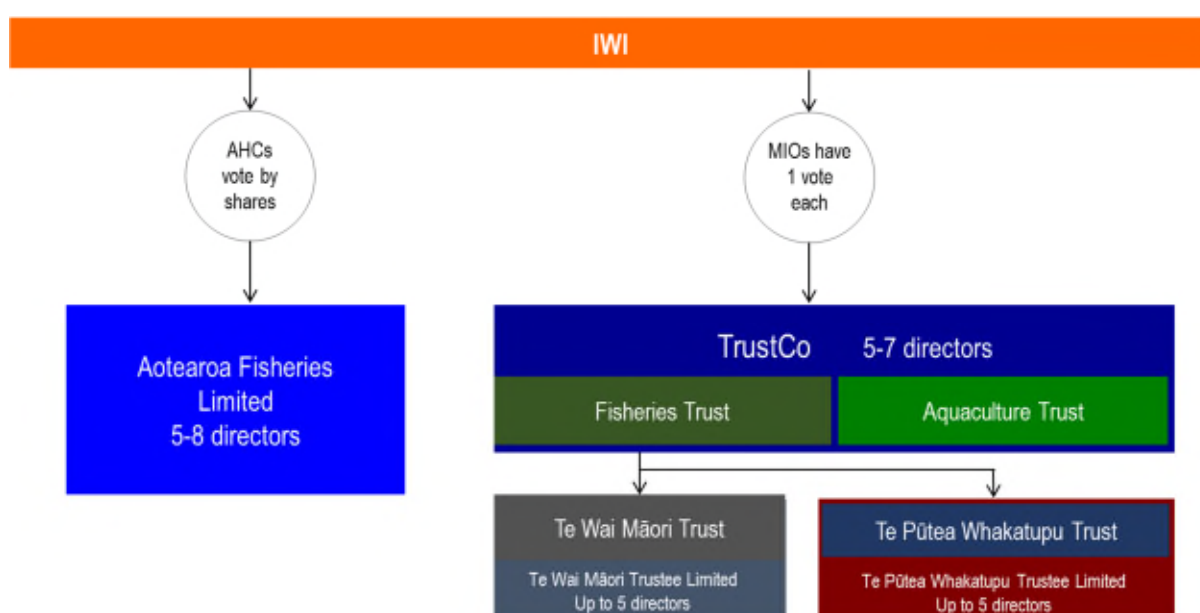
79. Under the straw tangata model, iwi (through their AHCs) would vote for the directors of AFL. Iwi (through their MIOs) would vote for the directors of a pan-iwi body – “TrustCo¹⁹”. This body would be the trustee of two trusts:
- the Fisheries Trust (incorporating the purposes of the existing Te Ohu Kai Moana Trust, Te Pūtea Whakatupu Trust and Te Wai Māori Trust – which would be rolled into one trust)
 - the Aquaculture Trust, which allocates and transfers aquaculture settlement assets to iwi who are eligible to participate in regional aquaculture settlements with the Crown.
80. The IWG considered the prospect of one Fisheries Trust and one Aquaculture Trust, governed by TrustCo to be the best possible means of aligning the interests of beneficiaries in the three existing trusts, at the same time creating efficiency through economies of scale. This is consistent with the principles they developed.
81. The IWG noted that the straw tangata model may not be directly possible within the process of the review and the MFA as it currently stands. However, iwi could agree to a non-binding resolution to take the proposal to the Minister for Primary Industries for consideration.

¹⁹ The IWG used this as a proxy name throughout its document to indicate a different organisation to the current Te Ohu Kaimoana. However, cognisant of the name being gifted by Dame Mira Szazy and its importance in the long haul for the Fisheries Settlement, along with the organisation’s reputation, the IWG proposed that the name be retained. That required wider endorsement from iwi, so the IWG continued to use the appellation “TrustCo” throughout to indicate the new organisation post review.

The IWG's proposal

82. The IWG developed a second set of arrangements which they considered to be practical and achievable in the shorter term (see figure 6). Key elements included:
- the allocation of voting and income shares in AFL to iwi through their Asset Holding Companies
 - a pan-iwi entity called "TrustCo" to provide leadership and support to iwi on policy and fisheries management, facilitate innovation and handle residual allocation work. Directors will be appointed by iwi
 - Te Pūtea Whakatupu Trustee Ltd and Te Wai Māori Trustee Ltd, who will be governed by TrustCo.

Figure 6: IWG proposed governance framework



83. The IWG also included proposals to simplify the process for selling settlement assets inside the Māori pool consistent with the reviewer's recommendations. The IWG considered that the most appropriate approach would be to enable iwi to trade their settlement assets within the pool on a willing buyer - willing seller basis.
84. The IWG also considered that the timeframe allowed for ACE contracts not to be considered a sale – presently 5 years – should be extended to 15 years to enable iwi to enter into longer term relationships with fishing companies.
85. Between 20 April and 1 May 2015, the IWG discussed its proposals with iwi. The response from iwi was generally supportive. The IWG noted that questions were raised on behalf of representative Māori organisations (RMOs) about the IWG's proposals as they affect Te Pūtea Whakatupu. The IWG considered its proposal would continue to take into account the interests of those Māori who do not know their iwi; or who choose not to engage with their MIO; and/or who do not receive benefits from their MIO. On balance IWG did not consider that the interests of RMOs would be significantly reduced by its proposals in this respect as

TrustCo would be required to consult RMOs identified in Schedule 5 of the MFA as part of the appointment process for directors of Te Pūtea Whakatupu.

86. Te Ohu Kaimoana supported the IWG’s proposals and included them in its plan **(see Appendix 4, Annex 1)**

87. Moana also developed a plan to implement the resolutions **(see Appendix 5)**.

88. The IWG held a national hui on 22nd May to provide iwi the opportunity to help shape appropriate resolutions for the Special General Meeting on 4th June, where iwi would exercise their vote. The purpose of the hui was to assist iwi to formulate clear resolutions available to MIOs well before the SGM. While this approach would not restrict the ability of MIOs to propose amendments on the day, it was intended to provide a clear and coherent set of proposals.

89. As a result of the National Hui, a set of resolutions was prepared for consideration at the SGM.

IWG proposals supported by iwi

90. The SGM was held on 4 June 2015. Iwi voted on 17 review resolutions (including 2 amendments), of which 12 were passed.²⁰ If amendments to the MFA are required to implement the resolutions, Te Ohu Kaimoana is required to request the Minister for Primary Industries to promote the necessary amendments. The binding resolutions are set out below:

Number	Resolution	Level of support
Binding review resolutions		
2	That iwi hold all Aotearoa Fisheries Limited (AFL) voting and income shares	Unanimous
3	That Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Limited be significantly restructured and works on priorities agreed by iwi to protect and enhance the settlements including undertaking advocacy and policy advice for iwi	Unanimous
4	That an amended funding model for Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Limited’s operations be approved by iwi at the 2016 Hui-a-Tau following detailed business modelling and consultation with iwi, such model to consider the role (if any) of Te Ohu Kai Moana Trust’s/Te Ohu Kai Moana Trustee Limited’s redeemable preference shares and all other funds held in its own right	Unanimous

²⁰ The SGM was held in accordance with s 127 (1) of the MFA. Iwi voted on the review resolutions in accordance with s 127 (2) and (3). Support for a resolution arising from the review requires the agreement of 75% of MIOs representing over 50% of the notional iwi population.

6	That special resolutions for major transactions for AFL require at least a 75% majority voting threshold	Unanimous
7	That AFL continue to work with iwi to develop and implement policies on collaboration	Unanimous
8	That AFL continue to work with Sealord to develop and implement policies on collaboration	Unanimous
10	That Te Pūtea Whakatupu Trust/ Te Pūtea Whakatupu Trustee Limited continue with its directors increased to a maximum of 5 with a quorum of a majority of directors	Unanimous
11	That Te Wai Māori Trust/Te Wai Māori Trustee Limited continue with its directors increased to a maximum of 5 with a quorum of a majority of directors	Unanimous
12	That the disposal restrictions in the Māori Fisheries Act 2004 for settlement quota and income shares remain and that simpler trading processes are developed for iwi wishing to sell some of their assets to willing buyers within the iwi/Te Ohu Kai Moana Group pool	Unanimous
13	That the current restrictions on the sale of ACE be increased from 5 to 15 years	55 iwi voted in favour 1 iwi voted against
14	That AFL continue to work with iwi from the Chathams to address key common issues on the Chathams and develop mutually beneficial commercial arrangements	Unanimous
15	That the Te Ohu Kai Moana Trustee Limited and Aotearoa Fisheries Limited Plans are adopted in full in accordance with the Review recommendations passed	Unanimous

91. By adopting Te Ohu's plan, iwi agreed that Te Ohu Kaimoana should report to the Minister with any necessary legislative changes by 30 September 2016.

92. Four additional resolutions were passed by iwi. First, in light of the review having only just been completed, iwi agreed that the next 4-yearly audit of Māori Fisheries Settlement entities, due in 2016, should not be conducted²¹. The following additional non-binding resolutions were also passed.

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

²¹ S 106 of the MFA enables 75% of MIOs/RIOs to agree not to conduct and audit of Te Ohu Kai Moana Trustee Ltd and its subsidiaries, and 75% of income shareholders to agree not to conduct and audit of AFL.

Implementing Te Ohu's plan

93. The resolutions agreed to by iwi at the SGM identified two important deadline dates:
- a. An amended funding model for Te Ohu's operations would be approved by iwi at the Hui-a-Tau on **31 March 2016** following detailed business modelling and consultation with iwi, such model to consider the role (if any) of Te Ohu's redeemable preference shares and all other funds held in its own right
 - b. Te Ohu would report to the Minister for Primary Industries by **30 September 2016** with details of the amendments that need to be made to the MFA to implement all agreed resolutions.
94. Following the June 2015 SGM, Te Ohu carried out extensive engagement with iwi to develop Te Ohu's business model (including its funding model) and to identify implementation details for other resolutions:
- a. In June 2015, Te Ohu carried out a survey of iwi to identify their priorities
 - b. In September 2015, Te Ohu held a series of regional hui to discuss its plan to implement the resolutions, and the priorities iwi have for Te Ohu in the longer term
 - c. In October 2015, Te Ohu ran a national workshop with invited participants from iwi to further clarify Te Ohu's future role and priorities
 - d. In November 2015, Te Ohu ran three focus group workshops to discuss:
 - i. how Te Ohu should carry out its role
 - ii. governance arrangements for Te Ohu and AFL
 - iii. funding options for Te Ohu.

Consultation documents and meeting notes can be provided if required.

95. In February 2016, after analysing the results of our engagement process, Te Ohu reported back to iwi via three regional hui to discuss its future business model, and progress on how other resolutions would be implemented (**see Appendix 6**).
96. A further national hui was held on 9 March to further report on the results and develop resolutions for iwi to vote on at the Hui-a-Tau (**see Appendix 7**). The main issue to be discussed would be Te Ohu's funding model.

Further decisions on Te Ohu's funding

97. Te Ohu assessed a number of funding options and recommended to iwi they support a model that would enable it to retain funds that it had accumulated since its establishment in 2004, and use the income to fund its operations. Te Ohu would develop policies for distribution of surpluses and seafood related investments (**see Appendix 8**). Te Ohu also commissioned an assessment of the costs it estimated as part of the proposal (**see Appendix 9**).
98. Te Ohu's proposed resolution was not put to the vote at the Hui-a-Tau. Instead a set of alternative resolutions was proposed to the effect that iwi should lead an independent review of the funding models proposed/considered by Te Ohu, along with its estimated future costs. These resolutions were passed by iwi.
99. At the Hui-a-Tau, iwi resolved to delay making a decision on Te Ohu's funding model, and instead resolved to carry out an independent review of the funding models considered by Te Ohu. While there was some support for Te Ohu's proposals, not all iwi were convinced that

retaining the accumulated funds in Te Ohu was the best option: some proposed a portion of the funds should be distributed, others proposed all the funds should be distributed and that AFL should meet Te Ohu's costs.

100. Iwi supported Te Ohu's second resolution that the redeemable preference shares held by Te Ohu in AFL should be cancelled, converted into ordinary shares and distributed to iwi.

101. The full resolutions considered by iwi are contained in **Appendix 2**.

Independent review of Te Ohu's funding models

102. An Iwi Working Group (IWG) was established in April 2016. The purposes of the IWG were:

- a. Facilitate development of independent advice on the implications of:
 - i. the accumulated funds held by Te Ohu are distributed to iwi who meet Te Ohu's costs through a levy
 - ii. the accumulated funds held by Te Ohu are distributed to iwi and Te Ohu's costs are met through 1st call on the AFL dividend
 - iii. the accumulated funds held by Te Ohu are distributed to iwi and AFL is required to meet Te Ohu's costs from their income
 - iv. Te Ohu retains the accumulated funds as an endowment fund and meets its costs from the income, after reserving enough to maintain the fund's real value. The Board would develop policies for distribution of surpluses and seafood related investments
 - v. Any other relevant considerations as determined by the IWG.
- b. Engage and monitor independent adviser(s)
- c. Receive the report and prepare recommendations
- d. Report to iwi on the independent adviser'(s) findings and IWG recommendations
- e. Communicate with Te Ohu on the independent adviser'(s) findings and IWG recommendations
- f. Attend a special general meeting (SGM) to present the IWG recommendations for MIOs to vote upon.

103. Unlike the IWG established to consider the 2014 – 15 review report, this IWG was established to be independent of Te Ohu, and sought its own technical advice.

104. The IWG appointed a consortium comprising Chapman Tripp/Korda Mentha ("the reviewers") to carry out the review. The reviewers finalised their report on 27 July (**see Appendix 10**).

105. The reviewers concluded that there are two credible options for funding Te Ohu:

- a. Te Ohu should retain the "Available Funds"²²
- b. Te Ohu should distribute some of the Available Funds and retain the balance.

Their preference was for Te Ohu to "distribute some, retain some". This option would provide Te Ohu \$50 million (assuming \$24m is distributed) which would be "more than

²² The reviewers' term for the accumulated funds held by Te Ohu

sufficient to cover funding for TOKM [sic] for a period of time ... in advance of a future review...”.²³

106. The reviewers also made recommendations to enable distributions to be made to non-charitable entities and for purposes other than fishing, and to include a compulsory levy system in the MFA which could be triggered by iwi subject to defined thresholds (they proposed at least 50% or more of the MIO, representing at least 50% of the notional iwi population).
107. The IWG carried out further engagement with iwi to discuss the recommendations and to firm up resolutions for consideration at an SGM.
108. Following a series of three regional hui held by Te Ohu in early August, Te Ohu held an SGM on 30 August 2016 for iwi to consider:
 - a. Resolutions developed by the IWG on Te Ohu’s funding model
 - b. Resolutions put forward by Te Ohu in response to the High Court findings on Te Pūtea Whakatupu
 - c. Resolutions put forward by AFL in relation to the minimum dividend requirement in the MFA.

Final decisions on Te Ohu’s funding

109. At the August SGM, iwi considered the resolutions put forward by the IWG. The full set of resolutions, including resolutions replaced by amendments, are contained in Appendix 3.
110. Iwi supported the following resolutions.

Te Ohu Kaimoana’s funding		Level of support
1	That TOKM [Te Ohu] undertake immediately a review of its operational structure and activities in line with the Reviewers’ report to confirm the funds available for retention and distribution.	Passed unanimously (51-0)
2	That iwi resolve to approve the preferred funding model of Retain some, Distribute some.	Passed unanimously (51-0)
3	That TOKM [Te Ohu], in conducting the structural and activities review, provides an outline to iwi regarding how iwi can have direct involvement in the process for approving unbudgeted projects which require expenditure of TOKM capital above \$1m per project and that any necessary amendments to the TOKM trust deed are made to give effect to such a process (for example, approval of such unbudgeted expenditure through a task force made up of TOKM [Te Ohu] representatives and iwi representatives who are appointed using the electoral college model).	Passed (50-1)
4b	That any surplus funds be distributed to iwi on an equal basis	Passed by majority (28-23)

²³ See Appendix 9: Chapman Tripp-KordaMentha *Review of TOKM costs and funding models: Report to the iwi Working Group*, 29 July 2016, p9

5	That TOKMTL [<i>Te Ohu</i>] seeks to amend the Māori Fisheries Act 2004 and the TOKM trust deed to also allow distributions, as directed by each MIO, to any charitable entity and/or for any charitable purpose (not just to a MIO or for fishing related purposes), within each MIO group structure to receive distributions.	Passed by majority (50-1)
6	That TOKMTL [<i>Te Ohu</i>] seeks to amend the Māori Fisheries Act 2004 to include a compulsory levy model (which charges iwi in proportion to population as set out in column 3 of Schedule 3 of the Māori Fisheries Act 2004) which does not apply immediately, but can be triggered by a vote of iwi at any time in the future (requiring approval of 75% or more of the MIO, representing at least 50% of the total notional iwi population in column 3 of Schedule 3), should iwi decide that this is the best on-going funding option.	Passed by majority (50-1)
7	That a further review of TOKM's [<i>Te Ohu's</i>] funding requirements occur within 5 - 7 years from the date of TOKM's [<i>Te Ohu's</i>] restructure	Passed by majority (50-1)

Distribution of surplus funds

111. An original recommendation was made by the IWG that surpluses should be distributed on the basis of the notional iwi population. Their recommendation is based on advice they received from the independent reviewer that the MFA presently requires distributions to be made on the basis of population.

112. A case was made by some iwi at the SGM that as the MFA is to be amended, there is an opportunity to amend the current requirements surrounding distribution. It was argued that it would be more appropriate for surpluses to be distributed equally amongst MIOs, particularly given many smaller iwi do not have sufficient resources to manage their fisheries on their own. Equal distribution of surpluses would put smaller iwi in a better position, compared to larger iwi, to manage their fisheries themselves.

113. For completeness we note that the resolution on the distribution of any surplus funds generated the most contention amongst iwi. We have incorporated a draft amendment to reflect this majority decision but note there is some risk it may be challenged later in the process.

Litigation in respect of Te Pūtea Whakatupu

114. The National Urban Māori Authority (NUMA) and Te Whanau o Waipareira Trust brought proceedings against Te Ohu Kaimoana on two matters relating to Te Pūtea Whakatupu. The first was to clarify the criteria for Te Pūtea Whakatupu's directors. Te Ohu's view had been that this requirement applied to the directors collectively, rather than individually. The Court found that each director must "have knowledge of, and be able to represent the interests of Māori who reside in urban areas of New Zealand"²⁴.

115. NUMA/Waipareira asked the Court to set aside the Te Ohu Plan and the resolutions passed by iwi at last year's SGM in so far as they related to Te Pūtea Whakatupu. They argued that

²⁴ National Māori Authority & Or v Te Ohu Kai Moana Trustee Ltd & Ors [2016] NZHC 1600 [15 July 2016]

there should have been specific consultation with urban Māori interests during the IWG process and that the decisions made by iwi regarding Te Pūtea Whakatupu at the June SGM were pre-determined. They also argued that it was not open for iwi to reject the recommendation from the reviewer²⁵ and replace it with a different resolution, which they said was contrary to the purpose of the Act.

116. On the second matter, the High Court found that Te Ohu's response to the findings and recommendations of the review were procedurally flawed as:
 - a. Te Ohu and the IWG did not have proper regard to the purposes of Te Pūtea Whakatupu when assessing the merits of the review
 - b. There needed to be but was not a proper and specific consultation process to present an opportunity for urban Māori views to be ascertained and considered before Te Ohu adopted the IWG paper as its Plan and presented it to the (June 2015) SGM.

117. Despite the above, the Court found that no relief should be given in relation to Te Ohu's Plan or the resolution of the SGM because:
 - a. There is no issue in relation to the Te Ohu Plan and Te Ohu acted within its powers in this regard
 - b. The outcomes of the SGM were not predetermined
 - c. Quashing the resolution regarding Te Pūtea Whakatupu would not advance matters
 - d. The resolution was not inconsistent with purposes of the Act
 - e. The resolution is a sensible one because it is clear that the current Pūtea Trustee structure is not working, particularly that all directors be available in order for there to be a quorum
 - f. Leaving the resolution in place does not prevent a further consultation process with urban Māori taking place.

118. In relation to Te Ohu's report to the Minister for Primary Industries the Court made further findings, including:
 - a. Te Ohu is obliged to forward the resolution concerning Te Pūtea Whakatupu to the Minister, but
 - b. Nothing prevents that resolution being accompanied by a report on the outcome of a fresh process that gives urban Māori a proper opportunity for input, and which responds to the review recommendations having had regard to the statutory purposes of Te Pūtea Whakatupu.

119. A more detailed summary of the case is attached at **Appendix 11**.

120. Te Ohu considers adequate time is needed to work with urban Māori authorities to resolve this matter and sought the support of iwi to report back to them with recommendations at the next Hui-a-Tau.

121. At the 30 August SGM, iwi supported the following resolutions put forward by Te Ohu:

²⁵ The reviewer's recommendation was to transfer control of Te Pūtea Whakatupu to the urban Māori authorities and Representative Māori Organisations along with a "yet to be determined iwi grouping, which followed on from the reviewer's primary recommendation to wind up or restructure Te Ohu.

Te Ohu Kaimoana resolution re Te Pūtea Whakatupu	Level of support
<p>That Te Ohu Kai Moana:</p> <p>a) engage in consultation with urban Māori groups (including, but not limited to, NUMA and the Schedule 5 Representative Māori Organisations) regarding the 2015 Review as it relates to proposed changes to Te Pūtea Whakatupu Trust; and</p> <p>b) informed by that consultation and the statutory purpose of Te Pūtea Whakatupu Trust (as emphasised by the recent High Court decision), develop a proposed set of recommendations in relation to Te Pūtea Whakatupu Trust to be put to our 2017 Hui-a-Tau for iwi approval.</p>	<p>Passed unanimously (51-0)</p>

Additional changes promoted by AFL

122. During 2016 AFL commissioned an independent review of its capital structure. Key findings are that the company is constrained by its statutory framework in the raising of capital, deployment of shareholder capital, and now that the critical infrastructure renewal is complete the company should work to reduce current debt levels.
123. In that context, the fact that the MFA is being reviewed provides an opportunity for iwi to consider whether the legislated requirement for AFL to pay a minimum dividend of 40% NPAT should be revised, taking into account that iwi, through their Asset Holding Companies (AHCs), have the mana and knowledge to make those decisions directly, consistent with rangatiratanga.
124. At the 30 August SGM, iwi supported the following resolutions put forward by AFL.

AFL resolutions re the minimum dividend requirement	Level of support
<p>The current legislative dividend requirement be removed from the Māori Fisheries Act, so as to allow shareholders to set the dividend policy.</p> <p>The current dividend policy will continue in effect until the Māori Fisheries Act is amended, and would only be changed post Māori Fisheries Act updates if Shareholders approved a different policy</p>	<p>Passed by majority (49-2)</p>

APPENDIX 2: Implementation plan for the Māori Fisheries Review

From Part D of the Report to the Minister for Primary Industries, September 2016

How the changes will be implemented

Introduction

1. An outline of the MFA is included in Part E of this report identifying where legislative changes are required to implement the resolutions agreed to by iwi. This part sets out the rationale for the changes as part of the overall implementation plan.

Implementation paths

2. Te Ohu's plan, presented to the SGM in June 2015, stated that we would provide a report to the Government by the end of September 2016, setting out the legislative changes required to implement the iwi decisions resulting from the review. While not all proposed changes will require legislative amendment, it is important to understand the path for implementation of all changes so they are implemented in an integrated way.

The Māori Fisheries Act 2004

3. The Act provides for the fundamental building blocks of the settlement, such as the allocation model (for example the method for allocating settlement assets to iwi, the governance arrangements between iwi and the various fisheries settlement entities and the restrictions on the sale of settlement assets within the settlement pool), and the obligations of the Crown (for example the settlement quantum of 20% of new fish-stocks introduced into the QMS). These can only be changed if Parliament amends the MFA.

Trust Deeds and Constitutions

4. Trust deeds and constitutions contain the rules for administration of relevant entities. The Act sets out the matters that must, at a minimum, be provided for in these documents. In most cases, the rules and processes are detailed in the constitutions and deeds and can be amended according to a process set out in each document and without the need to go back to Parliament.

Codes of Governance

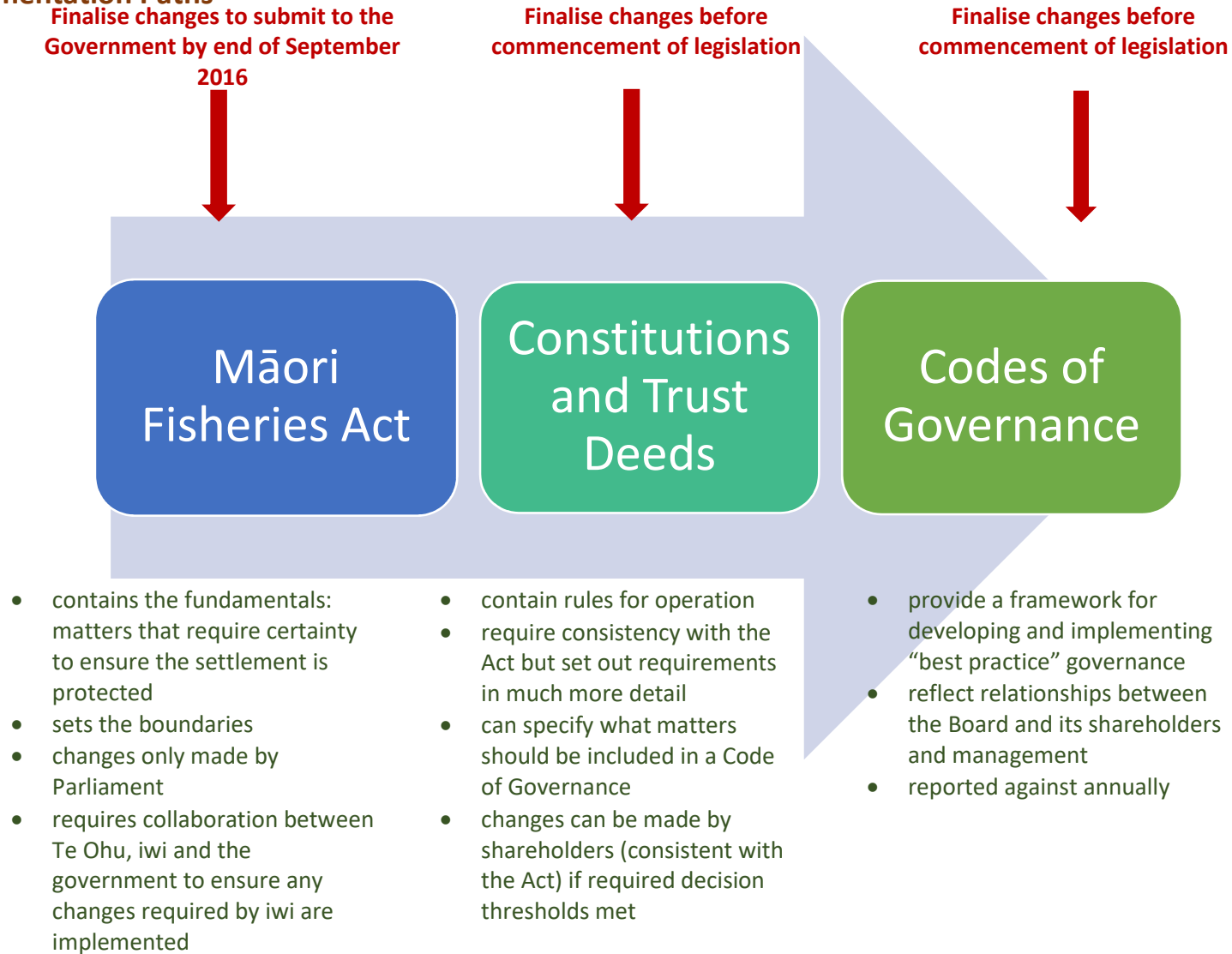
5. Codes of Governance or Charters can be used by Boards to set out their governance policies. They cover the Board's relationship with shareholders, Board procedures, Committees and their Terms of Reference, remuneration of directors, relationship with management and so on. Boards generally report against their Codes of Governance annually. AFL's constitution already requires the Company to prepare and publish a "Corporate Governance Code" and to report annually against it.
6. The relationship between the Act, the deeds and constitutions and codes of governance is summarised in Figure 5.

Implementation approach

7. The approach we have taken in designing the implementation of the decisions iwi have made is to provide for as much flexibility as possible by enabling the detail of polices to be set out in constitutional documents and Codes of Governance within the clear boundaries set by the legislation.

8. The resolutions on each entity or issue, along with the changes needed to implement them, are set out in the following sections. While we have identified which of the changes need to be implemented through amendments to the MFA, we have included – for completeness - the consequential changes that need to be made to other statutory documents such as constitutions and trust deeds. It will be important to allow time between the commencement of the amended legislation and its full operation to enable the statutory documents to be amended.

Figure 5: Implementation Paths



Implementation plan for Te Ohu Kaimoana

9. The following changes need to be made to implement the binding resolutions passed by iwi:
 - a. Governance of AFL needs to be removed from Te Ohu's duties and functions and its voting and income shares transferred to iwi
 - b. Te Ohu's primary focus will be to protect and enhance the settlements
 - c. Iwi, through MIOs, need to directly control the appointment and removal of Te Ohu's directors, approve Te Ohu's strategic plans and pool of directors' fees.
10. Consequential changes in governance processes are also needed, consistent with the recommendations of the first IWG and further engagement by Te Ohu, to support the following:
 - a. 5 – 7 directors for Te Ohu appointed on the basis of merit by MIOs at an AGM
 - b. MIOs will vote on the basis of 1 iwi:1vote
 - c. Iwi will approve three year strategic plans
 - d. A process for appointing directors
 - e. Three year terms for directors, with the ability to be re-appointed
 - f. A process for removing directors
 - g. Approval by MIOs of the total pool of directors' fees at an AGM.
 - h. Adoption of the first IWG's principles for Te Ohu's operations.
11. The structure of the new governance arrangements, based on the direct appointment of directors by MIOs, should be implemented through the MFA. Te Ohu's constitution and trust deed will be amended for consistency with the MFA, and set out in more detail how its requirements (for example the process for appointing directors) will be met. Te Ohu will also develop a Code of Governance incorporating its operating principles, how it will engage with iwi, Terms of Reference for Board committees and specific skills required for the board.
12. Non-binding resolutions passed by iwi also require changes to the MFA to:
 - a. Enable any surplus funds to be distributed to iwi on an equal basis
 - b. Enable distributions to be made by Te Ohu, as directed by each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure
 - c. Include a compulsory levy regime which charges iwi in proportion to population and which can be triggered by a vote of iwi at any time (requiring approval of 75% or more of the MIOs representing at least 50% of the population).
13. Any legislative changes should not compromise the charitable status of Te Ohu Kaimoana and other fisheries settlement entities.
14. Provision for a review of Te Ohu's funding should be included in the regime for reviewing the overall structural arrangements. This is covered later in this report.
15. Other non-binding resolutions can be implemented without the need for legislative amendment. Te Ohu has already commenced its review of operational structure and activities and will work with iwi to identify their priorities for the organisation, the costs of delivery and what if any surplus might be available for distribution. In the longer term, any surpluses identified as available for distribution will be determined through Te Ohu's strategic planning process.

16. Te Ohu will also develop an appropriate means for iwi to have direct involvement in the process for approving unbudgeted projects, involving amounts of capital above \$1 million, and amending the trust deed if necessary.

Distribution of surplus funds

17. Iwi will approve Te Ohu's strategic plans every three years. Within each planning cycle Te Ohu will need to monitor the funds available to Te Ohu to determine whether:
 - a. it has sufficient funds to cover its work programme for at least the next three years, or
 - b. some of its accumulated funds are surplus to requirements and able to be distributed.
18. Te Ohu will need to develop policies to determine the point at which it can be satisfied it has surplus funds that can be distributed. As per the August 2016 resolution, such distributions will be made to iwi on an equal basis. They will also be able to be made, as directed by each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure.
19. A new section on surplus funds will be incorporated in the MFA. This is necessary to avoid confusion between the distribution of surplus funds, and Te Ohu's existing ability under s 35 (1) (g) (i) of the MFA to "apply the funds of the Trust by way of payments to mandated iwi organisations" to achieve Te Ohu's purpose. These payments may or may not necessarily include all iwi at any one time.

Key elements of a compulsory levy

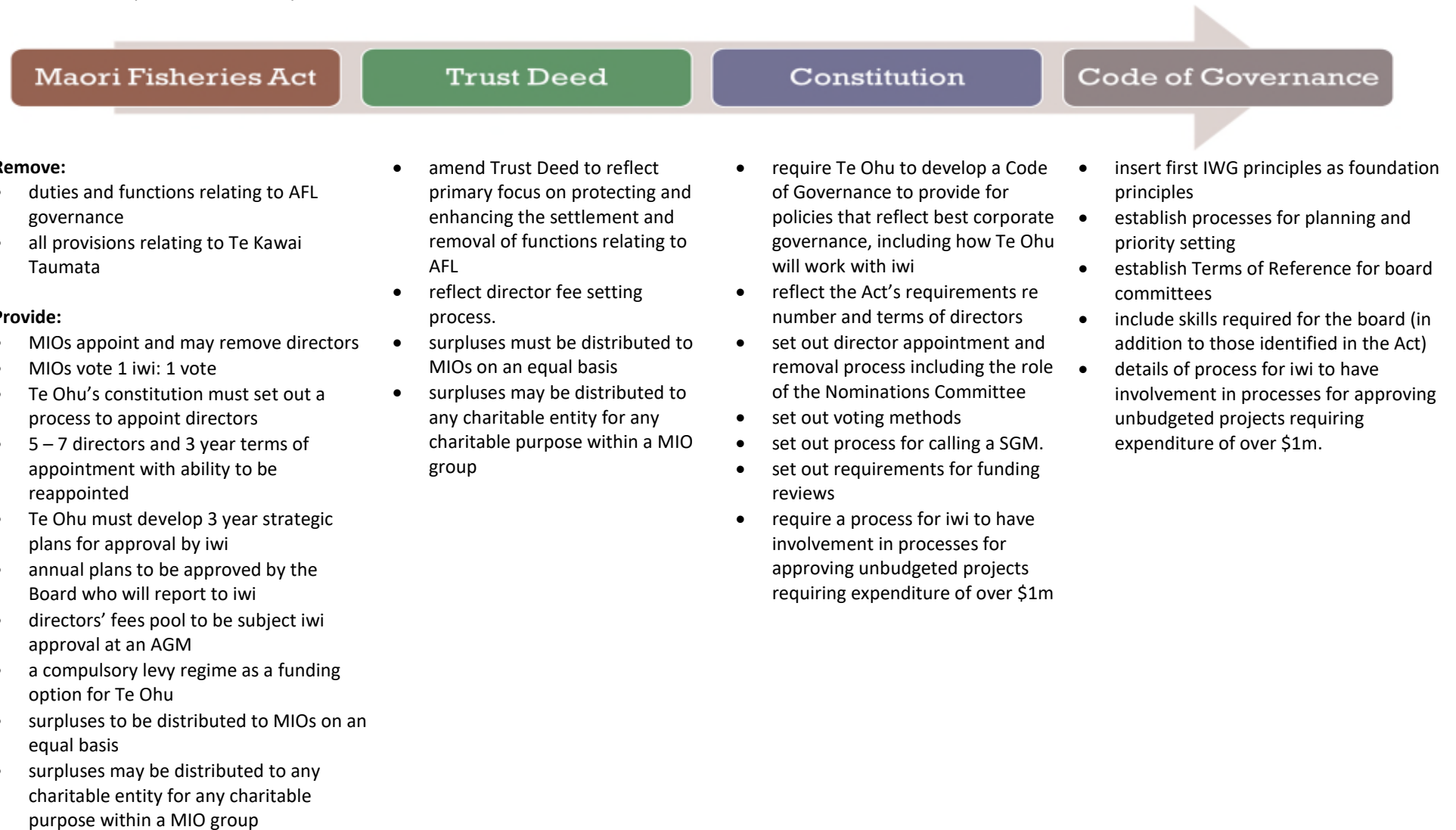
20. Iwi have agreed that a levy model should be included in the MFA that can be triggered at any time in the future should they decide this is the best on-going funding option.
21. As iwi will need to consider what services a levy will be paying for, any levy option needs to be considered as part of Te Ohu's broader strategic planning cycle where decisions are made by iwi about Te Ohu's strategic objectives. That being the case, a structured process will be needed to ensure Te Ohu can analyse the implications of a levy and present a proposal to iwi for consideration. The key elements of the process are outlined in Table 2 below. Further consideration needs to be given to the required statutory mechanisms to give effect to aspects of the process outlined.

Table 2: Outline of the levy process

Levy period	A maximum of 9 years
Initiation of a levy	<ul style="list-style-type: none"> a. Iwi can requisition Te Ohu to initiate the levy funding process, or Te Ohu can initiate the process itself b. Approval of 50% of MIOs representing 50% of the population will be required to requisition Te Ohu c. If a requisition is made, Te Ohu must prepare a proposal to impose a levy on MIOs and send it to each MIO.
Preparation of proposal by Te Ohu	<ul style="list-style-type: none"> a. The proposal must specify: <ul style="list-style-type: none"> i. the period during which a levy is proposed to apply ii. the anticipated cost of performing the functions and duties of Te Ohu over the period during which a levy is proposed to apply iii. the maximum funding levy that would be imposed in any year during the levy period iv. the assumptions supporting the maximum funding levies including other funding sources, use of reserves, carry forward of previous funding levies and inflation v. the circumstances in which less than the maximum funding levy might be imposed in respect of any year vi. the intended dates for funding levy payments and the penalties for non-payment vii. methods for recovery of unpaid levies, including sourcing the levies to be paid from AFL dividends viii. the likely consequences of the funding levy proposal not being adopted b. As soon as practicable after preparing the proposal and sending it to iwi, Te Ohu must convene a general meeting to consider the proposal c. If an amendment is proposed by any MIO or Te Ohu and supported by 50% of the MIOs representing 50% of the population, then Te Ohu must revise the proposal and convene a further general meeting within 60 days to consider and vote on the revised proposal
Decision	<ul style="list-style-type: none"> a. A resolution to adopt the funding levy requires the approval of 75% of MIOs representing at least 50% of the population b. If a resolution is not adopted, MIOs must not requisition Te Ohu again within 2 years after the failure of the resolution
Maximum levy	The maximum levy payable in any year will be reviewed at the commencement of every 3-year strategic planning cycle.
Review of levy	<ul style="list-style-type: none"> a. Not earlier than 2 years before the expiry of a funding levy, Te Ohu must: <ul style="list-style-type: none"> i. prepare and distribute a further funding levy proposal to MIOs ii. include an analysis of the likely consequences of the funding levy proposal not being adopted.

22. The implementation paths for all the changes required for Te Ohu are illustrated in Table 3.

Table 3: Implementation plan - Te Ohu Kaimoana



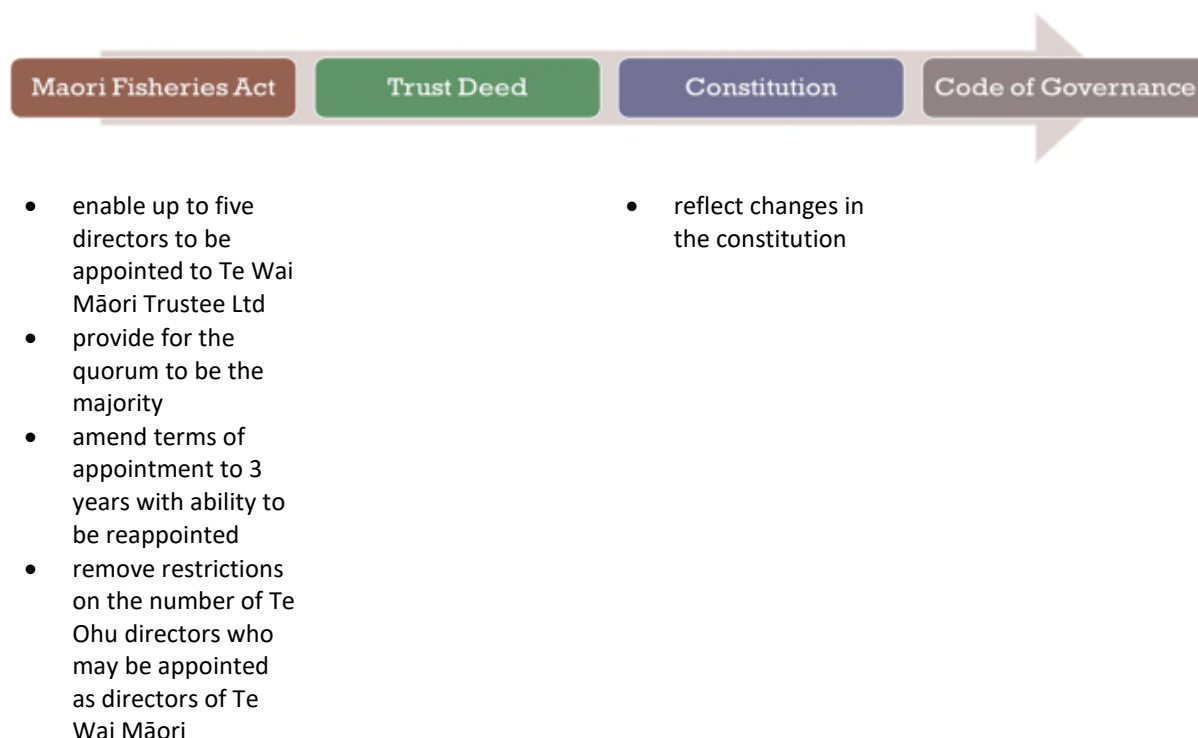
Implementation plan for Te Pūtea Whakatupu

23. Following the High Court decision in *National Urban Māori Authority & Te Whānau o Waipareira Trust v Te Ohu Kai Moana Trustee Limited & Ors* CIV 2015-485-819 [2016] NZHC 1600, consultation with urban Māori groups is being undertaken with resolutions due to be voted on by iwi at the March 2017 Hui-a-Tau. The results of this consultation process and the vote at the Hui-a-Tau will be notified to the Minister following the Hui-a-Tau.

Implementation plan for Te Wai Māori

24. To give effect to the binding resolutions passed by iwi, provision needs to be made for:
- up to 5 directors to be appointed to Te Wai Māori Trust by Te Ohu
 - The quorum to be the majority of directors.
25. Consistent with the “straw tangata” model, some changes could be made to more closely align Te Wai Māori with Te Ohu, creating greater efficiencies, including amending the terms of appointment from 4 to 3 years with rights of reappointment – bringing directors’ terms into line with those proposed for Te Ohu. Restrictions on the appointment of Te Ohu directors would also be removed, noting that any director will still need to meet the criteria set out in the MFA.
26. The necessary changes are set out in Table 4.

Table 4: Implementation plan – Te Wai Māori



Implementation plan for Aotearoa Fisheries Ltd

27. The following changes need to be made to implement the binding resolutions passed by iwi:
- a. All shares in AFL will become ordinary shares and have the same rights and benefits. The voting and income shares held by Te Ohu will be converted to ordinary shares, and transferred to iwi through AHCs
 - b. AFL should continue to develop and implement policies on collaboration with iwi (including Chathams iwi) and Sealord
 - c. Consequential changes in governance processes will need to be made, consistent with the recommendations of the first IWG and further engagement with iwi to support the following:
 - i. AFL is to have 5 – 8 directors appointed by AHCs at an AGM, based on merit
 - ii. AHCs will vote based on shareholding
 - iii. A process for appointing directors
 - iv. A three-year term for directors with the ability to be reappointed
 - v. A process for removing directors
 - vi. Approval by AHCs of the total pool of directors' fees at an AGM.
 - vii. Changes to the constitution that affect the rights and interests of shareholders require the approval of 75% by shareholding
 - viii. Vote of at least 75% of shares for major transactions and significant changes in business focus.
28. The structure of the new arrangements based on the direct appointment of directors by AHCs should be implemented through the MFA, with further detail (such as the director appointment process) provided for in the company's constitution.
29. The changes to the governance arrangements for AFL reflect a shift from a single voting shareholder (Te Ohu) to multiple shareholders (AHCs). For the most part, these changes mean the governance of the company will more closely align with that of a "standard" company and the decisions that are currently taken by Te Ohu will be made by AHCs as shareholders. These will include decisions on major and material transactions. In addition, the MFA currently provides that changes to the constitution that affect the rights and interest of income shareholders require the approval of the holders of 75% of income shares. Future decisions will be made by AHCs on the basis of their shareholding.
30. A major transaction is a transaction which involves acquiring or disposing of assets or acquiring rights or incurring liabilities or obligations with a value of more than 50% of the company's assets before the transaction²⁶. Iwi have resolved that special resolutions for major transactions for AFL should require at least a 75% majority voting threshold. This aligns with the definition of special resolutions under the Companies Act. The Companies Act also enables the constitution of a company to require a higher threshold²⁷.
31. There may be circumstances in which iwi wish to establish a higher threshold where a decision has major implications for all iwi –bearing in mind that currently 75% of iwi hold less than 25%

²⁶ S129, Companies Act.

²⁷ *special resolution* means a resolution approved by a majority of 75% or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question (s2, Companies Act 1993).

of the shares in AFL. Te Ohu will continue to work with AFL and iwi to identify the kinds of decisions that might require a threshold that is higher than the minimum, and reflect them in the company constitution before the amended legislation commences.

32. During our engagement, there was debate on the right threshold for determining how material transactions with a related party should be defined. At present, these are defined in the company constitution as transactions in which AFL:

acquires or disposes of assets, borrows, lends, pays or receives money or enters into obligations with a value in excess of 5% of shareholders' funds before the transaction.

33. Related party means:

a director or any person, company or trust associated with the director, or a MIO or AHC holding more than 5% of the income shares of AFL.

34. Such transactions are presently subject to an ordinary resolution (a simple majority by shareholding however currently there is only one voting shareholder).

35. The purpose of the material transaction provisions is to protect shareholders from directors and employees influencing a significant transaction to their benefit. The requirement for approval by ordinary resolution subjects the transaction to shareholder scrutiny so that shareholders can be satisfied the transaction is in all their best interests.

36. AFL advises there have been no transactions completed that would have triggered this threshold to date and no reason to change it. During the August 2016 regional hui, some iwi proposed that the definition of 5% of the shares threshold should be removed and that all material transactions with any shareholder (not just those holding more than 5%) must be approved by a simple majority of shareholders. Te Ohu and AFL will work with iwi to resolve these thresholds in an amended constitution before the commencement of legislative amendments.

37. The resolutions requiring AFL to work cooperatively with iwi (including Chathams iwi) and Sealord do not require an amendment to the MFA. AFL is already implementing these resolutions and we would expect a formal commitment to continue to do so will be included in the Code of Governance.

Right of First Refusal

38. Iwi agreed to a non-binding resolution that the alienation of assets by AFL and/or Sealord be subject to, at the very least, a binding RFR to allow iwi to buy any assets those companies wanted to sell. This resolution should be implemented through an amendment to the MFA, the company constitution and its code of governance.

39. The MFA should require AFL's constitution to include a policy on RFR, to be implemented through the Corporate Governance Code. The detailed procedures would be outlined in the Code, with the key concepts being:

- a. The RFR will include asset categories of quota, marine licence space, land and buildings and any business units.
- b. Assets will be offered at market value to generate benefits for all shareholders.

- c. If iwi can meet the market price, then iwi will be able to purchase the assets.

Redeemable preference shares (RPS)

40. The RPS were issued as part of the settlement of loans between AFL and the Treaty of Waitangi Fisheries Commission. The RPS were issued when Te Ohu was first being established and were structured so that Te Ohu could call on them if required. At that time, the funding Te Ohu needed to fulfil its functions was uncertain. The purpose of the RPS is identified in the Deed as “being in the nature of financial insurance for the Trustee”.
41. The conversion of the RPS to shares reduces AFL’s liabilities, increasing its equity and therefore value to its iwi shareholders. The RPS will be cancelled or converted into ordinary shares and transferred to iwi along with the other shares, as above.

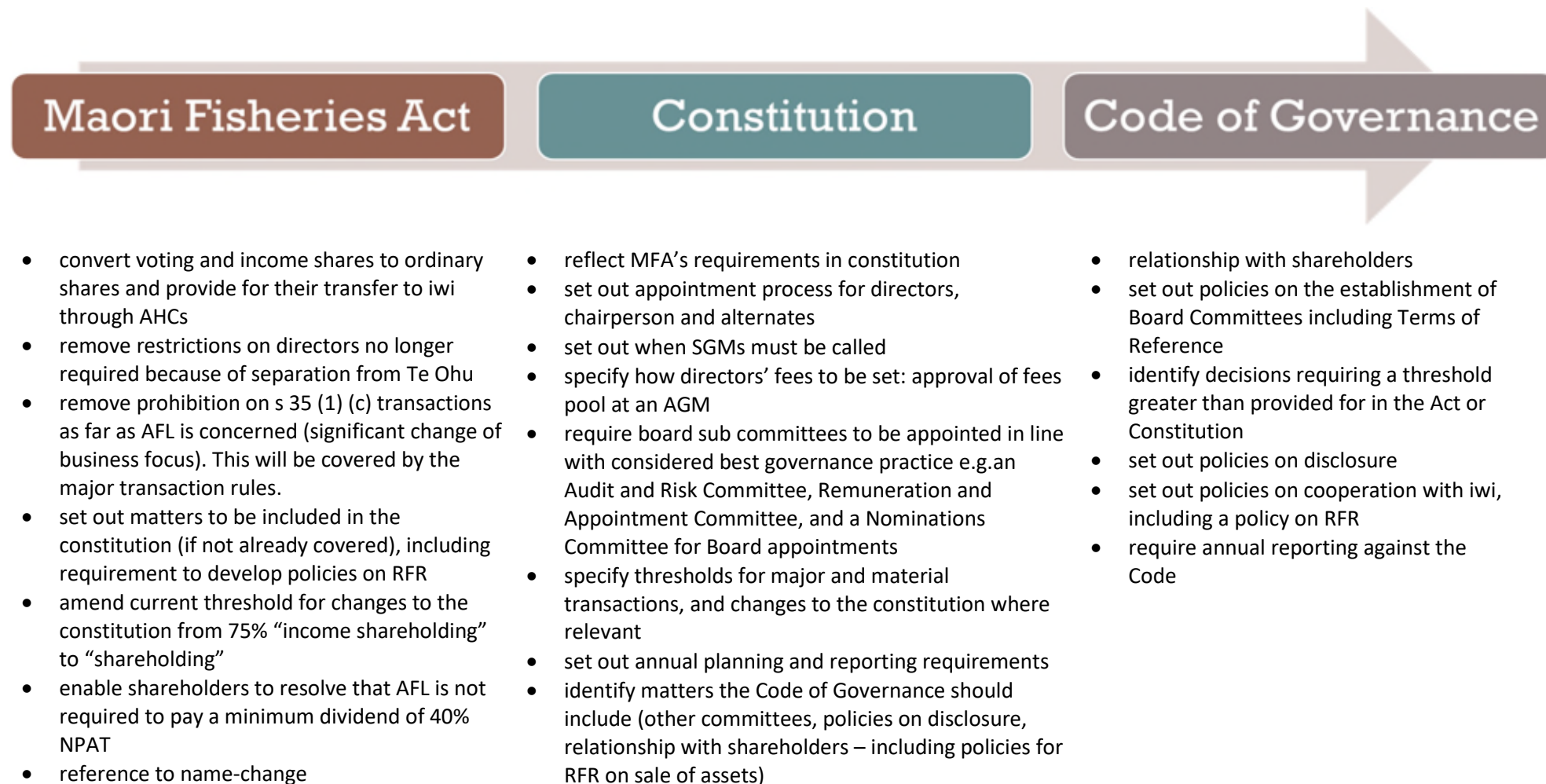
Minimum dividend requirement

42. Iwi agreed to a non-binding resolution to remove the requirement on AFL to pay a minimum dividend of 40% NPAT. This will require an amendment to the MFA. Iwi have agreed with AFL’s proposal that the current dividend policy will continue in effect until the MFA is amended and will only be changed after that time if shareholders approve a different policy. A practical approach to accommodate this resolution is to provide in the legislation for shareholders to resolve in respect of any year that the requirement to pay 40% NPAT does not apply.

Change of name

43. AFL is now trading under the name Moana New Zealand and is in the process of changing the company’s name to match. A reference to this change will need to be made in the MFA.
44. The changes required to implement all the resolutions are summarised in Table 5.

Table 5: Implementation of changes – AFL



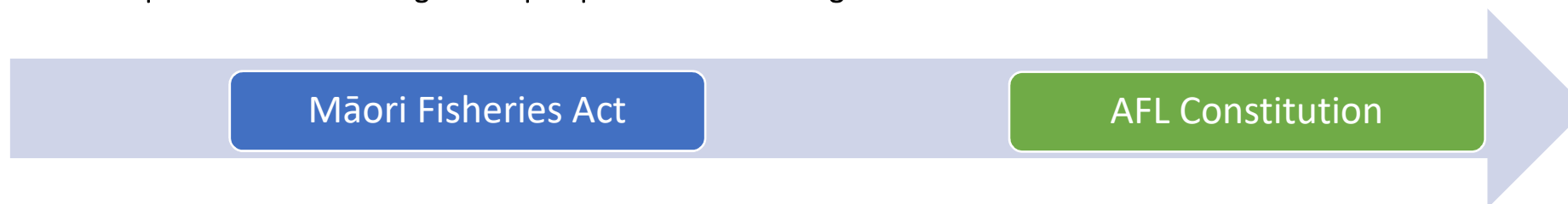
Implementation plan - simplification of the process for trading settlement assets

45. To simplify the process of trading settlement assets within the Māori pool, most of the existing requirements in the MFA will need to be removed and replaced with a simpler regime. In addition, the current legislative restriction on the sale of ACE will need to be increased from 5 to 15 years.
46. A summary of the new processes is set out below.

Trading AFL shares

47. The new process for trading AFL shares will include the following:
 - a. AHCs may sell their AFL shares to any AHC or AFL on a willing-buyer, willing-seller basis
 - b. The decision by the AHC to sell will be subject to a special resolution of the MIO's board
 - c. A decision to sell will not be time-limited unless the MIO chooses
 - d. Te Ohu will not be permitted to buy AFL shares
 - e. AHCs must notify AFL of the sale by providing a properly completed transfer of shares document
 - f. AFL must maintain a register of shareholders and share transfers and require evidence the transactions are between AHCs
 - g. AFL is to publicly notify any change in shareholding that is greater than 5% at the time of registering the transfer
 - h. Te Ohu is to maintain a public register of MIOs and AHCs to provide an independent and up-to-date source of information on parties who can trade AFL shares.
48. Enabling AFL to buy back its own shares and either hold them to re-sell, or cancel them is currently acceptable practice for limited companies.
49. Protections should be retained and updated to cover any agreements a MIO/AHC enters into with a third party that could result in the sale of income shares to ensure they can only be sold to AHCs or AFL. The prohibition on gifting should also be retained.
50. The implementation path for these changes is set out in Table 6.

Table 6: Implementation of changes - simpler processes for trading AFL shares



Māori Fisheries Act

AFL Constitution

Remove:

- requirement for AFL to establish a disposal process
- ability for Te Ohu to buy and sell AFL shares
- requirement that MIOs cannot sell their shares within 2 years of receiving them
- requirement that MIOs notify any proposal to sell AFL shares
- requirement for MIOs to obtain approval of at least 75% of adult members who vote at a General Meeting held for the purpose
- timeframes for approvals
- requirement for shares to be offered to Te Ohu and other MIOs (including requirement to accept best price available)

Provide:

- AHCs to sell their shares but only to another AHC or AFL
- A MIO must pass a resolution of their Board to approve a sale of AFL shares
- AHCs to notify AFL of the sale of AFL shares so the sale can be registered
- AHCs to provide evidence the sale is to another AHC
- enable AFL to buy back its shares
- AFL to maintain a share register and record transactions
- AFL to publicly notify any change in shareholding that is more than 5% when transfer registered
- Te Ohu to maintain an up-to-date register of MIOs, IAOs and AHCs
- update remedies for breaches of requirement that sales should be between AHCs, or AHCs and AFL
- simplify references to “exceptions” to ensure when an AHC is no longer owned by a MIO, the shares remain the property of the MIO

- reflect changes in the Act
- set out process to notify changes in shareholding >5%
- enable AFL to buy shares and hold for future resale or cancellation

Trading settlement quota

51. A simplified process for trading settlement quota is set out below:
 - a. A MIO, through its AHC, may sell settlement quota to any other MIO's AHC, Te Ohu Group or AFL on a willing-buyer, willing-seller basis
 - b. The decision to sell must be subject to a resolution of the MIO's board (by implication this means an AHC must obtain the approval of its MIO before a sale can proceed)
 - c. FishServe must be satisfied the transaction is between AHCs, Te Ohu Group or AFL and that the sale has been subject to a special resolution of the MIO (note in practice this will require the MIO to provide FishServe with all appropriate documentation to support the transfer)
 - d. Te Ohu will be required to maintain a public register of all MIOs and AHCs.

52. Existing protections and remedies for breaches will need to be updated to reflect this process. For example, protections exist to ensure that if a Te Ohu Group entity or a MIO sells or relinquishes control over a subsidiary or sub-company of an AHC that holds settlement quota, the quota must be treated as the property of Te Ohu or the MIO as appropriate. Remedies also exist for breaches of the sales requirements.

Timeframe for ACE sales

53. The extension of the maximum time for sales of ACE is to be extended from 5 to 15 years, consistent with the resolution agreed to by iwi. An amendment to the MFA will be required.

54. Table 7 sets out the implementation path for these changes.

Exchanges

55. The MFA provides a regime to enable iwi to exchange settlement quota for other quota of the same market value including:
 - a. settlement quota for other settlement quota
 - b. settlement quota for normal quota.

56. Exchanges of settlement quota for settlement quota can now be covered by the simplified sales process. That means such exchanges can be carried out as long as they meet the requirements for a sale of settlement quota, outlined earlier.

57. The current process for exchanging settlement quota for normal quota will remain because:
 - a. iwi have not resolved to remove it
 - b. the process retains an option for iwi
 - c. measures will remain to ensure that if iwi wish to exchange settlement quota for normal quota, the overall value of the "settlement pool" is not diminished.

58. As a consequence, Te Ohu's role in respect of exchanges outside the pool will remain to ensure they involve quota (or a mix of quota) of the same market value.

Table 7: Implementation of changes - simpler process for trading settlement quota and extension of timeframe for ACE sales



Remove:

- requirement for MIOs to seek approval from 75% of adult members who vote at a meeting called for the purpose
- requirement for MIOs to include its policy on sales in its annual plan
- requirement to offer settlement quota to all MIOs and Te Ohu Kaimoana Group
- restrictions relating to bundling of assets
- 15-month time limit for approvals
- restrictions on sales within 2 years of allocation
- requirements on how MIOs deal with bids and determine who can purchase
- remove procedures to determine who has right to purchase
- exchanges of settlement quota for settlement quota from the “exchanges regime”
- role of Te Ohu in making rules on sales of settlement quota within the pool
- role of Te Ohu in recording all transfers of settlement assets

Require

- MIOs to approve a sale of settlement quota through a resolution of their Board
- Te Ohu to maintain a public register of all MIOs, IAOs and AHCs (note that FishServe will need to check that sales are between legitimate parties and will hold records of transfers)
- amend other remaining provisions to reflect simplified process (including breaches of requirements)

Provide

- ACE can be sold for up to 15 years without being considered a sale

Review of structural arrangements and Te Ohu's funding

59. Iwi passed two non-binding resolutions that call for:
 - a. A further review of settlement entities no later than 10 years from the date that the amended structural relationships arising from the review are in place to assess their scope, role, funding and governance arrangements including their individual continuance and/or retention of assets.
 - b. A further review of Te Ohu's funding requirements within 5 – 7 years of Te Ohu's restructure.

60. The most practical approach is to incorporate the review of Te Ohu's funding requirements into the wider structural review, to occur no sooner than 7 years and no later than 10 years from the commencement of the structural changes. This would create flexibility for iwi and Te Ohu to settle on the timing for a review of all matters, based on any concerns or problems iwi have with the performance of the entities, or with Te Ohu's funding situation.

61. Given the change in the nature of the relationships between all settlement entities, including the removal of governance of AFL from Te Ohu, cooperation between all entities will need to be assured. This will be vital for any future review of the settlement entities particularly if Te Ohu is required to provide the necessary funding.

62. The review provisions in the MFA will need to be amended to incorporate this review. They currently provide for a Committee of Representatives to appoint a reviewer. The Committee is appointed through the electoral college system. The electoral college process will be removed along with Te Kawai Taumata following the amendments to the MFA. However a similar process can be followed by enabling iwi in each regional grouping identified in Schedule 3 of the MFA to appoint a representative. Representative Māori Organisations set out in Schedule 5 would appoint one representative.

Technical matters

63. Additional technical amendments to the MFA are desirable to provide greater clarity and prevent unnecessary litigation and cost to iwi and Te Ohu.

MIO constitutions – electoral provisions

64. One such provision concerns the election of directors or trustees to mandated iwi organisations. Kaupapa 1 of Schedule 7 of the Act requires that all adult members of an iwi must have the opportunity to elect the trustees of the MIO. It does not specify that all adult members must have the opportunity to elect all trustees and the provision is unclear as to whether it is sufficient that all adults of the iwi have the ability to elect one trustee of the MIO. While the constitutions of many MIOs favour an approach that enables iwi members to elect one trustee (e.g. based on their affiliation to hapū or recognised marae), it could be argued that the MFA requires them to enable all adult members to have the opportunity to elect all trustees. It should be noted that Crown policy in respect of post-settlement governance entities (PSGEs) allows an electorate approach to elections of officeholders, if that is chosen by an iwi. Ensuring that the MFA's provisions align with this policy would be useful.
65. An amendment to Kaupapa 1 of Schedule 7 could clarify this matter to ensure that all existing MIOs, including PSGEs, comply with the MFA.

Approval of Post Settlement Governance entities as MIOs under the MFA

66. As many iwi reach Treaty settlements with the Government, they must establish new Post Settlement Governance Entities (PSGEs). Many iwi wish to have these new entities replace their existing MIO, in which case they must seek the approval of Te Ohu. Once approval is given, fisheries settlement assets are transferred to the new entity.
67. An amendment is needed to allow for the ownership of an existing AHC to be transferred to a new MIO recognised by Te Ohu, avoiding the need for iwi to establish a new AHC and incur the expenses of transferring settlement quota from the existing AHC to the new AHC (s16A-16G of the Act refers).

Restrictions on directors of AHCs

68. The MFA currently provides that no more than 40% of the directors of a MIO can also be directors of their AHC, any subsidiary of an AHC and any fishing enterprise it establishes in accordance with the MFA. This provision was intended to ensure a level of independence in the governance of the AHC.
69. Te Ohu is aware that for many iwi, the costs of obtaining additional directors on their AHCs is prohibitive. It also conflicts with the principle of rangatiratanga and its imposition on iwi should be reconsidered.

Definition of Freshwater Fisheries

70. The definition of freshwater fisheries is currently worded as follows:

***freshwater fisheries** means any fishery in freshwater in New Zealand excluding any sports fishery or unwanted aquatic life or activities conducted under the Freshwater Fish Farming Regulations 1983 (s 91).*

71. Neither the Draft Māori Fisheries Bill submitted by Te Ohu as part of *He Kawai Amokura* nor the Māori Fisheries Bill introduced to Parliament included this exclusion. It is unclear from the Select Committee report why it was included later.

72. The purpose of Te Wai Māori is to:

*Hold and manage the trust funds on trust for and on behalf of the beneficiaries under the Deed of Settlement, in order to advance the Māori interests in **freshwater fisheries**, but not in a manner that could adversely affect the charitable status (if any) of the Trust (s 94).*

The exclusion limits the activities Te Wai Māori can advance on behalf of Māori. We welcome the opportunity to clarify the rationale for this exclusion and to remove it if redundant.

