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as at 1 September 2017



## Maori Fisheries Act 2004

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Commencement    see section 2

### Contents

	Page
Preamble	
1 Title	13
2 Commencement	13
<b>Part 1</b>	
<b>Purposes of Act, key concepts, and key iwi organisations</b>	
Subpart 1—Purposes, outline, and interpretation	
3 Purposes	13
4 Outline of Act	14
5 Interpretation	14
6 Act binds the Crown	21
Subpart 2—Key concepts	
<i>Classification of deepwater and inshore quota</i>	
7 Classification of new quota	21
8 Basis for classifying stock under section 7	21
9 Alternative basis for classification of new quota	22

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry for Primary Industries.**

	<i>How iwi population and coastlines determined</i>	
10	Population of an iwi	23
11	Registered coastline entitlements	23
	Subpart 3—Iwi organisations	
	<i>Mandated iwi organisations</i>	
12	Functions and powers of mandated iwi organisations	24
13	Recognition of mandated iwi organisations	25
14	Criteria for recognition of mandated iwi organisation	25
15	Recognition of iwi governance entity	25
16	Functions and powers of asset-holding companies	26
17	Constitutional documents	27
18	Changes to constitutional documents	28
	<i>New mandated iwi organisation may replace existing mandated iwi organisation</i>	
18A	Interpretation	28
18B	Requirements for recognition of new mandated iwi organisation	29
18C	Requirements relating to constitutional documents of new organisation	30
18D	Proposed transfer date if recognition requirements met	30
18E	Recognition of new mandated iwi organisation and transfer of specified settlement assets	30
18F	Certain effects of recognition of new organisation	31
18G	Remedy if specified settlement assets not transferred	32
	<i>Provisions allowing for reorganisation of specified mandated iwi organisations</i>	
19	Interpretation	33
20	Withdrawal of group from joint mandated iwi organisation	33
21	Recognition of mandated iwi organisation of withdrawing group	35
22	Transfer of assets	36
23	Voting rights	36
24	Status of Ngati Hine and Rongomaiwahine	36
25	Further criteria may be prescribed	37
26	Benefit to persons who are not members of iwi	37
	<i>Recognised iwi organisations</i>	
27	Functions and powers of recognised iwi organisations	37
28	Status of recognised iwi organisations	38
29	Representative Maori organisations	38
	<b>Part 2</b>	
	<b>Establishment and review of new entities</b>	
30	Outline of this Part	39

Subpart 1—Te Ohu Kai Moana and Te Ohu Kai Moana Trustee  
Limited

*Establishment of trust and trustee*

31	Te Ohu Kai Moana to be established	39
32	Purpose of Te Ohu Kai Moana	39
33	Trustee of Te Ohu Kai Moana	40

*Duties and functions of trustee*

34	Duties of Te Ohu Kai Moana Trustee Limited	40
35	Functions of Te Ohu Kai Moana Trustee Limited	41

*Trust deed*

36	Trust deed of Te Ohu Kai Moana	42
37	Matters to be included in annual plan	44
38	Annual report of Te Ohu Kai Moana Trustee Limited	44
39	Consultation and other reporting obligations	46
40	Obligation to establish and maintain iwi register	46
41	Review of revenue requirements	47
42	Scope of revenue review	47
43	Allocation and transfer of surplus loan funds	48

*Te Ohu Kai Moana Trustee Limited*

44	Constitution of Te Ohu Kai Moana Trustee Limited	48
----	--	----

*Appointment of directors*

45	First directors of Te Ohu Kai Moana Trustee Limited	50
46	Subsequent appointments	50
47	Term of office of directors	50
48	Eligibility for office of director	51
49	Removal of directors	51
50	Effect of vacancy in membership of Te Ohu Kai Moana Trustee Limited	51

*Iwi register*

51	Documentation relating to iwi register	51
52	Access to iwi register	52
53	Policy on iwi register	52

*Rule-making procedures*

54	Procedures for making or amending rules	52
----	---	----

Subpart 2—Te Kawai Taumata

55	Establishment of Te Kawai Taumata	53
56	Sole function of Te Kawai Taumata	53
57	Membership of Te Kawai Taumata	54
58	Alternate members of Te Kawai Taumata	54
59	Eligibility for membership of Te Kawai Taumata	54

Subpart 3—Aotearoa Fisheries Limited		
<i>Establishment</i>		
60	Establishment of Aotearoa Fisheries Limited	55
<i>Duty of Aotearoa Fisheries Limited</i>		
61	Duty of Aotearoa Fisheries Limited	56
<i>Constitution of Aotearoa Fisheries Limited</i>		
62	Requirements for constitution	56
<i>Directors</i>		
63	Directors of Aotearoa Fisheries Limited	57
64	Restrictions on appointment of directors	57
65	Directors of subcompanies	58
<i>Voting shares</i>		
66	Voting shares	59
<i>Income shares</i>		
67	Income shares	59
68	Additional income shares	59
69	Disposal of income shares by mandated iwi organisations	60
70	Process for disposal of income shares by mandated iwi organisations	60
71	Disposal of income shares by Te Ohu Kai Moana Trustee Limited	61
72	Other constraints on disposal of income shares	61
73	Remedy for breach of sections 69 to 72	62
74	Exceptions to restrictions on disposal of income shares	63
<i>Transfer of assets</i>		
75	Transfer of assets to Aotearoa Fisheries Limited	63
76	Payment of dividends by Aotearoa Fisheries Limited	64
77	Circumstances when payments not required	65
Subpart 4—Te Putea Whakatupu Trust and Te Putea Whakatupu Trustee Limited		
<i>Establishment</i>		
78	Interpretation	65
79	Establishment of Te Putea Whakatupu Trust	66
80	Trustee of Te Putea Whakatupu Trust	66
81	Purpose of Te Putea Whakatupu Trust	66
82	Benefits of Trust	67
83	Functions of Te Putea Whakatupu Trustee Limited	67
<i>Requirements for trust deed</i>		
84	Contents of trust deed of Te Putea Whakatupu Trust	68
85	Annual plan of Te Putea Whakatupu Trustee Limited	69

86	Reporting obligations of Te Putea Whakatupu Trustee Limited	69
	<i>Requirements for constitution</i>	
87	Constitution of Te Putea Whakatupu Trustee Limited	70
	<i>Directors</i>	
88	Requirements for appointment of directors	71
89	Eligibility for office of director	72
	<i>Payments</i>	
90	Payments to Te Putea Whakatupu Trustee Limited	72
	Subpart 5—Te Wai Maori Trust and Te Wai Maori Trustee Limited	
	<i>Establishment</i>	
91	Interpretation	73
92	Establishment of Te Wai Maori Trust	73
93	Trustee of Te Wai Maori Trust	73
94	Purpose of Te Wai Maori Trust	74
95	Functions of Te Wai Maori Trustee Limited	74
	<i>Requirements for trust deed</i>	
96	Contents of trust deed of Te Wai Maori Trust	74
97	Annual plan of Te Wai Maori Trustee Limited	75
98	Distributions of trust income	76
99	Reporting obligations of Te Wai Maori Trustee Limited	76
	<i>Requirements for constitution</i>	
100	Constitution of Te Wai Maori Trustee Limited	77
	<i>Directors</i>	
101	Criteria for appointment of directors	78
102	Eligibility for office of director	78
	<i>Payments</i>	
103	Payments to Te Wai Maori Trustee Limited	79
	Subpart 6—Audits and reviews	
104	Interpretation	79
	<i>Audit of entities</i>	
105	Audits	80
106	Subsequent audits	80
107	Person to conduct audit	80
108	General scope of audits	81
109	Audit of Te Ohu Kai Moana Trustee Limited	81
110	Audit of Aotearoa Fisheries Limited	81
111	Audits of Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited	82

	<i>Procedure after completion of audit</i>	
112	Procedure for auditor and entity audited	82
113	Procedure for Te Ohu Kai Moana Trustee Limited	82
	<i>Requirement for review of entities</i>	
114	Review of entities	83
115	Funding of reviews	84
	<i>Committee of representatives</i>	
116	Committee of representatives	84
117	Appointment procedure	84
118	Functions of committee of representatives	85
119	Terms of reference	85
120	Procedure and remuneration of committee of representatives	86
	<i>Conduct of review</i>	
121	Reviewer	86
122	Scope of review	86
123	Further relevant considerations	87
124	Limits to recommendations that may be made	88
	<i>Procedure after completion of review</i>	
125	Report on review	88
126	Consideration of review report by entity under review	89
127	Consideration of review report	89
	<i>Requirement to provide information</i>	
128	Information requested by auditor or reviewer	90
	<b>Part 3</b>	
	<b>Allocation and transfer of settlement assets</b>	
129	Outline of this Part	90
	Subpart 1—Allocation and transfer of settlement assets	
	<i>Duty</i>	
130	Duty to allocate and transfer settlement assets	91
	<i>Further circumstance when Te Ohu Kai Moana Trustee Limited must allocate and transfer settlement assets</i>	
131	Interpretation	91
132	Application of sections 133 and 134	91
133	Procedure if request made under section 132(2)	92
134	Allocation and transfer after request under section 132(2)	93
	<i>Discretionary power</i>	
135	Discretion to allocate and transfer	93
136	Limitations applying if mandated iwi organisation receives settlement quota under section 135	94

	<i>Settlement asset money</i>	
137	Transfer of money	94
138	Allocation of surplus funds	95
138A	Allocation and transfer of New Zealand units	96
	<i>Income shares</i>	
139	Allocation of income shares	97
	Subpart 2—Bases for allocation of settlement quota	
	<i>Inshore quota</i>	
140	Allocation of inshore quota	97
	<i>Deepwater quota</i>	
141	Allocation of deepwater quota	97
	<i>Chatham zone</i>	
142	Chatham Island allocations	97
	<i>Harbour quota</i>	
143	Allocation of quota within harbours	99
	<i>Allocations in specified Fishery Management Areas</i>	
144	Allocation of settlement quota in quota management areas same as Fishery Management Area 4	100
145	Allocation of settlement quota in quota management areas same as Fishery Management Area 6	100
146	Allocation of settlement quota in quota management areas same as Fishery Management Area 10	100
	<i>Highly migratory species</i>	
147	Allocation of settlement quota for highly migratory species	100
	<i>Adjustments to number of quota shares available for distribution</i>	
147A	Recalculation of allocations of deepwater stock	101
147B	Allocation of reduced number of quota shares	101
	<i>Freshwater quota</i>	
148	Allocation of freshwater quota	101
	<i>Alteration of quota management areas under Fisheries Act 1996</i>	
148A	Consequence of altering quota management area	102
	<i>Cash allocations</i>	
149	Additional cash in lieu of shortfall in settlement quota	102
150	Specific cash transfers to certain iwi	103
	Subpart 3—Transfer of settlement assets	
151	Transfer of allocated settlement quota	103
152	Offer of annual catch entitlement	104

	Subpart 4—Miscellaneous	
	<i>Assets held in trust</i>	
153	When settlement assets must be held in trust	105
	<i>Status of settlement assets for purposes of Inland Revenue Acts and other enactments</i>	
154	Status of settlement assets	105
	<b>Part 4</b>	
	<b>Settlement quota interests, sales and exchanges of settlement quota, related restrictions, and option to purchase</b>	
155	Outline of this Part	106
156	Interpretation	106
	Subpart 1—Registration of settlement quota interests	
157	Registration of settlement quota interests	106
158	General restriction on transfer of settlement quota	107
159	Quota may be treated as settlement quota	107
160	Application for registration	107
	Subpart 2—Restrictions on, and procedures for, disposal of settlement quota	
161	Restrictions on disposal of settlement quota	108
162	Prerequisites to sale of settlement quota	109
	<i>Option to purchase</i>	
163	Offer of option to purchase	110
164	Procedure for selling bundle of assets	110
165	Procedure to determine right to purchase	110
166	Basis on which sale must proceed	111
167	Other constraints on disposal	111
168	Application of this subpart to Te Ohu Kai Moana Group	112
169	When sale of settlement quota must be allowed	112
170	Remedy for breach of requirements under this subpart	113
	Subpart 3—Exceptions to application of subpart 2	
	<i>Quota sold to wholly-owned entities</i>	
171	Settlement quota sold to wholly-owned entities	113
	<i>Small parcels of settlement quota</i>	
172	Rationalisation of small parcels of settlement quota	114
	<i>Quota exchange</i>	
173	Exception for quota exchanges	114
174	Procedure and criteria for exchange	115



	<i>Breach of restrictions applying to exchanges</i>	
175	Remedy for breach of restrictions	116
	Subpart 4—Additional rules for quota sales and exchanges	
176	Additional rules	116
	<b>Part 5</b>	
	<b>Dispute resolution</b>	
177	Outline of this Part	117
178	Purpose of this Part	117
	Subpart 1—Procedure for resolution of disputes	
179	Notification of specified decisions	118
	<i>Application of Part</i>	
180	Application of this Part to specified decisions	118
181	Resolution of disputes	120
182	Reference to Maori Land Court	120
183	Effect of reference or application etc to Maori Land Court	121
	Subpart 2—Other matters relevant to disputed decisions	
184	Implementation of decision	122
185	Powers of Te Ohu Kai Moana Trustee Limited in relation to mandated iwi organisations	122
186	Other powers not limited	122
187	Dispute resolution in relation to reorganisation of specified mandated iwi organisations	122
	<b>Part 6</b>	
	<b>Transitional and miscellaneous provisions, repeal, and amendments</b>	
188	Outline of this Part	123
189	Interpretation	123
	Subpart 1—Transitional provisions	
	<i>Powers, savings, and validations</i>	
190	Powers of Treaty of Waitangi Fisheries Commission	123
191	Agreements for sale of annual catch entitlements	124
192	Certain exemptions saved	124
193	Validation of certain decisions, etc	124
	<i>Transfer from Treaty of Waitangi Fisheries Commission</i>	
194	Treaty of Waitangi Fisheries Commission dissolved and existing undertaking vested	124
195	Payment of taxation refunds (if any)	125
196	Classification of quota shares allocated to Treaty of Waitangi Fisheries Commission	125

<i>Final report</i>		
197	Final report of Treaty of Waitangi Fisheries Commission	126
198	References in instruments	126
199	Status of contracts and other instruments	126
200	Status of existing securities	127
201	Continuation of proceedings	127
202	Matters not affected by transfer to Te Ohu Kai Moana Trustee Limited	127
203	Books and documents to remain evidence	128
204	Registers	128
Subpart 2—Employees and agents		
205	Interpretation	129
206	Liability of employees and agents	129
207	Transfer of existing employees	129
208	Terms and conditions of employment of transferred employees	129
209	Continuity of employment	130
210	No compensation for technical redundancy	130
Subpart 3—Miscellaneous provisions		
211	Application of Inland Revenue Acts and other enactments	130
212	Protection of names	130
Subpart 4—Repeal and consequential amendments		
213	Enactment repealed	131
214	Amendments to other enactments	131
<b>Schedule 1</b>		132
<b>Quota shares</b>		
<b>Schedule 2</b>		146
<b>Harbours and harbour quota</b>		
<b>Schedule 3</b>		151
<b>Iwi (listed by groups of iwi) and notional iwi populations</b>		
<b>Schedule 4</b>		155
<b>Organisations that are recognised iwi organisations (as at the commencement of this Act)</b>		
<b>Schedule 5</b>		157
<b>Representative Maori organisations</b>		
<b>Schedule 6</b>		158
<b>Methodology for determination of coastline entitlements</b>		
<b>Schedule 7</b>		168
<b>Kaupapa applying to constitutional documents of mandated iwi organisations</b>		

<b>Schedule 8</b>	175
<b>Te Kawai Taumata</b>	
<b>Schedule 9</b>	182
<b>Consequential amendments</b>	

## **Preamble**

- (1) By the Treaty of Waitangi, the Queen of England confirmed and guaranteed to the chiefs, tribes, and individual Maori the full, exclusive, and undisturbed possession of their fisheries for so long as they wished to retain them:
- (2) Maori claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the quota management system introduced by the Fisheries Amendment Act 1986 was unlawful and in breach of the principles of the Treaty of Waitangi, or had no application to Maori fisheries (including commercial fisheries):
- (3) In legal proceedings, Maori obtained from the High Court and the Court of Appeal, by way of interim relief, a declaration that the Crown ought not to take further steps to bring the fisheries within the quota management system:
- (4) The Maori Fisheries Act 1989 was enacted to make better provision for the recognition of Maori commercial fishing rights secured by the Treaty of Waitangi. The Act provided that the Maori Fisheries Commission was to be provided with 10% of all quota holdings then subject to the quota management system, or the equivalent value in cash as compensation for commercial fishing claims:
- (5) A Deed of Settlement dated 23 September 1992 was entered into between the Crown and representatives of the New Zealand Maori Council, the National Maori Congress, and iwi:
- (6) In that Deed of Settlement it was agreed that the settlement (which was ultimately for the benefit of all Maori), the implementation in legislation of the agreements made in that Deed, and the continuing relationship between the Crown and Maori, would constitute a full and final settlement of all Maori claims to commercial fishing rights:
- (7) The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, an Act “to give effect to the settlement of claims relating to Maori fishing rights”, provided for the implementation of the Deed of Settlement through the following means:
  - (a) reconstitution of the Maori Fisheries Commission as the Treaty of Waitangi Fisheries Commission; and
  - (b) payment by the Crown to the Treaty of Waitangi Fisheries Commission of a sum of \$150 million to be used for the development and involvement of Maori in the New Zealand fishing industry, including participation in a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company; and

- (c) provision for the allocation to the Treaty of Waitangi Fisheries Commission of 20% of quota for any new quota management stocks brought within the quota management system; and
  - (d) provision for the making of regulations to recognise and provide for customary food gathering by Maori; and
  - (e) empowerment of the Treaty of Waitangi Fisheries Commission to allocate the assets held by the Maori Fisheries Commission at the settlement date specified in the Deed of Settlement, after considering how best to give effect to the resolutions adopted by the Annual General Meeting of the Maori Fisheries Commission on 25 July 1992 and reporting to the Minister of Fisheries for approval of that scheme of allocation; and
  - (f) empowerment of the Treaty of Waitangi Fisheries Commission, after full consultation with Maori, to develop and report to the Minister on proposals for a new Maori Fisheries Act that would provide—
    - (i) a scheme for identifying the beneficiaries and their interests under the Deed of Settlement; and
    - (ii) a procedure to allocate the assets of the Treaty of Waitangi Fisheries Commission (other than those held prior to the signing of that Deed):
- (8) The Crown, through the provisions of the Fisheries Act 1996, allocates to the Treaty of Waitangi Fisheries Commission 20% of quota for any new quota management stocks brought within the quota management system:
- (9) The Treaty of Waitangi Fisheries Commission, having considered its duties under the Maori Fisheries Act 1989 and the Deed of Settlement, has examined alternative methods for allocating its assets, produced discussion material, and consulted with iwi and Maori on the allocation of the assets referred to in Schedule 1A of the Maori Fisheries Act 1989:
- (10) In 1998 the Treaty of Waitangi Fisheries Commission developed an “optimum model” for allocation. The bases for that model have been challenged in successive court actions and overall have been found to have been consistent with the intent of the Deed of Settlement:
- (11) The Judicial Committee of the Privy Council, in *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17, held that the obligations of the trust imposed by the Deed of Settlement required the benefits of the settlement to be allocated to iwi, meaning the traditional tribes, for the ultimate benefit of all Maori:
- (12) Subsequently, the Treaty of Waitangi Fisheries Commission considered and took into account the findings of the courts as to its duties under the Maori Fisheries Act 1989 and the Deed of Settlement. It examined alternative methods for allocating its assets, produced further consultation material, consulted with iwi and Maori, and after undertaking additional processes to reach

agreement on the model, considered that it had secured the maximum possible support for its allocation proposals:

- (13) In May 2003, the Treaty of Waitangi Fisheries Commission reported to the Minister of Fisheries on its proposal for the allocation of the assets it held on the settlement date specified in the Deed of Settlement: *He Kawai Amokura: A model for allocation of the Fisheries Settlement Assets: Report to the Minister of Fisheries*:
- (14) The Minister of Fisheries assessed the proposal of the Treaty of Waitangi Fisheries Commission, in accordance with the requirements of the Maori Fisheries Act 1989 and the Deed of Settlement, and considered the proposal to be consistent with those requirements. He therefore agreed to incorporate the proposal in legislation:
- (15) The enactment of this legislation will complete implementation of the agreements in the Deed of Settlement between the Crown and Maori in respect of Maori claims to commercial fisheries, as outlined in the Preamble to that Deed and in the Preamble of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

## **1 Title**

This Act is the Maori Fisheries Act 2004.

## **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

# **Part 1**

## **Purposes of Act, key concepts, and key iwi organisations**

### Subpart 1—Purposes, outline, and interpretation

## **3 Purposes**

- (1) The purposes of this Act are to—
  - (a) implement the agreements made in the Deed of Settlement dated 23 September 1992; and
  - (b) provide for the development of the collective and individual interests of iwi in fisheries, fishing, and fisheries-related activities in a manner that is ultimately for the benefit of all Maori.
- (2) To achieve the purposes of this Act, provision is made to establish a framework for the allocation and management of settlement assets through—
  - (a) the allocation and transfer of specified settlement assets to iwi as provided for by or under this Act; and

- (b) the central management of the remainder of those settlement assets.

#### 4 Outline of Act

- (1) This section and sections 30, 129, 155, 177, and 188 are a guide to the general scheme of the Parts of this Act, but do not affect the interpretation or application of the other provisions of this Act.
- (2) This Act replaces the Maori Fisheries Act 1989.
- (3) The Preamble sets out the background to this Act.
- (4) Following the Title and commencement clauses, Part 1 contains—
  - (a) subpart 1, which includes the purpose and interpretation provisions; and
  - (b) subpart 2, which sets out the key concepts for the allocation of settlement assets, namely, provisions for the classification of quota, the determination of iwi population, and the determination of iwi coastline entitlements, including interim and supplementary coastline entitlements; and
  - (c) subpart 3, which relates to the nature and role of iwi organisations involved with the allocation of settlement assets, including provisions allowing for the reorganisation of joint mandated iwi organisations.
- (5) The schedules set out—
  - (a) the quota shares provided to the Treaty of Waitangi Fisheries Commission under section 40 of the Maori Fisheries Act 1989 (the interim settlement) and those since allocated to the Treaty of Waitangi Fisheries Commission under section 44 of the Fisheries Act 1996; and
  - (b) the relevant harbours and harbour quota for allocation in relation to those harbours; and
  - (c) iwi listed by groups and the notional population of each iwi; and
  - (d) organisations that are recognised iwi organisations; and
  - (e) the representative Maori organisations; and
  - (f) the method for determining coastline entitlements; and
  - (g) the kaupapa that apply to the constitutional documents of mandated iwi organisations; and
  - (h) procedures for Te Kawai Taumata, including provisions for the appointment of members and alternate members; and
  - (i) consequential amendments.

#### 5 Interpretation

In this Act, unless the context otherwise requires,—

**adult member** means a person 18 years of age or over

**allocate**,—

- (a) in respect of settlement assets, means the determination of the quantum of those assets to be transferred to an iwi; but
- (b) does not include—
  - (i) the transfer of those assets by Te Ohu Kai Moana Trustee Limited; or
  - (ii) distributions made under section 83(b) or section 95(b); or
  - (iii) grants of assistance made under section 35(1)(h)

**annual catch entitlement** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**Aotearoa Fisheries Limited** means the company established in accordance with section 60

**appointed day** means the day specified as the appointed day by the Governor-General by Order in Council made on the recommendation of the Minister at the request of the Treaty of Waitangi Fisheries Commission, being a day not later than 45 working days after the commencement of this Act

**asset-holding company** means a company—

- (a) established as required by section 12(1)(d); and
- (b) that complies with section 16(1) and (2); and
- (c) whose constitutional documents comply with the relevant requirements of sections 17 and 18

**beneficiary of the Deed of Settlement** means iwi and, through iwi, ultimately all Maori

**Chatham zone** has the meaning set out in section 142

**coastline entitlement** means a registered coastline entitlement obtained in accordance with Schedule 6

**committee of representatives** means a committee established under section 116 with the functions provided for by section 118

**constitutional documents**, in relation to a company, trust, or other entity set up for the purposes of this Act, means the constitution, trust deed, or rules adopted for the governance of the company, trust, or other entity

**Court**—

- (a) means the District Court or, where proceedings are commenced in the High Court, the High Court; but
- (b) does not include the Maori Land Court

**Deed of Settlement** means the Deed of Settlement dated 23 September 1992 signed by the Crown and Maori and referred to in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

**deepwater quota** means—

- (a) the settlement quota identified in Schedule 1 as DW; and
- (b) the quota of any new quota management stocks brought into the quota management system under section 18 of the Fisheries Act 1996 that Te Ohu Kai Moana Trustee Limited determines to be deepwater quota under section 7

**earnings** means interest and dividends

**financial year** means the period of 12 consecutive months nominated in a constitutional document as the financial year of the entity concerned

**fisheries** has the meaning given to fisheries resources in section 2(1) of the Fisheries Act 1996

**Fishery Management Area** means a Fishery Management Area defined in Parts 1 and 2 of Schedule 1 of the Fisheries Act 1996

**fishing** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**fishing permit** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**fishing year** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**freshwater** means the waters of rivers, streams, lakes, ponds, estuaries, lagoons, wetlands, canals, impoundments, channels, or water courses, whether occurring naturally or artificially made

**freshwater fisheries** and **freshwater fishing** have the meanings set out in section 91

**freshwater quota** means—

- (a) the settlement quota identified in Schedule 1 as FW; and
- (b) the quota of any new quota management stocks brought into the quota management system under section 18 of the Fisheries Act 1996 that Te Ohu Kai Moana Trustee Limited determines to be freshwater quota under section 7

**general meeting** means an annual or special meeting that,—

- (a) in the case of a meeting convened by Te Ohu Kai Moana Trustee Limited, is open to—
  - (i) all mandated iwi organisations and the members of the iwi represented by each mandated iwi organisation; and
  - (ii) all representative Maori organisations and their members; and
  - (iii) the members and alternate members of Te Kawai Taumata; and
- (b) in the case of a meeting convened by a mandated iwi organisation, is open to all members of the iwi; and
- (c) in each case, complies with the constitutional documents of the organisation convening the meeting



**general power of sale** means a power included in the constitutional documents of Te Ohu Kai Moana Trustee Limited or any entity within Te Ohu Kai Moana Group to provide by special resolution for the sale, in accordance with any specified terms and conditions, of income shares or settlement quota, but without obtaining a specific power of sale by special resolution

**harbour quota** means—

- (a) that part of the settlement quota listed in Schedule 1 that is quantified in Part 2 of Schedule 2; and
- (b) the number of quota shares of any new quota management stocks brought into the quota management system under section 18 of the Fisheries Act 1996 that Te Ohu Kai Moana Trustee Limited determines to be harbour quota under section 7

**He Kawai Amokura** means the report to the Minister of Fisheries referred to in paragraph (13) of the Preamble

**income share** means an income share in Aotearoa Fisheries Limited

**individual transferable quota** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**Inland Revenue Acts** has the meaning given to it in section 3(1) of the Tax Administration Act 1994

**inshore quota** means—

- (a) the settlement quota identified in Schedule 1 as IN; and
- (b) the quota of any new quota management stocks brought into the quota management system under section 18 of the Fisheries Act 1996 that Te Ohu Kai Moana Trustee Limited determines to be inshore quota under section 7

**interim coastline entitlement** means a registered interim coastline entitlement obtained in accordance with Schedule 6

**investment plan** has the meaning set out in section 78

**iwi**—

- (a) means an iwi listed in column 1 of Schedule 3; and
- (b) includes all the members of that iwi; and
- (c) as listed in the notes to Schedule 3, in relation to—
  - (i) the iwi of Hauraki, means 1 or more of the iwi listed in note (1); and
  - (ii) the iwi of Te Arawa, means 1 or more of the iwi listed in note (2)

**iwi register** means the register set up by Te Ohu Kai Moana Trustee Limited in accordance with section 40

**joint mandated iwi organisation** has the meaning set out in section 19

**kaupapa** means principle or principles

**mandated iwi organisation**, in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27

**Maori** has the meaning given to it in section 4 of Te Ture Whenua Maori Act 1993

**member of an iwi** means a person who affiliates to the iwi through descent from a primary ancestor of the iwi, or a person granted that status in accordance with kaupapa 6 of Schedule 7

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**National Urban Maori Authority** means the trust of that name established by trust deed dated 8 May 2003

**Ngapuhi** means the iwi listed under the heading “B—NGAPUHI” in Schedule 3

**Ngati Hine** means the group that is a member of Ngapuhi

**Ngati Kahungunu** means the iwi listed under the heading “G—TAKITIMU” in Schedule 3

**panui** means a notice or other form of written communication **population of an iwi** has the meaning set out in section 10

**private notice** means a notice—

- (a) sent by any means that is private to the recipient; and
- (b) in the case of a notice given by a mandated iwi organisation, complies with kaupapa 4 of Schedule 7

**public notice** means a notice that—

- (a) is published in a newspaper generally circulating in the relevant area or areas; and
- (b) may also be published by panui or electronic media, including radio or television; and
- (c) in the case of a notice given by a mandated iwi organisation, complies with kaupapa 4 of Schedule 7

**quota** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**quota management area** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**quota management stock** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**quota management system** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**quota share** has the meaning given to it in section 42 of the Fisheries Act 1996

**recognised iwi organisation** means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 27 as the recognised iwi organisation for an iwi, and includes organisations listed in Schedule 4

**register of iwi members** means the register required by kaupapa 5 of Schedule 7

**registered coastline entitlement** means the proportion and equivalent number of quota shares for a particular stock that—

- (a) is determined by Te Ohu Kai Moana Trustee Limited under section 11; and
- (b) is recorded in the iwi register by Te Ohu Kai Moana Trustee Limited under section 11(2)(b); and
- (c) represents the allocation, to a named iwi, of settlement quota for the stock, determined by coastline length under subpart 2 of Part 3

**representative Maori organisation** means an organisation specified in Schedule 5

**Rongomaiwahine** means the group that is a member of Ngati Kahungunu

**settlement assets** means—

- (a) the assets transferred to Te Ohu Kai Moana Trustee Limited under section 194(1)(c) (including Aotearoa Fisheries Limited and all its assets); and
- (b) any further quota shares allocated to Te Ohu Kai Moana Trustee Limited under section 44 of the Fisheries Act 1996; and
- (c) any New Zealand units allocated to Te Ohu Kai Moana Trustee Limited under the fishing allocation plan issued under the Climate Change Response Act 2002

**settlement quota** means quota shares that have a settlement quota interest registered against them

**settlement quota interest** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**special resolution**, in respect of Te Ohu Kai Moana Trustee Limited, means a resolution approved by 75% or more of the directors entitled to vote on the motion

**specific power of sale** means a power included in the constitutional documents of Te Ohu Kai Moana Trustee Limited or any entity within Te Ohu Kai Moana Group to provide by special resolution for the sale, in accordance with any specified terms and conditions, of specified income shares or settlement quota

**statutory declaration** means a declaration made before a person authorised under the Oaths and Declarations Act 1957 to take a declaration

**stock** means quota management stock

**subcompany**—

- (a) means a company, trust, or entity (whether or not it is a subsidiary of Aotearoa Fisheries Limited) over which Aotearoa Fisheries Limited—
  - (i) controls, directly or indirectly, 50% or more of the votes; or
  - (ii) appoints, or has the right to appoint, 50% or more of the directors, trustees, or office holders, as the case may be; and
- (b) includes—
  - (i) a company that is a subsidiary of a subcompany; and
  - (ii) a company, trust, or entity over which the sub-company has effective control, as provided for in paragraph (a)

**subsidiary** has the meaning given to it in section 5 of the Companies Act 1993

**Te Kawai Taumata** means the members of the group (or their alternate members) established in accordance with section 55

**Te Ohu Kai Moana** means the trust established in accordance with section 31

**Te Ohu Kai Moana Group** means Te Ohu Kai Moana Trustee Limited and every subsidiary, trust, or other entity over which it has effective control, including Aotearoa Fisheries Limited and its subcompanies, because in relation to that subsidiary, trust, or other entity, Te Ohu Kai Moana Trustee Limited—

- (a) controls, directly or indirectly, 50% or more of the votes; or
- (b) appoints 50% or more of the directors, trustees, or office holders, as the case may be

**Te Ohu Kai Moana Trustee Limited** means the company established in accordance with section 33

**Te Putea Whakatupu Trust** means the trust established in accordance with section 79

**Te Putea Whakatupu Trustee Limited** means the company established in accordance with section 80

**Te Wai Maori Trust** means the trust established in accordance with section 92

**Te Wai Maori Trustee Limited** means the company established in accordance with section 93

**tikanga Maori** has the meaning given to it in section 4 of Te Ture Whenua Maori Act 1993

**total allowable commercial catch** has the meaning given to it in section 2(1) of the Fisheries Act 1996

**Treaty of Waitangi Fisheries Commission** means the Commission established under section 4 of the Maori Fisheries Act 1989

**voting share** means a voting share in Aotearoa Fisheries Limited

**wananga** has the meaning given to it in section 159 of the Education Act 1989.

Section 5 **settlement assets**: substituted, on 8 December 2009, by section 87(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## 6 Act binds the Crown

This Act binds the Crown.

### Subpart 2—Key concepts

#### *Classification of deepwater and inshore quota*

## 7 Classification of new quota

- (1) If the responsible Minister declares under section 18 of the Fisheries Act 1996 that a stock is subject to the quota management system, Te Ohu Kai Moana Trustee Limited must, within 6 months of the notification of that declaration,—
  - (a) determine the appropriate classification for the stock in accordance with sections 8 and 9; and
  - (b) in accordance with section 8, determine, for every harbour specified in Schedule 2 that is within the relevant quota management area, either—
    - (i) the quantity of harbour quota for the stock; or
    - (ii) that there is no harbour quota for the stock; and
  - (c) publish in the *Gazette*—
    - (i) the classification of the stock; and
    - (ii) whether harbour quota applies to that stock; and
    - (iii) the quantity, if any, of each harbour quota for the stock.
- (2) A *Gazette* notice under this section applies as if Part 2 of Schedule 1 and Part 2 of Schedule 2 were amended in accordance with determinations made under this section and sections 8 and 9.

## 8 Basis for classifying stock under section 7

- (1) For the purpose of classifying stock under section 7, a stock for which Te Ohu Kai Moana Trustee Limited determines, on the basis of scientific or anecdotal evidence, that the commercial catch during the 5 fishing years prior to the declaration referred to in section 7(1) was entirely taken—
  - (a) at depths greater than 400 m from the surface, must be classified as deepwater:
  - (b) at depths less than 200 m from the surface, must be classified as inshore:
  - (c) in freshwater, must be classified as freshwater.

- (2) For each stock, if any commercial catch was taken during the 5 fishing years prior to the declaration referred to in section 7(1) in any of the harbours listed in Schedule 2, Te Ohu Kai Moana Trustee Limited must determine a harbour quota.
- (3) In relation to each harbour listed in Schedule 2, the proportion of the available settlement quota that is to be classified as harbour quota for each stock must be the proportion of the total commercial catch of that stock taken in that harbour in the fishing year with the highest commercial catch in that harbour during the 5 fishing years prior to the declaration referred to in section 7(1).
- (4) Harbour quota is calculated under subsection (3) in accordance with the following formula:

$$\text{Harbour quota for the listed harbour} = (a \div b) \times c$$

where—

- a is the highest commercial catch of a stock in a listed harbour in a fishing year during the 5 fishing years prior to the declaration referred to in section 7(1)
- b is the total commercial catch of that stock in that year
- c is the available settlement quota.

## **9 Alternative basis for classification of new quota**

- (1) This section applies when Te Ohu Kai Moana Trustee Limited is unable to classify a stock under section 8.
- (2) Te Ohu Kai Moana Trustee Limited must consider the evidence from the previous 5 fishing years referred to in section 8(1) for the stock, and classify the stock as—
  - (a) deepwater, if at least 75% of the commercial catch was taken in depths greater than 300 m from the surface; or
  - (b) inshore, if at least 75% of the commercial catch was taken in depths of 300 m or less from the surface; or
  - (c) freshwater, if at least 90% of the commercial catch was taken in freshwater.
- (3) If the classification cannot be determined under subsection (2), Te Ohu Kai Moana Trustee Limited must determine a classification, after taking into account—
  - (a) the fishing gear used to take the stock; and
  - (b) the location where the stock was taken; and
  - (c) any other information that Te Ohu Kai Moana Trustee Limited considers to be relevant.

*How iwi population and coastlines determined*

**10 Population of an iwi**

- (1) In this Act,—
  - (a) the population of an iwi is the notional iwi population as stated in column 2 of Schedule 3; and
  - (b) the notional iwi population—
    - (i) binds all iwi; and
    - (ii) applies irrespective of any multiple iwi affiliations or other census or other data.
- (2) However, that notional iwi population does not—
  - (a) bind the iwi to which it relates or any other iwi in any matter that is before the Waitangi Tribunal, the Maori Land Court, or any other court, other than under this Act; or
  - (b) bind, compromise, advantage or disadvantage, or operate as a precedent for any other matter; or
  - (c) affect any customary rights, aboriginal title rights, or any rights arising under the Treaty of Waitangi in relation to any other matter.
- (3) Column 3 of Schedule 3 sets out the percentage that the notional population of each iwi bears to the total notional iwi population.

**11 Registered coastline entitlements**

- (1) A mandated iwi organisation, in order to obtain allocations of settlement quota based on coastlines under this Act, must make coastline claims for coastline entitlements for its iwi (including any interim and supplementary coastline entitlements) in accordance with Part 1 of Schedule 6.
- (2) Coastline entitlements must be—
  - (a) determined by Te Ohu Kai Moana Trustee Limited in accordance with Schedule 6; and
  - (b) recorded by Te Ohu Kai Moana Trustee Limited on the iwi register.
- (3) Registered coastline entitlements are created under this Act for the sole purpose of calculating the amount of settlement quota to be allocated to iwi under subpart 2 of Part 3.
- (4) However, those registered coastline entitlements do not—
  - (a) bind the iwi to which they relate or any other iwi in any matter that is before the Waitangi Tribunal, the Maori Land Court, or any other court, other than under this Act; or
  - (b) bind, compromise, advantage or disadvantage, or operate as a precedent for any other matter; or

- (c) affect any customary rights, aboriginal title rights, or any rights arising under the Treaty of Waitangi in relation to any other matter.

### Subpart 3—Iwi organisations

#### *Mandated iwi organisations*

## **12 Functions and powers of mandated iwi organisations**

- (1) Under this Act, a mandated iwi organisation must—
  - (a) act for the benefit of all the members of the iwi, irrespective of where those members reside; and
  - (b) perform the functions and duties conferred on it by or under this Act; and
  - (c) except as restricted by section 23(2), represent its iwi by voting at any meeting convened under—
    - (i) clause 1 or clause 6 of Schedule 8 to appoint or remove a member or alternate member of Te Kawai Taumata;
    - (ii) clause 1 of Schedule 8 to appoint a member of a committee of representatives; and
  - (d) ensure that it has 1 or more asset-holding companies that, in each case,—
    - (i) is wholly owned by the mandated iwi organisation; and
    - (ii) performs the functions and complies with the requirements set out in sections 16 to 18.
- (2) A mandated iwi organisation may—
  - (a) directly receive and hold, on behalf of its iwi, settlement assets allocated and grants made to that iwi by Te Ohu Kai Moana Trustee Limited, other than assets referred to in section 16(1)(c);
  - (b) receive distributions from Te Putea Whakatapu Trustee Limited and Te Wai Maori Trustee Limited, as provided for under subparts 4 and 5 of Part 2;
  - (c) if relevant, enter into agreements with other mandated iwi organisations in relation to—
    - (i) coastline claims under section 11;
    - (ii) the allocation of—
      - (A) harbour quota under section 143;
      - (B) freshwater quota under section 148;
  - (d) establish companies to undertake fishing and fisheries-related activities, including, but not limited to, any activity related to the seafood industry;
  - (e) perform other functions provided for by or under this Act.



### **13 Recognition of mandated iwi organisations**

- (1) As soon as is reasonably practicable after Te Ohu Kai Moana Trustee Limited is satisfied that an iwi or a withdrawing group has established an organisation that meets the criteria specified in section 14 or section 21(1), as the case may be, or that an iwi has an iwi governance entity that meets the criteria specified in section 15, Te Ohu Kai Moana Trustee Limited must, by special resolution,—
  - (a) recognise 1 mandated iwi organisation for that iwi or withdrawing group, as the case may be; and
  - (b) record its recognition of that mandated iwi organisation in the iwi register.
- (2) Te Ohu Kai Moana Trustee Limited must not recognise more than 1 mandated iwi organisation for an iwi.

### **14 Criteria for recognition of mandated iwi organisation**

The criteria for recognition and continuing recognition of a mandated iwi organisation under section 13(1) are that—

- (a) the organisation is a company, trust, body corporate set up under an enactment, or incorporated society; and
- (b) the constitutional documents of the organisation comply with section 17; and
- (c) the directors, trustees, or office holders, as the case may be, are able to demonstrate that, for the purposes of their responsibilities under this Act, they have been duly elected or appointed in accordance with the constitutional documents of the organisation; and
- (d) the organisation has a register of iwi members that—
  - (i) complies with kaupapa 5 of Schedule 7; and
  - (ii) has no fewer than the minimum number of members specified in column 4 of Schedule 3.

### **15 Recognition of iwi governance entity**

Te Ohu Kai Moana Trustee Limited must, if requested, recognise an iwi governance entity as a mandated iwi organisation under section 13(1) if, before the commencement of this Act, that entity meets the following criteria:

- (a) it has been approved as a governance entity of the iwi for the purposes of the settlement of the historical Treaty of Waitangi claims of that iwi, as perfected through the enactment of legislation; and
- (b) it represents an iwi listed in Schedule 3; and
- (c) it complies with section 14(a); and

- (d) it has established 1 or more asset-holding companies as required by section 12(1)(d); and
- (e) it has directors, trustees, or office holders, as the case may be, who are elected in a manner that complies with the kaupapa of Schedule 7; and
- (f) it has a dispute resolution mechanism that complies with kaupapa 8 of Schedule 7.

## **16 Functions and powers of asset-holding companies**

- (1) An asset-holding company required by section 12(1)(d) must—
  - (a) be and remain wholly owned by the mandated iwi organisation that established the company; and
  - (b) have constitutional documents that comply with section 17; and
  - (c) receive and hold, on behalf of the mandated iwi organisation that owns the company, for so long as they are to be retained, all settlement quota and income shares allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by, the iwi under this Act; and
  - (d) provide dividends solely to the mandated iwi organisation owning the asset-holding company; and
  - (e) not undertake fishing or hold a fishing permit.
- (2) However, an asset-holding company—
  - (a) must not enter into any transaction relating to or affecting the income shares it holds unless the mandated iwi organisation has complied with its obligations under sections 69 to 72; and
  - (b) in its function of receiving and holding settlement quota and income shares, is bound by all the requirements specified for mandated iwi organisations in relation to those matters.
- (3) An asset-holding company may—
  - (a) establish 1 or more subsidiaries to be its subsidiary asset-holding companies; and
  - (b) transfer to a subsidiary some or all of the assets received under subsection (1)(c).
- (4) A subsidiary established under subsection (3)(a) must—
  - (a) be and remain wholly owned by the asset-holding company that established it, and
  - (b) receive and hold, on behalf of the asset-holding company, settlement quota and income shares transferred to it by the asset-holding company under subsection (3)(b); and
  - (c) provide dividends solely to the mandated iwi organisation owning the asset-holding company that established the subsidiary; and

- (d) comply with subsection (2); and
- (e) not undertake fishing or hold a fishing permit.

## **17 Constitutional documents**

- (1) Every mandated iwi organisation, asset-holding company, and subsidiary of an asset-holding company must have 1 or more constitutional documents that comply with, and implement, the kaupapa set out in Schedule 7.
- (2) The constitutional documents referred to in subsection (1) are of no effect under this Act until—
  - (a) they are approved as complying with the requirements of this Act,—
    - (i) in the case of a mandated iwi organisation, by Te Ohu Kai Moana Trustee Limited; and
    - (ii) in the case of each asset-holding company and subsidiary of an asset-holding company, by the mandated iwi organisation that owns the asset-holding company; and
  - (b) they are ratified,—
    - (i) in the case of a mandated iwi organisation, by not less than 75% of the adult members of the iwi who vote—
      - (A) in person at a general meeting called for the purpose of adopting a constitution; or
      - (B) by postal ballot; and
    - (ii) in the case of each asset-holding company and subsidiary of an asset-holding company, by not less than 75% of the directors, trustees, or office holders of the mandated iwi organisation that owns the asset-holding company.
- (3) Notice of the meeting referred to in subsection (2)(b)(i)(A) must comply with kaupapa 4(2) of Schedule 7.
- (4) As soon as is reasonably practicable after the constitutional documents of an asset-holding company or subsidiary of an asset-holding company have been approved in accordance with subsection (2)(a)(ii) and ratified in accordance with subsection (2)(b)(ii), the mandated iwi organisation that owns the asset-holding company must—
  - (a) advise Te Ohu Kai Moana Trustee Limited that the constitutional documents have been approved and ratified; and
  - (b) provide documentation to Te Ohu Kai Moana Trustee Limited, supported by a statutory declaration if Te Ohu Kai Moana Trustee Limited so requests, as may be necessary to establish that the constitutional documents of its asset-holding company, and any subsidiary of the asset-holding company, comply with the requirements of subsection (2)(a)(ii) and

- (b)(ii), and, in the case of amendments to a constitutional document, with the requirements of section 18.
- (5) This section does not apply to an iwi governance entity recognised by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation because it meets the criteria set out in section 15.
- (6) However, this section does apply to—
- (a) an asset-holding company of a mandated iwi organisation referred to in subsection (5); and
  - (b) any subsidiary of that asset-holding company.

## 18 Changes to constitutional documents

- (1) To the extent that the constitutional documents of a mandated iwi organisation, asset-holding company, or subsidiary of an asset-holding company relate to matters provided for by or under this Act, a proposal to change those documents—
- (a) must not be inconsistent with this Act; and
  - (b) unless the change is required as a consequence of a rule made or amended under section 25,—
    - (i) must not be made earlier than 2 years after the date on which the mandated iwi organisation is recognised by Te Ohu Kai Moana Trustee Limited under section 13(1); and
    - (ii) may only be promoted if the iwi resolves at a general meeting of the mandated iwi organisation that the change is for the collective benefit of all members of the iwi.
- (2) Section 17(2) and (3) applies, with the necessary modifications, to changes proposed under this section for constitutional documents or required as a consequence of rules made or amended in accordance with section 25.

### *New mandated iwi organisation may replace existing mandated iwi organisation*

Heading: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

## 18A Interpretation

In sections 18A to 18G,—

**existing organisation** has the meaning given by section 18B(1)

**new organisation** has the meaning given by section 18B(1)

**specified income shares** means the income shares received under this Act and held by an asset-holding company of the existing organisation

**specified settlement assets** means the specified settlement quota and specified income shares of the existing organisation

**specified settlement quota** means the settlement quota received under this Act and held by an asset-holding company of the existing organisation.

Section 18A: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

### **18B Requirements for recognition of new mandated iwi organisation**

- (1) An organisation may be recognised as the mandated iwi organisation (**new organisation**) of an iwi in place of the existing mandated iwi organisation (**existing organisation**) if the requirements of this section, and section 18C (if applicable), are met.
- (2) The new organisation must—
  - (a) meet the criteria in section 14, and have 1 or more asset-holding companies (as required by section 12(1)(d)); or
  - (b) have met the criteria in section 15 before the commencement of this Act.
- (3) The 1 or more asset-holding companies of the new organisation that are to receive the transfer of the specified settlement assets under section 18E(3) must comply with section 17(1).
- (4) The existing organisation must—
  - (a) notify the proposal to have the new organisation recognised to the adult members of the iwi in accordance with subclause (4) of kaupapa 4 of Schedule 7; and
  - (b) obtain approval for the proposal from not less than 75% of the adult members of the iwi who vote—
    - (i) at a general meeting of the existing organisation called for the purpose; or
    - (ii) by postal ballot.
- (5) A notice given under subsection (4)(a) must—
  - (a) specify the name of the new organisation; and
  - (b) state that, if the proposal is approved and Te Ohu Kai Moana Trustee Limited is satisfied that the requirements for recognition are met and authorises the transfer of the relevant settlement assets, the following things may happen:
    - (i) the new organisation is recognised as the mandated iwi organisation for the iwi in place of the existing organisation; and
    - (ii) the settlement quota and income shares received under this Act and held by an asset-holding company of the existing organisation are transferred to an asset-holding company of the new organisation.

Section 18B: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

**18C Requirements relating to constitutional documents of new organisation**

- (1) This section applies if the new organisation seeks recognition by meeting the criteria in section 14.
- (2) The existing organisation is responsible for ensuring that the constitutional documents of the new organisation comply with section 17 (as required by section 14(b)).
- (3) The existing organisation must first have the constitutional documents approved by Te Ohu Kai Moana Trustee Limited for the purposes of section 17(2)(a)(i).
- (4) The existing organisation must then have the constitutional documents ratified for the purposes of section 17(2)(b)(i).
- (5) The constitutional documents must be ratified at the same general meeting, or by the same postal ballot, that approves the proposal to have the new organisation recognised.
- (6) Notice of the proposed ratification must be given together with notice of the proposal to have the new organisation recognised, in accordance with subclause (4) of kaupapa 4 of Schedule 7 (and despite section 17(3)).

Section 18C: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

**18D Proposed transfer date if recognition requirements met**

- (1) As soon as is reasonably practicable after Te Ohu Kai Moana Trustee Limited is satisfied that the requirements of section 18B, and section 18C (if applicable), are met, it must give written notice of that fact to the existing organisation.
- (2) The existing organisation may, after receiving the written notice, give Te Ohu Kai Moana Trustee Limited at least 3 months' written notice of the date on which the specified settlement assets are proposed to be transferred under section 18E(3) (the **proposed transfer date**).
- (3) The proposed transfer date must be no later than 15 months after the date upon which the proposal to have the new organisation recognised was approved under section 18B(4).

Section 18D: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

**18E Recognition of new mandated iwi organisation and transfer of specified settlement assets**

- (1) This section applies only if—
  - (a) the existing organisation has given notice of a proposed transfer date under section 18D(2); and
  - (b) before the proposed transfer date, Te Ohu Kai Moana Trustee Limited—

- (i) has authorised (for the purposes of section 158(1)(a)) the transfer of the specified settlement quota to 1 or more asset-holding companies of the new organisation; and
  - (ii) has authorised the transfer of the specified income shares to 1 or more asset-holding companies of the new organisation.
- (2) Te Ohu Kai Moana Trustee Limited must, on the proposed transfer date,—
  - (a) do the following things under section 13(1):
    - (i) recognise the new organisation as the mandated iwi organisation for the iwi in place of the existing organisation; and
    - (ii) record its recognition of the new organisation in the iwi register; and
  - (b) remove its recognition of the existing organisation from the iwi register.
- (3) The existing organisation must ensure that all the specified settlement assets are transferred to the 1 or more asset-holding companies of the new organisation on the proposed transfer date in accordance with the authorisations referred to in subsection (1)(b).
- (4) Te Ohu Kai Moana Trustee Limited must contribute its part of the joint application required by section 158(2) to transfer the specified settlement quota.
- (5) The new organisation must, as soon as is reasonably practicable after the specified income shares have been transferred, give written notice of the transfer to Aotearoa Fisheries Limited.

Section 18E: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

#### **18F Certain effects of recognition of new organisation**

- (1) From the time that a new organisation is recognised in place of an existing organisation under section 18E(2),—
  - (a) the new organisation is the mandated iwi organisation of the relevant iwi for the purposes of this Act; and
  - (b) any registered coastline entitlement held by the existing organisation is to be treated as a registered coastline entitlement held by the new organisation; and
  - (c) any coastline claim, agreement, or written statement of the existing organisation under Part 1 of Schedule 6 is to be treated as a coastline claim, agreement, or written statement of the new organisation.
- (2) However, to avoid doubt, section 136(1)(b) does not require the specified settlement quota to be transferred to the new organisation under that provision.
- (3) Subpart 2 of Part 4 does not apply to, and section 136(1)(a) does not prevent, the transfer of the specified settlement quota under section 18E(3).

- (4) Sections 69 to 73 do not apply to the transfer of the specified income shares under section 18E(3).

Section 18F: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

**18G Remedy if specified settlement assets not transferred**

- (1) This section applies if all the specified settlement assets are not transferred on the proposed transfer date as required by section 18E(3).
- (2) The Court may make orders as it thinks fit, including—
- (a) an order to cancel a transaction or contract for the transfer of any specified settlement assets:
  - (b) an order to vest any specified settlement assets in an asset-holding company of the existing organisation or of the new organisation:
  - (c) an order to vest any consideration for the transaction or contract in the new organisation:
  - (d) an order directing Te Ohu Kai Moana Trustee Limited—
    - (i) to recognise the new organisation as the mandated iwi organisation for the iwi in place of the existing organisation in accordance with section 18E(2)(a) and (b); or
    - (ii) to reverse any such recognition so that the existing organisation is reinstated as the mandated iwi organisation for the iwi:
  - (e) any other order, if the new organisation has on-sold, or has granted any interest in or security over, any specified settlement assets:
  - (f) an order that the costs of the applicant be met by the parties to the transaction or contract.
- (3) Orders made under subsection (2) may be made—
- (a) on the application of—
    - (i) a party; or
    - (ii) an adult member of an iwi whose mandated iwi organisation is a party; or
    - (iii) a mandated iwi organisation; or
    - (iv) Te Ohu Kai Moana Trustee Limited; and
  - (b) on the terms and conditions that the Court thinks fit, so long as the result is the following:
    - (i) all specified settlement assets are vested in an asset-holding company of either the existing organisation or the new organisation; and
    - (ii) that organisation is recognised as the mandated iwi organisation for the iwi.



- (4) If Te Ohu Kai Moana Trustee Limited reverses recognition of the new organisation in accordance with an order of the Court,—
- (a) the recognition of the existing organisation is to be treated as having continued as if the new organisation had never been recognised; and
  - (b) the effects under section 18F(1) of recognising the new organisation are to be treated as if they had never occurred.

Section 18G: inserted, on 16 September 2011, by section 4 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

*Provisions allowing for reorganisation of specified mandated iwi organisations*

**19 Interpretation**

In this Act,—

**joint mandated iwi organisation** means the first mandated iwi organisation recognised under section 13(1), or a new organisation recognised in place of that organisation under section 18E(2), for—

- (a) the iwi of Hauraki listed in note (1) to Schedule 3:
- (b) the iwi of Te Arawa listed in note (2) to Schedule 3:
- (c) Ngapuhi (including Ngati Hine):
- (d) Ngati Kahungunu (including Rongomaiwahine)

**withdrawing group** means—

- (a) in the case of the iwi of Hauraki or the iwi of Te Arawa, any iwi that withdraws from the joint mandated iwi organisation in accordance with the constitutional documents of the joint mandated iwi organisation as provided for under section 20; and
- (b) in the case of Ngapuhi, Ngati Hine if it withdraws from Ngapuhi in accordance with the constitutional documents of the joint mandated iwi organisation of Ngapuhi as provided for under section 20; and
- (c) in the case of Ngati Kahungunu, Rongomaiwahine if it withdraws from Ngati Kahungunu in accordance with the constitutional documents of the joint mandated iwi organisation of Ngati Kahungunu as provided for under section 20.

Section 19 **joint mandated iwi organisation**: amended, on 16 September 2011, by section 5 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

**20 Withdrawal of group from joint mandated iwi organisation**

- (1) In addition to the matters required for the constitutional documents of a mandated iwi organisation under section 17, the constitutional documents of a joint mandated iwi organisation must provide,—

- (a) in the cases of the iwi of Hauraki and the iwi of Te Arawa, for any iwi to withdraw, if it so chooses, from the relevant joint mandated iwi organisation; and
  - (b) in the case of Ngapuhi, for Ngati Hine, if it so chooses, to withdraw from the joint mandated iwi organisation of Ngapuhi; and
  - (c) in the case of Ngati Kahungunu, for Rongomaiwahine, if it so chooses, to withdraw from the joint mandated iwi organisation of Ngati Kahungunu.
- (2) The constitutional documents of each joint mandated iwi organisation must also provide—
- (a) the process that a withdrawing group must undertake in order to withdraw, including giving notice of its intention to withdraw to—
    - (i) Te Ohu Kai Moana Trustee Limited; and
    - (ii) the relevant joint mandated iwi organisation; and
  - (b) the process for determining, consistently with the provisions of Part 3, the matters set out in subsection (3); and
  - (c) the criteria that must be met by the withdrawing group in order to complete the process of withdrawal, including having a mandated iwi organisation recognised by Te Ohu Kai Moana Trustee Limited in accordance with section 13(1).
- (3) The matters that must be determined by the process provided for under subsection (2)(b) are—
- (a) the amount of the notional iwi population specified in column 2 of Schedule 3 for an iwi that must, in each case, be attributed to any withdrawing group; and
  - (b) the division of settlement assets that must be made between the joint mandated iwi organisation and a withdrawing group, including the proportion that the withdrawing group is entitled to receive of—
    - (i) the settlement assets of the joint mandated iwi organisation, on the date when the withdrawal is complete; and
    - (ii) other settlement assets that the joint mandated iwi organisation receives—
      - (A) under sections 36(1)(f)(ii), 43, 84(1)(g), and 96(1)(g); and
      - (B) as a consequence of the allocation and transfer of settlement assets under subparts 1 and 2 of Part 3, including quota shares in respect of new species introduced into the quota management system and transferred to Te Ohu Kai Moana Trustee Limited under section 44 of the Fisheries Act 1996.
- (4) In determining the amount of the notional iwi population to be attributed to a withdrawing group under subsection (3)(a) and the proportion of the settlement

assets that a withdrawing group must receive under subsection (3)(b), a joint mandated iwi organisation and a withdrawing group may use any relevant information, including the relevant data from the census of 2001 or 2006 (but no other census data).

- (5) If a withdrawing group chooses to withdraw from its joint mandated iwi organisation, it must commence the process of withdrawal, in accordance with the process provided for under subsection (2)(a), not later than 5 years after the recognition of the relevant joint mandated iwi organisation under section 13(1).

## **21 Recognition of mandated iwi organisation of withdrawing group**

- (1) Despite section 13(2), if a withdrawing group notifies in accordance with section 20(2)(a) its intention to withdraw from a joint mandated iwi organisation, Te Ohu Kai Moana Trustee Limited must recognise under section 13(1) a mandated iwi organisation for the withdrawing group if the withdrawing group has set up an organisation that meets—

- (a) the criteria of section 14 (other than section 14(d)(ii)); and  
(b) the following further criteria:

- (i) it has on its register of iwi members no fewer than the minimum number of persons specified in column 4 of Schedule 3, in the proportion that the amount attributed to the withdrawing group under section 20(3)(a) represents of the notional iwi population specified in column 2 of Schedule 3, calculated in accordance with the formula—

$$(a \div b) \times c$$

where—

- a is the amount attributed to the withdrawing group under section 20(3)(a)  
b is the total notional population for the iwi set out in column 2 of Schedule 3  
c is the minimum number of members specified in column 4 of Schedule 3; and

- (ii) it has an asset-holding company, as required by section 12(1)(d).

- (2) Despite subsection (1), if a group has withdrawn from a joint mandated iwi organisation as provided for under section 20, settlement assets must be distributed under section 36(1)(f)(ii), allocated and transferred under section 43 or Part 3, or payments must be made under section 84(1)(g) or section 96(1)(g), as the case may be, to the relevant joint mandated iwi organisation as if no group had withdrawn from that joint mandated iwi organisation.

**22 Transfer of assets**

- (1) A joint mandated iwi organisation must not transfer to a withdrawing group the assets referred to in section 20(3)(b) until the withdrawing group has completed the process of withdrawal in accordance with the criteria provided for under section 20(2)(c).
- (2) A transfer of assets referred to in subsection (1) must be—
  - (a) free of charge to the withdrawing group, other than reasonable administrative costs; and
  - (b) treated as if it were between wholly-owned asset-holding companies of the joint mandated iwi organisation.

**23 Voting rights**

- (1) The mandated iwi organisation of a withdrawing group, after it has completed the process of withdrawal provided for under section 20(2)(c),—
  - (a) has all the voting rights of a mandated iwi organisation under this Act; and
  - (b) may exercise those rights from the date when it has completed the process of withdrawal.
- (2) However, only the joint mandated iwi organisation may exercise voting rights in respect of an appointment or removal at a meeting convened under—
  - (a) clause 1 or clause 6 of Schedule 8 to appoint or remove a member or alternate member of Te Kawai Taumata; or
  - (b) clause 1 of Schedule 8 to appoint a member of a committee of representatives, as provided for by section 117(1).
- (3) For the purposes of sections 115(2), 127(3), 137(2)(b), and 138(3)(b),—
  - (a) the notional iwi population represented by the mandated iwi organisation of any withdrawing group is the amount attributed to the withdrawing group under section 20(3)(a), and
  - (b) the notional iwi population represented by the joint mandated iwi organisation is the number stated in column 2 of Schedule 3, after subtracting the amount attributed, under section 20(3)(a), to the withdrawing group.

**24 Status of Ngati Hine and Rongomaiwahine**

- (1) If Ngati Hine withdraws from the joint mandated iwi organisation of Ngapuhi in accordance with the constitutional documents of Ngapuhi, Ngati Hine becomes, upon completion of its withdrawal, an iwi for the purposes of this Act as if it were listed in Group B—NGAPUHI of Schedule 3.
- (2) If Rongomaiwahine withdraws from the joint mandated iwi organisation of Ngati Kahungunu in accordance with the constitutional documents of Ngati Kahungunu, Rongomaiwahine becomes, upon completion of its withdrawal, an

iwi for the purposes of this Act as if it were listed in Group G—TAKITIMU of Schedule 3.

- (3) Subsections (1) and (2) do not override section 21(2).

## **25 Further criteria may be prescribed**

For the purpose of recognising and continuing to recognise mandated iwi organisations under section 13(1), Te Ohu Kai Moana Trustee Limited may make or amend rules in accordance with section 54 in respect of the criteria or requirements that apply to mandated iwi organisations and their constitutional documents.

## **26 Benefit to persons who are not members of iwi**

- (1) The constitutional documents of a mandated iwi organisation may permit the organisation to benefit—
- (a) Maori who are not members of the iwi:
  - (b) the community generally.
- (2) If the constitutional documents of a mandated iwi organisation make provision as contemplated by subsection (1), that does not disqualify the organisation from being recognised as a mandated iwi organisation or affect the validity of its constitutional documents, to the extent that they relate to matters provided for by or under this Act.

### *Recognised iwi organisations*

## **27 Functions and powers of recognised iwi organisations**

- (1) This section and section 28 apply to the organisations listed in Schedule 4, each of which is a recognised iwi organisation for the matters listed in subsection (3), but only until there is a mandated iwi organisation for the iwi.
- (2) In addition to the recognised iwi organisations listed in Schedule 4, Te Ohu Kai Moana Trustee Limited may recognise other organisations as recognised iwi organisations for the matters listed in subsection (3), so long as there is only 1 recognised iwi organisation for an iwi.
- (3) A recognised iwi organisation has the functions and powers of a mandated iwi organisation, including the right—
- (a) to receive all documents, reports, and notices that must be provided to mandated iwi organisations under Part 2; and
  - (b) to participate in the process for offering annual catch entitlement provided for in section 152; and
  - (c) to participate in the process for resolving a dispute referred to in section 180(1)(b), (d), (e), (g), (h), (i), (k), or (l); and
  - (d) to represent the iwi in consultation, negotiation, and proceedings relating to a matter listed in this subsection; and

- (e) to represent its iwi by voting at any meeting convened under clause 1 or clause 6 of Schedule 8 to appoint or remove a member or alternate member of Te Kawai Taumata.
- (4) However, a recognised iwi organisation does not have the right—
  - (a) to receive settlement quota; or
  - (b) to receive money under section 149 or section 150; or
  - (c) to purchase settlement quota; or
  - (d) to receive or purchase income shares, or to receive dividends relating to income shares; or
  - (e) to enter into binding agreements with other iwi over coastline claims; or
  - (f) to submit coastline claims to Te Ohu Kai Moana Trustee Limited for determination under section 11; or
  - (g) to enter into agreements for freshwater quota or harbour quota; or
  - (h) to nominate an entity with charitable status to receive distributions on the termination of—
    - (i) Te Ohu Kai Moana, as provided for under section 36(1)(f)(ii);
    - (ii) Te Putea Whakatupu Trust, as provided for under section 84(1)(g);
    - (iii) Te Wai Maori Trust, as provided for under section 96(1)(g).

## **28 Status of recognised iwi organisations**

- (1) Te Ohu Kai Moana Trustee Limited, mandated iwi organisations, and recognised iwi organisations must recognise and deal with a recognised iwi organisation as if it were a mandated iwi organisation, including for the matters listed in section 27(3), until there is a mandated iwi organisation for the iwi.
- (2) Despite the constitutional documents of a recognised iwi organisation, Te Ohu Kai Moana Trustee Limited may, if it considers in the circumstances that it is reasonably necessary, require the directors, trustees, or office holders of a recognised iwi organisation to demonstrate that, in relation to their functions under this Act, they have the confidence of the majority of the adult members of the iwi who vote at a properly constituted general meeting to act on their behalf.

## **29 Representative Maori organisations**

- (1) The organisations specified in Schedule 5 are representative Maori organisations under this Act.
- (2) A representative Maori organisation is entitled to participate in the procedures—
  - (a) to appoint or remove a member or alternate member of Te Kawai Taumata, as provided for in Schedule 8; and

- (b) to appoint a member of any committee of representatives established under section 116.

## **Part 2**

### **Establishment and review of new entities**

#### **30 Outline of this Part**

This Part provides, in 6 subparts, for the establishment, audit, and review of the following new entities:

- (a) Te Ohu Kai Moana and Te Ohu Kai Moana Trustee Limited; and
- (b) Te Kawai Taumata; and
- (c) Aotearoa Fisheries Limited; and
- (d) Te Putea Whakatupu Trust and Te Putea Whakatupu Trustee Limited; and
- (e) Te Wai Maori Trust and Te Wai Maori Trustee Limited.

#### Subpart 1—Te Ohu Kai Moana and Te Ohu Kai Moana Trustee Limited

##### *Establishment of trust and trustee*

#### **31 Te Ohu Kai Moana to be established**

- (1) The Treaty of Waitangi Fisheries Commission must, before the appointed day, establish by trust deed a trust called Te Ohu Kai Moana.
- (2) Neither the rule against perpetuities nor any relevant provisions of the Perpetuities Act 1964—
  - (a) prescribe or restrict the period during which Te Ohu Kai Moana may exist in law; or
  - (b) apply to a document entered into to give effect to the Deed of Settlement (including the trust deed required to be entered into under subsection (1)) if the application of that rule or the provisions of that Act would otherwise make the document, or a right or obligation conferred by that document, invalid or ineffective.

#### **32 Purpose of Te Ohu Kai Moana**

The purpose of Te Ohu Kai Moana is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to—

- (a) ultimately benefit the members of iwi and Maori generally; and
- (b) further the agreements made in the Deed of Settlement; and
- (c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and

- (d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

### **33 Trustee of Te Ohu Kai Moana**

- (1) Te Ohu Kai Moana must have only 1 trustee.
- (2) The trustee of Te Ohu Kai Moana must be a company formed under the Companies Act 1993 with the name Te Ohu Kai Moana Trustee Limited.

#### *Duties and functions of trustee*

### **34 Duties of Te Ohu Kai Moana Trustee Limited**

Te Ohu Kai Moana Trustee Limited must administer the settlement assets in accordance with the purposes of this Act and the purpose of Te Ohu Kai Moana, including performing the following duties:

- (a) as required by sections 7 and 196, to determine the appropriate classification of quota shares; and
- (b) as required by section 157, to apply to register settlement quota interests against—
  - (i) the quota shares listed in Schedule 1; and
  - (ii) any quota shares allocated under section 44 of the Fisheries Act 1996; and
- (c) to allocate and transfer the settlement assets; and
- (d) to manage on a transitional basis, collectively or separately as Te Ohu Kai Moana Trustee Limited considers appropriate, the settlement assets to be allocated to an iwi, until they are transferred to the mandated iwi organisation of the iwi; and
- (e) to determine the coastline entitlements of iwi under section 11 and Schedule 6; and
- (f) to maintain the iwi register required by section 40 and to record the matters relating to mandated iwi organisations required by or under this Act; and
- (g) if Te Ohu Kai Moana Trustee Limited is satisfied that each commercial fisher is wholly owned by 1 or more mandated iwi organisations, to advise the chief executive of the Ministry of Fisheries as to those commercial fishers who are approved entities for the purposes of section 74(2A) of the Fisheries Act 1996; and
- (h) to make extracts of the iwi register available, on request, to mandated iwi organisations or members of iwi, in accordance with any policy prepared under section 53; and



- (i) to assist recognised iwi organisations to establish a register of iwi members that includes the contact details and date of birth for every person included in that register; and
- (j) to assist iwi to meet the requirements of sections 14, 17, and 130(3); and
- (k) where the lack of a mandated iwi organisation for an iwi prevents the mandated iwi organisation of another iwi from making its coastline claims under clause 3 of Schedule 6, Te Ohu Kai Moana Trustee Limited must give priority to assisting the iwi that does not have a mandated iwi organisation, as provided for in paragraph (j); and
- (l) to the extent that they relate to matters provided for by or under this Act, to approve constitutional documents under section 17 and any changes made under section 18 or required under section 25; and
- (m) to appoint the directors of Aotearoa Fisheries Limited; and
- (n) to establish Te Putea Whakatupu Trust, appoint the directors of Te Putea Whakatupu Trustee Limited, and make the payments required by section 90(1) and (3); and
- (o) to establish Te Wai Maori Trust, appoint the directors of Te Wai Maori Trustee Limited, and make the payments required by section 103(1), (3), and (4); and
- (p) to consider and, if satisfied, approve the annual plans of Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited; and
- (q) to prepare the final financial statements of the Treaty of Waitangi Fisheries Commission, as provided for in section 197; and
- (r) to perform any other duties prescribed by or under this Act or any other enactment.

### **35 Functions of Te Ohu Kai Moana Trustee Limited**

- (1) As a means to further the purpose of Te Ohu Kai Moana, Te Ohu Kai Moana Trustee Limited may—
  - (a) foster, promote, commission, or fund research into the sustainable management of fisheries:
  - (b) in relation to fisheries, fishing, and fisheries-related activities, act to protect and enhance the interests of iwi and Maori in those activities:
  - (c) in relation to other activities, so long as the nature of the business activities of Te Ohu Kai Moana Group, taken as a whole, is not significantly changed from the primary focus on fisheries, fishing, or fisheries-related activities,—
    - (i) approve other activities, including, but not limited to, activities related to the seafood industry:

- (ii) give prior approvals to specified entities of Te Ohu Kai Moana Group to conduct other activities up to thresholds specified by Te Ohu Kai Moana Trustee Limited:
  - (d) require mandated iwi organisations to demonstrate their progress in meeting the criteria and requirements set out in section 14, 17, or section 130(3)(b), as the case may be, before granting assistance under section 34(i) or (j):
  - (e) in accordance with the provisions of Part 4, acquire or dispose of income shares, settlement quota, and quota other than settlement quota, and sell annual catch entitlement generated by settlement quota or by quota other than settlement quota:
  - (f) perform the functions of the voting shareholder of Aotearoa Fisheries Limited:
  - (g) apply the funds of the trust by way of payments to—
    - (i) mandated iwi organisations:
    - (ii) Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited as specified in sections 90(5) and 103(6) respectively:
  - (h) grant assistance, as permitted by or under this Act, to—
    - (i) mandated iwi organisations:
    - (ii) individual Maori and groups of Maori:
  - (i) maintain reserve funds to the extent that it considers prudent:
  - (j) perform any other functions permitted by or under this Act or any other enactment.
- (2) Te Ohu Kai Moana Trustee Limited must not undertake fishing or hold a fishing permit.
- (3) This section and section 34 do not limit the activities (other than fishing or holding a fishing permit) that Te Ohu Kai Moana Trustee Limited may undertake to further the purpose of Te Ohu Kai Moana.

### *Trust deed*

#### **36 Trust deed of Te Ohu Kai Moana**

- (1) The trust deed of Te Ohu Kai Moana must—
- (a) specify the purpose of Te Ohu Kai Moana as stated in section 32; and
  - (b) require Te Ohu Kai Moana Trustee Limited to develop—
    - (i) an annual plan; and
    - (ii) a 5-year strategic plan that is updated annually; and

- (c) require Te Ohu Kai Moana Trustee Limited to circulate drafts of the plans referred to in paragraph (b) for comment, prior to their adoption by Te Ohu Kai Moana Trustee Limited, to—
    - (i) mandated iwi organisations; and
    - (ii) representative Maori organisations; and
  - (d) provide for the manner in which the trust deed may be varied and any restrictions on its variation; and
  - (e) provide for fees or remuneration for attendance at meetings, as the case may be, and reimbursing allowances or actual and reasonable expenses to be paid, in accordance with the provisions included in the annual plan of Te Ohu Kai Moana Trustee Limited under section 37(d) to (g), to—
    - (i) the directors of Te Ohu Kai Moana Trustee Limited; and
    - (ii) the directors of Te Putea Whakatapu Trustee Limited and Te Wai Maori Trustee Limited; and
    - (iii) the members and alternate members of Te Kawai Taumata; and
    - (iv) the members of a committee of representatives; and
  - (f) provide for—
    - (i) the termination of Te Ohu Kai Moana; and
    - (ii) on termination of that Trust, the distribution of the assets of the Trust, including capital and accumulated income, in the percentages specified in column 3 of Schedule 3,—
      - (A) to each mandated iwi organisation that has charitable status; or
      - (B) in the case of a mandated iwi organisation that does not have charitable status, to an entity with charitable status nominated by the mandated iwi organisation to benefit the relevant iwi and its members; or
      - (C) if no mandated iwi organisation exists or no nomination is made under subparagraph (B), to an entity with charitable status nominated by Te Ohu Kai Moana Trustee Limited to benefit the relevant iwi and its members.
- (2) The trust deed may—
- (a) include any other matter that is not inconsistent with this Act; and
  - (b) be amended, subject to—
    - (i) the purpose of Te Ohu Kai Moana; and
    - (ii) any restrictions specified by the trust deed on the way it may be varied; and
    - (iii) the provisions of this Act.

- (3) A provision of the trust deed or an amendment to it has no effect to the extent that it is inconsistent with this Act.

### **37 Matters to be included in annual plan**

The trust deed of Te Ohu Kai Moana must require Te Ohu Kai Moana Trustee Limited to include in its annual plan for the relevant year—

- (a) whether Te Ohu Kai Moana Trustee Limited will hold and account separately or collectively for—
- (i) the net proceeds of sales referred to in section 152(4); and
  - (ii) income shares and dividends referred to in section 153(1); and
- (b) the matters referred to in section 152(5)(a) (which relates to the sale of annual catch entitlement) for the year to which the plan applies, unless those matters have been included in a panui; and
- (c) the budget for Te Ohu Kai Moana Trustee Limited; and
- (d) the budget to be paid by Te Ohu Kai Moana Trustee Limited for Te Kawai Taumata, as provided for under clause 19 of Schedule 8, including the daily rate for meetings payable to the members and alternate members of Te Kawai Taumata under clause 18 of Schedule 8; and
- (e) when relevant, the budget for—
- (i) a review under section 114(2) and (3)(a); and
  - (ii) a committee of representatives, as provided for under section 115(1), including the daily rate for meetings payable to the members of a committee under section 120(4); and
- (f) the scale of fees (expressed in bands of \$10,000) that applies for—
- (i) the directors of Te Ohu Kai Moana Trustee Limited, to be paid by Te Ohu Kai Moana Trustee Limited; and
  - (ii) the directors of Te Putea Whakatupu Trustee Limited, to be paid by Te Putea Whakatupu Trustee Limited; and
  - (iii) the directors of Te Wai Maori Trustee Limited, to be paid by Te Wai Maori Trustee Limited; and
- (g) the policy that must apply to the payments referred to in paragraphs (d), (e), and (f) of reimbursing allowances to, or actual and reasonable expenses of, the directors, members, and alternate members, as the case may be.

### **38 Annual report of Te Ohu Kai Moana Trustee Limited**

- (1) The trust deed of Te Ohu Kai Moana must set out the reporting obligations of Te Ohu Kai Moana Trustee Limited, as provided for in this section and section 39.

- (2) In measuring its performance against the annual plan and strategic plan referred to in section 36(1)(b), Te Ohu Kai Moana Trustee Limited must report annually, not later than 5 months after the end of each financial year, to—
  - (a) mandated iwi organisations and representative Maori organisations; and
  - (b) the members and alternate members of Te Kawai Taumata.
- (3) In each annual report required by subsection (2), Te Ohu Kai Moana Trustee Limited must—
  - (a) describe any amendments made to the trust deed of Te Ohu Kai Moana; and
  - (b) describe the key activities undertaken by—
    - (i) Te Ohu Kai Moana Trustee Limited; and
    - (ii) any subsidiary set up by Te Ohu Kai Moana Trustee Limited, including Aotearoa Fisheries Limited; and
    - (iii) Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited; and
  - (c) describe any special resolution passed or approval granted during that year in respect of the matters referred to in section 35(1)(c); and
  - (d) separately describe each of the funds it has reserved under section 35(1)(i), the reason why each reserve fund is held, and any proposed applications of those reserves; and
  - (e) separately describe each sale of income shares sold under section 71; and
  - (f) describe how the revenue from annual catch entitlements sold in the previous year was used; and
  - (g) describe separately or collectively, as provided for in the annual plan, the income shares and dividends held under section 153(1); and
  - (h) describe separately, in relation to any loan referred to in section 75(4)(f),—
    - (i) the capital sum of the loans; and
    - (ii) the money received, in each case by way of capital repayments or interest; and
    - (iii) loans written off or discharged; and
  - (i) list any appointments made by Te Ohu Kai Moana Trustee Limited to the board of directors of Aotearoa Fisheries Limited, Te Putea Whakatupu Trustee Limited; and Te Wai Maori Trustee Limited.
- (4) The annual report must include—
  - (a) the audited financial statements of Te Ohu Kai Moana and Te Ohu Kai Moana Trustee Limited; and

- (b) a statement of—
  - (i) the payments made under section 35(1)(g); and
  - (ii) the fees (expressed in bands of \$10,000) and the reimbursing allowances or actual and reasonable expenses paid to each of the directors of Te Ohu Kai Moana Trustee Limited, Te Putea Whakaputu Trustee Limited, and Te Wai Maori Trustee Limited; and
  - (iii) the remuneration and reimbursing allowances or actual and reasonable expenses paid, collectively, to—
    - (A) the members and alternate members of Te Kawai Taumata; and
    - (B) the members of a committee of representatives.

### **39 Consultation and other reporting obligations**

- (1) The trust deed must require Te Ohu Kai Moana Trustee Limited—
  - (a) to hold a general meeting, not later than 8 months after the end of each financial year, to discuss and address issues arising from the annual report; and
  - (b) to provide, in a timely manner, to mandated iwi organisations, representative Maori organisations, and the members and alternate members of Te Kawai Taumata—
    - (i) the minutes of every general meeting; and
    - (ii) the annual report required by section 38, together with information on where the report is publicly available; and
    - (iii) the annual and strategic plans referred to in section 36(1)(b).
- (2) This section does not limit any reporting obligations arising under any other enactment or rule of law.

### **40 Obligation to establish and maintain iwi register**

- (1) The trust deed of Te Ohu Kai Moana must include an obligation on Te Ohu Kai Moana Trustee Limited to establish and maintain an iwi register.
- (2) The purpose of the iwi register is to provide a record, in respect of each iwi, of the matters set out in subsection (3).
- (3) Without limiting the scope of the iwi register, Te Ohu Kai Moana Trustee Limited must record in the iwi register—
  - (a) its recognition of mandated iwi organisations; and
  - (b) to the extent that the constitutional documents (and any amendments to them) relate to the matters provided for by or under this Act,—
    - (i) its approval of the documents of mandated iwi organisations; and

- (ii) the approval by mandated iwi organisations of the documents of their asset-holding companies and of any subsidiaries of those asset-holding companies; and
- (c) changes to the criteria or requirements that apply to mandated iwi organisations and their constitutional documents made in accordance with section 18; and
- (d) its determinations on coastline entitlements or interim coastline entitlements made under clause 10A or 11 of Schedule 6; and
- (e) the allocation of settlement assets to each iwi; and
- (f) the transfer of those settlement assets to the mandated iwi organisation of the iwi or to an asset-holding company of the mandated iwi organisation, as appropriate; and
- (g) any transfer of settlement quota made in accordance with Part 4 that results from a sale or exchange.

Section 40(3)(d): amended, on 13 December 2006, by section 4 of the Maori Fisheries Amendment Act 2006 (2006 No 78).

#### 41 Review of revenue requirements

- (1) In this section and sections 42 and 43,—

**loan funds** means the funds identified in section 42(1)(c)

**revenue review** means the review conducted in accordance with those sections.

- (2) The trust deed of Te Ohu Kai Moana must include an obligation on Te Ohu Kai Moana Trustee Limited to commence and complete, during the 12th year after the commencement of this Act, a review of the revenue requirements of Te Ohu Kai Moana Trustee Limited.
- (3) Te Ohu Kai Moana Trustee Limited must include, in the next annual report after the completion of the revenue review, a report on the findings and conclusions of the review.

#### 42 Scope of revenue review

- (1) The revenue review conducted under section 41 must consider and report on the following matters:
- (a) the activities that Te Ohu Kai Moana Trustee Limited must undertake in carrying out its duties and functions under this Act; and
  - (b) the revenue that is necessary to enable Te Ohu Kai Moana Trustee Limited to carry out the activities identified under paragraph (a); and
  - (c) whether, in order to meet the revenue requirements identified under paragraph (b), it is necessary for Te Ohu Kai Moana Trustee Limited to continue to hold and receive any of the funds relating to the loans referred to in section 75(4)(f), as follows:

- (i) the capital funds of the loans:
  - (ii) the income from the capital funds:
  - (iii) the accumulated income from the loans.
- (2) If Te Ohu Kai Moana Trustee Limited determines under subsection (1)(c) that it is necessary that it continue to hold and receive some or all of the loan funds, it must—
  - (a) state the period of time for which it will continue to do so; and
  - (b) complete a further revenue review before the expiry of the period of time provided for under paragraph (a).
- (3) In conducting the revenue review, Te Ohu Kai Moana Trustee Limited must—
  - (a) consult with mandated iwi organisations and representative Maori organisations; and
  - (b) take their views into account.

#### **43 Allocation and transfer of surplus loan funds**

If Te Ohu Kai Moana Trustee Limited determines, in the revenue review conducted under section 41, that some or all of the loan funds are not necessary to meet its revenue requirements identified under section 42(1)(b), Te Ohu Kai Moana Trustee Limited must allocate and transfer the surplus loan funds to mandated iwi organisations in the percentage specified for each iwi in column 3 of Schedule 3.

#### *Te Ohu Kai Moana Trustee Limited*

#### **44 Constitution of Te Ohu Kai Moana Trustee Limited**

- (1) Te Ohu Kai Moana Trustee Limited must have—
  - (a) only 1 share that—
    - (i) has no distribution rights; and
    - (ii) is held jointly by the members of the board of Te Ohu Kai Moana Trustee Limited; and
  - (b) a constitution that is consistent with this Act.
- (2) The constitution must provide—
  - (a) that the role of Te Ohu Kai Moana Trustee Limited is restricted to acting as the trustee of Te Ohu Kai Moana; and
  - (b) that Te Ohu Kai Moana Trustee Limited must have a board that consists of at least 6, and not more than 7, directors; and
  - (c) that an extraordinary vacancy of a director does not create a breach of the constitution, so long as—
    - (i) there is an alternate for that director; and



- (ii) a new director is appointed within 6 months of the vacancy arising; and
- (d) that, in accordance with sections 46 to 49, Te Kawai Taumata—
  - (i) must appoint the directors (except the first directors) of Te Ohu Kai Moana Trustee Limited; and
  - (ii) may remove any director; and
- (e) that each of the directors of Te Ohu Kai Moana Trustee Limited must be a Maori; and
- (f) that, having regard to the purpose of Te Ohu Kai Moana, the directors of Te Ohu Kai Moana Trustee Limited collectively must have commercial expertise and business skills, and be well versed in matters of tikanga Maori; and
- (g) a procedure for the appointment of an alternate for a director to attend and vote at meetings on behalf of that director; and
- (h) a method by which the board of Te Ohu Kai Moana Trustee Limited must address conflicts of interest for its directors; and
- (i) that no director of Te Ohu Kai Moana Trustee Limited may undertake any contract for services for Te Ohu Kai Moana Group; and
- (j) the restrictions that apply to the chairperson and deputy chairperson of Te Ohu Kai Moana Trustee Limited in relation to any other appointment under this Act; and
- (k) the criteria that must be taken into account when an alternate director is appointed and any restrictions on eligibility that apply to the appointment of an alternate; and
- (l) a procedure for amending the constitution of Te Ohu Kai Moana Trustee Limited; and
- (m) that Te Ohu Kai Moana Trustee Limited must convene at least 1 general meeting each financial year; and
- (n) that Te Ohu Kai Moana Trustee Limited must give public notice of not less than 20 working days that a general meeting is to be held and the agenda for that meeting, with separate written notice to—
  - (i) each mandated iwi organisation and representative Maori organisation; and
  - (ii) each member and alternate member of Te Kawai Taumata; and
- (o) that Te Ohu Kai Moana Trustee Limited must put any written motion to a non-binding vote at a general meeting, provided the motion is supported by not less than 20% of the total number of mandated iwi organisations; and
- (p) that Te Ohu Kai Moana Trustee Limited may be put into voluntary liquidation only if Te Ohu Kai Moana is terminated; and

- (q) a process for putting Te Ohu Kai Moana Trustee Limited into voluntary liquidation.
- (3) The constitution must provide for a specific power of sale of income shares or settlement quota or both and may provide for a general power of sale of income shares or settlement quota or both, including in each case any terms and conditions as to the exercise of the power.
- (4) A provision of the constitution of Te Ohu Kai Moana Trustee Limited is of no effect to the extent that it is inconsistent with this Act.
- (5) Te Ohu Kai Moana Trustee Limited has full powers to act in its role as the trustee of Te Ohu Kai Moana.

### *Appointment of directors*

#### **45 First directors of Te Ohu Kai Moana Trustee Limited**

- (1) The Minister of Maori Affairs must appoint the first directors of Te Ohu Kai Moana Trustee Limited.
- (2) The directors appointed under subsection (1) must not exercise any powers or functions as directors or take any other action before the appointed day.
- (3) Each director appointed by the Minister under subsection (1) must, immediately before the appointed day, be a member of the Treaty of Waitangi Fisheries Commission.
- (4) Despite section 47(1), 3 of the directors appointed under subsection (1) must be appointed for a term not exceeding 2 years, as specified by the Minister.
- (5) Before appointing the first directors, the Minister may consult any person he or she considers appropriate.

#### **46 Subsequent appointments**

- (1) Te Kawai Taumata must, in accordance with this Act and the constitution of Te Ohu Kai Moana Trustee Limited, appoint to the board of Te Ohu Kai Moana Trustee Limited—
  - (a) 3 directors to replace the directors whose terms expire under section 45(4); and
  - (b) all other directors.
- (2) If at any time Te Kawai Taumata cannot make all the appointments necessary to fill the board of Te Ohu Kai Moana Trustee Limited, the members of Te Kawai Taumata (or their alternates) must nominate which of the directors will not be replaced for the time being.

#### **47 Term of office of directors**

- (1) A director is appointed under section 45(1) or section 46(1) for a term not exceeding 4 years.

- (2) However, a director—
- (a) who has held office for 2 consecutive full terms (disregarding any appointment to fill a vacancy arising during the term of another director) is not eligible to be reappointed as a director within 2 years after ceasing to hold office; and
  - (b) whose term of office expires, continues in office until his or her successor is appointed in accordance with this Act and the constitution of Te Ohu Kai Moana Trustee Limited.

#### **48 Eligibility for office of director**

- (1) A person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata is not eligible for appointment as a director or alternate director of Te Ohu Kai Moana Trustee Limited or of a subsidiary of Te Ohu Kai Moana Trustee Limited.
- (2) If a director of Te Ohu Kai Moana Trustee Limited or of a subsidiary of Te Ohu Kai Moana Trustee Limited becomes a member or alternate member of Te Kawai Taumata, he or she must, within 5 working days, resign as a director or alternate director of Te Ohu Kai Moana Trustee Limited or of the subsidiary, as the case may be.

#### **49 Removal of directors**

- (1) A director appointed under section 45(1) may be removed from office by the Minister of Maori Affairs, without compensation, for disability affecting the performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (2) A director appointed under section 46(1) may be removed from office, without compensation, at any time by Te Kawai Taumata in accordance with the constitution of Te Ohu Kai Moana Trustee Limited and Schedule 8.

#### **50 Effect of vacancy in membership of Te Ohu Kai Moana Trustee Limited**

The functions and powers of Te Ohu Kai Moana Trustee Limited are not affected by a vacancy in the membership of the board.

#### *Iwi register*

#### **51 Documentation relating to iwi register**

- (1) Te Ohu Kai Moana Trustee Limited must preserve, for not less than 12 years from the date when the document comes into existence, every document relevant to the iwi register, in respect of—
- (a) iwi constitutional documents; and
  - (b) documents submitted in making a coastline claim under section 11; and
  - (c) records of the process by which coastline entitlements are determined by Te Ohu Kai Moana Trustee Limited; and

- (d) other documents that Te Ohu Kai Moana Trustee Limited considers relevant to the matters set out in section 40(3).
- (2) Te Ohu Kai Moana Trustee Limited may create summaries of the records listed in subsection (1) for the purpose of section 52.

### **52 Access to iwi register**

- (1) The iwi register must be available for access upon request by—
  - (a) a mandated iwi organisation:
  - (b) a member of an iwi:
  - (c) the members and alternate members of Te Kawai Taumata.
- (2) However, access to the iwi register may be restricted under a policy of Te Ohu Kai Moana Trustee Limited prepared under section 53.

### **53 Policy on iwi register**

- (1) Te Ohu Kai Moana Trustee Limited may prepare a policy on the iwi register that includes—
  - (a) rules on access to—
    - (i) information on the register:
    - (ii) documents that are relevant to, and included with, information on the register:
  - (b) criteria that apply to—
    - (i) protect the confidentiality of information in the iwi register:
    - (ii) restrict access to the register:
  - (c) the circumstances when only a summary of information on the iwi register will be accessible, and those when the full documentation will be accessible:
  - (d) when and where the iwi register may be accessed:
  - (e) fees and charges that apply for supplying information requested from the iwi register.
- (2) In preparing a policy on the iwi register, Te Ohu Kai Moana Trustee Limited must comply with the procedures set out in section 54.

### *Rule-making procedures*

### **54 Procedures for making or amending rules**

- (1) Te Ohu Kai Moana Trustee Limited may make or amend rules—
  - (a) that change the procedures applying to the sale or exchange of settlement quota under Part 4:

- (b) that affect the criteria or other requirements applying to the constitutional documents of mandated iwi organisations in accordance with section 25;
- (c) that restrict access to the iwi register under section 52.
- (2) Te Ohu Kai Moana Trustee Limited must give notice in the *Gazette* of rules made or amended under subsection (1).
- (3) Before notifying a rule or an amendment under subsection (2), Te Ohu Kai Moana Trustee Limited must, in respect of the proposed rule or amendment,—
  - (a) identify the mandated iwi organisations that will be affected by the proposal; and
  - (b) inform them of the proposal; and
  - (c) if Te Ohu Kai Moana Trustee Limited will be a party affected by the proposal, inform the affected mandated iwi organisations of that fact; and
  - (d) allow not less than 20 working days for affected mandated iwi organisations to make written submissions to Te Ohu Kai Moana Trustee Limited on the proposal; and
  - (e) take into account submissions made by mandated iwi organisations under paragraph (d); and
  - (f) notify the affected mandated iwi organisations of significant issues raised by the submissions and how those issues were taken into account.
- (4) Rules must not be inconsistent with this Act or any other enactment or rule of law.

## Subpart 2—Te Kawai Taumata

### **55 Establishment of Te Kawai Taumata**

- (1) The chairperson of the board of Te Ohu Kai Moana Trustee Limited must by written notice request those with responsibility under clause 1 of Schedule 8 to commence the process to appoint the members and alternate members of Te Kawai Taumata.
- (2) The duty under subsection (1) must be completed not later than 6 months before the term of office expires under section 45(4) for 3 directors of Te Ohu Kai Moana Trustee Limited.
- (3) Schedule 8 applies to the members and alternate members of Te Kawai Taumata.

### **56 Sole function of Te Kawai Taumata**

- (1) The sole function of the members and alternate members of Te Kawai Taumata is to appoint and remove directors of Te Ohu Kai Moana Trustee Limited in accordance with—
  - (a) the requirements of this Act; and

- (b) the constitution of Te Ohu Kai Moana Trustee Limited.
- (2) In carrying out their function under subsection (1), the members and alternate members of Te Kawai Taumata,—
  - (a) are not subject to directions from the board of Te Ohu Kai Moana Trustee Limited or any of its directors; and
  - (b) may collectively seek advice from any source they consider appropriate; and
  - (c) must act in a manner that is consistent with achieving the purpose of Te Ohu Kai Moana; and
  - (d) must receive audit reports under section 113 and review reports under section 125, and may comment on the review reports as provided for by section 127(1), to the extent that the review reports are concerned with the role, activities, or performance of Te Kawai Taumata.

#### **57 Membership of Te Kawai Taumata**

- (1) Te Kawai Taumata must have not more than 11 members, and not fewer than 6, together with an alternate member for each member.
- (2) One member of Te Kawai Taumata, and an alternate for that member, may be appointed, in accordance with clauses 1 to 3 of Schedule 8, by—
  - (a) each of the groups of iwi set out in column 1 of Schedule 3; and
  - (b) the group of representative Maori organisations listed in Schedule 5.
- (3) All members of Te Kawai Taumata and their alternates must be Maori.

#### **58 Alternate members of Te Kawai Taumata**

- (1) An alternate member may act in place of the member, but only if the member is unable by illness, absence, or other reason to act as a member.
- (2) The death, resignation, or removal from office of a member does not cause the removal from office of that member's alternate member, until the new member and his or her alternate member are appointed, which must not be later than 6 months after the death, resignation, or removal from office of the member.

#### **59 Eligibility for membership of Te Kawai Taumata**

- (1) Any Maori is eligible for appointment as a member or alternate member of Te Kawai Taumata if,—
  - (a) in the case of a person appointed by mandated iwi organisations, a majority of the mandated iwi organisations in the group have voted for that person; or
  - (b) in the case of a person appointed by the representative Maori organisations, a majority of those organisations have voted for that person; or

- (c) in the case of the person appointed by Ngapuhi, a majority of the directors, trustees, or office holders of the Ngapuhi mandated iwi organisation have voted for that person.
- (2) A person is not eligible to be a member or alternate member of Te Kawai Taumata at the same time as he or she is a director of—
  - (a) Te Ohu Kai Moana Trustee Limited; or
  - (b) Aotearoa Fisheries Limited or any other subsidiary of Te Ohu Kai Moana Trustee Limited; or
  - (c) a subcompany; or
  - (d) Te Putea Whakatupu Trustee Limited; or
  - (e) Te Wai Maori Trustee Limited.
- (3) If subsection (2) is breached, the member or alternate member of Te Kawai Taumata must, within 5 working days, resign as a director of any company listed in that subsection.

### Subpart 3—Aotearoa Fisheries Limited

#### *Establishment*

#### **60 Establishment of Aotearoa Fisheries Limited**

- (1) Before the appointed day, unless it has done so before the commencement of this Act, the Treaty of Waitangi Fisheries Commission must form a company under the Companies Act 1993 with the name Aotearoa Fisheries Limited.
- (2) Aotearoa Fisheries Limited must have—
  - (a) voting shares that have—
    - (i) all the rights to vote under the Companies Act 1993, except those under section 207P of that Act, subject to the decisions taken by income shareholders using their rights under the constitution of Aotearoa Fisheries Limited; but
    - (ii) no rights to distributions from Aotearoa Fisheries Limited; and
  - (b) income shares that have—
    - (i) equal distribution rights; and
    - (ii) sole rights to vote under section 207P of the Companies Act 1993.
- (3) To avoid doubt, Aotearoa Fisheries Limited is not the company of the same name referred to in section 12 of the Maori Fisheries Act 1989.

Section 60(2)(a)(i): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 60(2)(b)(ii): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

*Duty of Aotearoa Fisheries Limited***61 Duty of Aotearoa Fisheries Limited**

- (1) Aotearoa Fisheries Limited must manage its assets in a commercial manner.
- (2) Despite section 35(2), in carrying out its duty under subsection (1), Aotearoa Fisheries Limited and its subcompanies may undertake—
  - (a) fishing and fisheries-related activities;
  - (b) other activities including, but not limited to, activities related to the sea-food industry.
- (3) However, Aotearoa Fisheries Limited and its subcompanies must not undertake activities referred to in subsection (2)(b) unless they do so in a manner consistent with the terms and conditions of an approval given under section 35(1)(c).

*Constitution of Aotearoa Fisheries Limited***62 Requirements for constitution**

- (1) Aotearoa Fisheries Limited must have a constitution that includes—
  - (a) a provision that prevents Aotearoa Fisheries Limited from passing a special resolution for the purpose of approving any transaction that would be likely to have the effect of breaching section 35(1)(c); and
  - (b) a procedure for the appointment of an alternate for a director to attend and vote at meetings on behalf of that director; and
  - (c) the criteria that must be taken into account when an alternate is appointed, and any restrictions on eligibility that apply to an appointment; and
  - (d) a method by which the board of Aotearoa Fisheries Limited must address conflicts of interest that may arise for its directors; and
  - (e) a provision enabling income shareholders to pass non-binding resolutions relating to the management of the company; and
  - (f) a requirement that Aotearoa Fisheries Limited report to income shareholders with—
    - (i) formal unaudited half-yearly financial statements; and
    - (ii) audited yearly financial statements; and
    - (iii) an annual report that includes a statement of any change in the value of the company for the financial year, together with a statement of the method by which that value was determined; and
    - (iv) a business plan for the next financial year, including a summary of the key activities to be undertaken in that year; and
    - (v) the minutes of the annual general meeting and any special general meeting; and



- (g) a requirement that Aotearoa Fisheries Limited use its best endeavours to work co-operatively with iwi on commercial matters; and
  - (h) requirements that Aotearoa Fisheries Limited—
    - (i) establish a process for the disposal of income shares in accordance with the provisions of sections 69 to 72; and
    - (ii) maintain a register that records—
      - (A) all income shareholders; and
      - (B) all transfers of income shares; and
    - (iii) record transfers of shares in the register if, and only if, the transfers comply with the requirements of sections 69 to 72; and
  - (i) a requirement that if Aotearoa Fisheries Limited is put into liquidation, distributions must be made to the income shareholders in proportion to their shareholding at the time of liquidation; and
  - (j) a 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; and
  - (k) a provision enabling Aotearoa Fisheries Limited—
    - (i) to issue additional income shares; and
    - (ii) to establish subcompanies; and
  - (l) provisions for any other matters that are required by this Act.
- (2) This section does not limit any reporting obligations arising under another enactment or rule of law.
- (3) To the extent that a provision of the constitution of Aotearoa Fisheries Limited or an amendment to it is inconsistent with this Act, that provision has no effect.

### *Directors*

#### **63 Directors of Aotearoa Fisheries Limited**

- (1) Te Ohu Kai Moana Trustee Limited must appoint, and may remove, the directors of Aotearoa Fisheries Limited.
- (2) Aotearoa Fisheries Limited must have not fewer than 5, and not more than 8, directors.
- (3) An extraordinary vacancy of a director does not create a breach of this section if the vacancy is filled within 3 months.

#### **64 Restrictions on appointment of directors**

- (1) Not more than 2 of the directors of Aotearoa Fisheries Limited may be directors or employees of Te Ohu Kai Moana Trustee Limited.

- (2) Neither the chairperson nor the deputy chairperson of either Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited may, at the same time, be the chairperson or deputy chairperson of the other.
- (3) If subsection (1) is breached, the most recently appointed director of Aotearoa Fisheries Limited who is also a director or employee of Te Ohu Kai Moana Trustee Limited must resign, within 5 working days,—
  - (a) as a director of Aotearoa Fisheries Limited; or
  - (b) as a director or employee of Te Ohu Kai Moana Trustee Limited, as the case may be.
- (4) A breach of subsection (1) does not—
  - (a) invalidate an action or decision of Aotearoa Fisheries Limited;
  - (b) occur in the case of an extraordinary vacancy of a director, if the vacancy is filled within 3 months.
- (5) To avoid doubt, subsection (1) does not apply to the appointment of an alternate for a director, as provided for in the constitution of Aotearoa Fisheries Limited under section 62(1)(b).
- (6) A person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata is not eligible for appointment as a director of Aotearoa Fisheries Limited.
- (7) A director of Aotearoa Fisheries Limited is not eligible to be, at the same time, a director of Te Putea Whakatapu Trustee Limited or of Te Wai Maori Trustee Limited.

#### **65 Directors of subcompanies**

- (1) In this section, if a subcompany of Aotearoa Fisheries Limited is a trust or an entity other than a company, a reference to a director of a subcompany is a reference to a trustee or office holder of the entity.
- (2) Not more than 2 of the directors of a subcompany of Aotearoa Fisheries Limited may be directors or employees of Te Ohu Kai Moana Trustee Limited.
- (3) If subsection (2) is breached, the most recently appointed director of the subcompany who is also a director or employee of Te Ohu Kai Moana Trustee Limited must, within 5 working days, resign, as the case may be,—
  - (a) as a director of the subcompany; or
  - (b) as a director or employee of Te Ohu Kai Moana Trustee Limited.
- (4) A breach of subsection (2) does not—
  - (a) invalidate an action or decision of the subcompany; or
  - (b) occur in the case of an extraordinary vacancy of a director of the subcompany if the vacancy is filled within 3 months.

- (5) A person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata is not eligible for appointment as a director of a subcompany of Aotearoa Fisheries Limited.
- (6) A director of a subcompany is not eligible to be, at the same time, a director of Te Putea Whakatupu Trustee Limited or of Te Wai Maori Trustee Limited.

#### *Voting shares*

### **66 Voting shares**

- (1) On the appointed day, Aotearoa Fisheries Limited must have 125 000 voting shares, all of which it must issue to Te Ohu Kai Moana Trustee Limited, unless it has already done so.
- (2) Te Ohu Kai Moana Trustee Limited must retain control of all the voting shares in Aotearoa Fisheries Limited.
- (3) However, if a resolution that is supported under section 127(3) requires the transfer or issue of voting shares to mandated iwi organisations, that requirement must be implemented in accordance with the resolution.

#### *Income shares*

### **67 Income shares**

- (1) On the appointed day, Aotearoa Fisheries Limited must have 125 000 income shares, all of which it must issue to Te Ohu Kai Moana Trustee Limited, unless it has already done so.
- (2) Income shares in Aotearoa Fisheries Limited must be held only by—
  - (a) Te Ohu Kai Moana Trustee Limited, either as an owner or trustee; and
  - (b) mandated iwi organisations, through their asset-holding companies.
- (3) Te Ohu Kai Moana Trustee Limited must—
  - (a) retain ownership of 20% of all the income shares issued at any time by Aotearoa Fisheries Limited; and
  - (b) until they are allocated in accordance with section 139, hold the other 80% of income shares issued under subsection (1) in trust for iwi.

### **68 Additional income shares**

If Aotearoa Fisheries Limited issues additional income shares,—

- (a) they must be offered to income shareholders in proportion to the income shares they hold at the date of issue, including income shares held in trust under section 67(3)(b); and
- (b) in the case of any unsubscribed shares, they must be offered or withdrawn in accordance with the constitution of Aotearoa Fisheries Limited.

**69 Disposal of income shares by mandated iwi organisations**

- (1) A mandated iwi organisation may sell its income shares, but only—
  - (a) to Te Ohu Kai Moana Trustee Limited; or
  - (b) to another mandated iwi organisation; and
  - (c) in accordance with section 70 and the process established in the constitution of Aotearoa Fisheries Limited.
- (2) Despite subsection (1), a mandated iwi organisation must not sell income shares allocated to it under section 139 within 2 years after the date on which those shares are transferred to it under section 130 or section 135.
- (3) Income shares—
  - (a) must not be gifted; and
  - (b) may be exchanged or otherwise disposed of, but only in accordance with this Act and the process established in the constitution of Aotearoa Fisheries Limited.
- (4) An exchange or other disposal of income shares must be treated as a sale under sections 69 to 73.

**70 Process for disposal of income shares by mandated iwi organisations**

- (1) Before a mandated iwi organisation may sell its income shares, it must—
  - (a) notify its proposal to sell income shares, in accordance with the constitutional documents of the mandated iwi organisation; and
  - (b) obtain the prior approval of at least 75% of the adult members of the iwi who vote—
    - (i) at a general meeting; or
    - (ii) in a process prescribed in the constitutional documents of the mandated iwi organisation.
- (2) A notice given under subsection (1)(a) must specify,—
  - (a) in a public notice,—
    - (i) the approximate proportion of the total value of the income shares of the mandated iwi organisation affected by the proposal; and
    - (ii) the date on which any approval expires; and
  - (b) in a private notice, if required under kaupapa 4 of Schedule 7,—
    - (i) the number of income shares affected by the proposal; and
    - (ii) a reasonable estimate of the net present value or likely sale price of those shares.
- (3) If approval to sell income shares is obtained under subsection (1)(b), the mandated iwi organisation must—
  - (a) offer the income shares to—

- (i) every mandated iwi organisation; and
  - (ii) Te Ohu Kai Moana Trustee Limited; and
- (b) accept the best price reasonably obtainable at the time of the sale, unless the offer permits the mandated iwi organisation to withdraw the income shares from sale.
- (4) Approval obtained under subsection (1)(b) to sell income shares is valid for not more than 15 months from the date on which it is given.
- (5) As soon as is reasonably practicable after a mandated iwi organisation has sold any income shares under section 69, it must—
  - (a) notify Aotearoa Fisheries Limited of the sale; and
  - (b) provide documentation to Aotearoa Fisheries Limited, supported by a statutory declaration if Aotearoa Fisheries Limited so requires, to establish that the sale complied with all the requirements of sections 69, 70, and 72.

#### **71 Disposal of income shares by Te Ohu Kai Moana Trustee Limited**

- (1) Te Ohu Kai Moana Trustee Limited may sell income shares acquired under section 69 to a mandated iwi organisation, but only if—
  - (a) it has passed a special resolution giving it a specific power of sale of income shares, or the sale meets the terms and conditions of a general power of sale; and
  - (b) the shares are offered to every mandated iwi organisation; and
  - (c) it accepts the best price reasonably obtainable at the time of the sale, unless the offer permits Te Ohu Kai Moana Trustee Limited to withdraw the income shares from sale; and
  - (d) it acts in accordance with the constitution of Aotearoa Fisheries Limited.
- (2) Te Ohu Kai Moana Trustee Limited must not sell income shares held under section 67(3).
- (3) As soon as is reasonably practicable after Te Ohu Kai Moana Trustee Limited has sold any income shares under subsection (1), it must—
  - (a) notify Aotearoa Fisheries Limited of the sale; and
  - (b) provide documentation to Aotearoa Fisheries Limited, supported by a statutory declaration if Aotearoa Fisheries Limited so requires, to establish that the sale complied with all the requirements of this section.

#### **72 Other constraints on disposal of income shares**

- (1) Section 70(1) to (4) applies, with the necessary modifications, if a mandated iwi organisation proposes to enter into a transaction with a third party (for example, an option, security, or guarantee) or series of transactions that could result in—

- (a) the sale of its income shares; or
  - (b) the iwi being disentitled to the income from the income shares for a period of more than 5 years.
- (2) If a third party to a transaction or series of transactions referred to in subsection (1) exercises a right to sell or requires the sale of income shares,—
- (a) section 69(1)(a) and (b) applies as if the vendor were a mandated iwi organisation; and
  - (b) the third party proposing to sell must notify the proposal to—
    - (i) Te Ohu Kai Moana Trustee Limited; and
    - (ii) all mandated iwi organisations.
- (3) As soon as is reasonably practicable after a third party has sold income shares under subsection (2), it must—
- (a) notify Aotearoa Fisheries Limited; and
  - (b) provide documentation to Aotearoa Fisheries Limited, supported by a statutory declaration if Aotearoa Fisheries Limited so requires, to establish that the sale complied with subsection (2).
- (4) In this section, **third party** means a party that is not entitled to hold settlement quota or income shares.

### 73 Remedy for breach of sections 69 to 72

- (1) If a contract for the sale of income shares, including a transaction or series of transactions referred to in section 72(1), is in breach of section 67 or sections 69 to 72, the Court may make orders that—
- (a) cancel the contract or transaction:
  - (b) vest in the vendor the income shares that were the subject of the contract or transaction:
  - (c) vest in the buyer the consideration for the contract or transaction:
  - (d) the Court thinks fit, if the buyer has on-sold, or has granted any interest in, or security over, the income shares:
  - (e) the costs of the applicant be met by the parties to the sale or transaction.
- (2) Orders made under subsection (1) may be made—
- (a) on the application of—
    - (i) a party; or
    - (ii) an adult member of an iwi whose mandated iwi organisation is a party; or
    - (iii) a mandated iwi organisation; or
    - (iv) Te Ohu Kai Moana Trustee Limited; and

- (b) on the terms and conditions that the Court thinks fit, so long as the income shares are not vested other than in—
  - (i) a mandated iwi organisation, to be held in trust by an asset-holding company of the mandated iwi organisation; or
  - (ii) Te Ohu Kai Moana Trustee Limited.
- (3) In the case of a breach of section 67(2) or sections 69 to 72, subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 does not apply.  
Section 73(3): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

#### **74 Exceptions to restrictions on disposal of income shares**

- (1) Sections 69 to 73 do not apply to transfers of income shares between or among—
  - (a) asset-holding companies wholly owned by the same mandated iwi organisation; or
  - (b) subsidiaries of asset-holding companies that are wholly owned by the same mandated iwi organisation.
- (2) If an asset-holding company or a subsidiary of an asset-holding company ceases to be wholly owned by its mandated iwi organisation, its income shares must be—
  - (a) treated as the property of the mandated iwi organisation; and
  - (b) held by another asset-holding company of the mandated iwi organisation, as required by section 16(1)(c).

#### *Transfer of assets*

#### **75 Transfer of assets to Aotearoa Fisheries Limited**

- (1) In this section, **assets** includes any assets, whether in the form of quota shares, interests, rights, or liabilities, that, immediately before the appointed day, are owned, controlled, or held by—
  - (a) the Treaty of Waitangi Fisheries Commission; or
  - (b) any company or other commercial entity, to the extent that it is owned or controlled by the Treaty of Waitangi Fisheries Commission.
- (2) Before the appointed day, the Treaty of Waitangi Fisheries Commission may transfer some or all of its assets to Aotearoa Fisheries Limited or to any of its subcompanies.
- (3) On the appointed day, Te Ohu Kai Moana Trustee Limited must transfer to Aotearoa Fisheries Limited, or to any of its subcompanies, all of the assets that have not been transferred under subsection (2).
- (4) However, subsections (2) and (3) do not apply to—
  - (a) quota shares listed in Schedule 1; or

- (b) assets described in section 137(1); or
  - (c) any entities in which Te Ohu Kai Moana Trustee Limited has a controlling interest that hold any of the quota listed in Schedule 1; or
  - (d) shares in a subsidiary of, or a trust controlled by, Te Ohu Kai Moana Trustee Limited that owns any of the quota shares listed in Schedule 1; or
  - (e) the shares in ACE Trader Limited, SafeAce Limited, Whangape Mussels Limited, and Southern Abalone Limited; or
  - (f) any loans issued by the Treaty of Waitangi Fisheries Commission at any time to a company transferred to Aotearoa Fisheries Limited under this Act; or
  - (g) other assets that continue to be held by Te Ohu Kai Moana Trustee Limited, including administrative and research assets and information that it reasonably needs in order to perform its functions and exercise its powers.
- (5) To avoid doubt, subsection (3) does not limit section 66(2) or section 67(3).
- (6) A transfer made by the Treaty of Waitangi Fisheries Commission under subsection (2) or subsection (3) must be without charge to Aotearoa Fisheries Limited in respect of—
- (a) the value of the assets; or
  - (b) the costs associated with the transfer.
- (7) The transfer of assets by the Treaty of Waitangi Fisheries Commission or by Te Ohu Kai Moana Trustee Limited to Aotearoa Fisheries Limited or to a subcompany in accordance with subsections (2) and (3) are not subject to income tax, goods and services tax, gift duty, or a tax, levy, duty, or other charge imposed or provided for under the Inland Revenue Acts or any other enactment.
- (8) For the purposes of the Inland Revenue Acts, the value of the assets transferred under subsections (2) and (3) is included in the available subscribed capital of Aotearoa Fisheries Limited or its subcompanies.

#### **76 Payment of dividends by Aotearoa Fisheries Limited**

- (1) Aotearoa Fisheries Limited may pay dividends only to income shareholders.
- (2) Aotearoa Fisheries Limited must ensure that not less than 40% of its consolidated group net profit after tax, as determined in accordance with generally accepted accounting practice, is paid annually to its income shareholders.
- (3) Aotearoa Fisheries Limited must use its best endeavours to ensure that the constitution of every subcompany requires the subcompany to make payments that provide Aotearoa Fisheries Limited with sufficient money to enable Aotearoa Fisheries Limited to comply with subsection (2).



- (4) If the payments from its subcompanies are insufficient to allow Aotearoa Fisheries Limited to comply with subsection (2), Aotearoa Fisheries Limited may meet its obligations under subsection (2) by other means.
- (5) In subsection (2),—
- consolidated group** means Aotearoa Fisheries Limited and its subcompanies
- consolidated group net profit after tax** does not include—
- (a) asset revaluations; or
  - (b) unrealised capital gains or losses; or
  - (c) unrealised gains or losses from financial instruments.

**77 Circumstances when payments not required**

Section 76(2) does not apply—

- (a) until Te Ohu Kai Moana Trustee Limited has made payments—
  - (i) under section 137(1)(a) to Te Putea Whakatupu Trustee Limited; and
  - (ii) under section 137(1)(b) to Te Wai Maori Trustee Limited; or
- (b) to the extent that compliance would put Aotearoa Fisheries Limited, a subcompany, or any directors of either, in breach of any obligation under the Companies Act 1993.

Subpart 4—Te Putea Whakatupu Trust and Te Putea Whakatupu Trustee Limited

*Establishment*

**78 Interpretation**

In this subpart and in subpart 5,—

**distribution** means, in relation to trust income, the annual distributions made by—

- (a) Te Putea Whakatupu Trustee Limited under section 83(b);
- (b) Te Wai Maori Trustee Limited under section 95(b)

**distribution policy** means the statement of objectives, priorities, and criteria that must be used to guide the annual distribution of trust income in order to meet the purpose of Te Putea Whakatupu Trust or Te Wai Maori Trust, as the case may be

**investment plan** means the proposed investment of the trust capital

**trust capital** means,—

- (a) in the case of Te Putea Whakatupu Trust—

- (i) settlement asset money transferred by Te Ohu Kai Moana Trustee Limited in accordance with section 137(1)(a); and
- (ii) any further payments made under section 90(5); and
- (b) in the case of Te Wai Maori Trust—
  - (i) settlement asset money transferred by Te Ohu Kai Moana Trustee Limited in accordance with sections 103(3) and 137(1)(b); and
  - (ii) any further payments made under section 103(6)

**trust funds** means trust capital and accumulated trust income

**trust income** means—

- (a) in the case of Te Putea Whakatupu Trust,—
  - (i) funds transferred under section 137(1)(e)(ii); and
  - (ii) earnings derived from the trust capital; and
- (b) in the case of Te Wai Maori Trust—
  - (i) funds transferred under section 137(1)(e)(iii); and
  - (ii) earnings derived from trust capital.

#### **79 Establishment of Te Putea Whakatupu Trust**

- (1) Te Ohu Kai Moana Trustee Limited must, not later than 60 working days after the appointed day, establish by trust deed a trust called Te Putea Whakatupu Trust.
- (2) Neither the rule against perpetuities nor any relevant provisions of the Perpetuities Act 1964—
  - (a) prescribe or restrict the period during which Te Putea Whakatupu Trust may exist in law; or
  - (b) apply to a document entered into to give effect to the Deed of Settlement (including the trust deed required to be entered into under subsection (1)) if the application of that rule or the provisions of that Act would otherwise make a document, or a right or obligation conferred by that document, invalid or ineffective.

#### **80 Trustee of Te Putea Whakatupu Trust**

- (1) Te Putea Whakatupu Trust must have only 1 trustee.
- (2) The trustee of Te Putea Whakatupu Trust must be a company formed under the Companies Act 1993 with the name of Te Putea Whakatupu Trustee Limited.

#### **81 Purpose of Te Putea Whakatupu Trust**

The purpose of Te Putea Whakatupu Trust 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 promote education, training, and research, including matters

that relate to fisheries, fishing, and fisheries-related activities, but not in a manner that could adversely affect the charitable status (if any) of the Trust.

## **82 Benefits of Trust**

The benefits of Te Putea Whakatupu Trust must be made available as widely as possible to all Maori, having regard to—

- (a) the extent to which mandated iwi organisations are providing, or are able to provide, benefits for members of their iwi that are the same or similar to those that are able to be provided by Te Putea Whakatupu Trustee Limited; and
- (b) the interests of Maori who—
  - (i) do not associate with their iwi; or
  - (ii) do not receive benefits from a mandated iwi organisation.

## **83 Functions of Te Putea Whakatupu Trustee Limited**

In achieving the purpose of Te Putea Whakatupu Trust, Te Putea Whakatupu Trustee Limited must—

- (a) manage the trust funds; and
- (b) distribute the annual trust income for activities that include—
  - (i) promoting educational and training programmes, courses, and schemes within New Zealand for Maori, with a view to providing educational and training opportunities, including those that have application to the fishing industry:
  - (ii) funding the development of the skills of Maori, including those relevant to the fishing industry:
  - (iii) promoting the advancement of Maori by—
    - (A) offering or funding scholarships and grants to enable Maori students to meet the entry requirements of wananga, universities, or other tertiary institutions in New Zealand or overseas; and
    - (B) establishing scholarships and grants, or funding wananga, universities, or other tertiary institutions in New Zealand to offer scholarships and grants, with a view to encouraging Maori to develop their education and skills:
  - (iv) promoting research and development by wananga, universities, or other tertiary institutions in New Zealand or overseas into (but not limited to)—
    - (A) the involvement of Maori in fishing and fisheries-related activities; and
    - (B) matters affecting Maori fishing:

- (v) facilitating access of Maori working in, or wishing to work in industry (including the fishing industry), to—
  - (A) education and training courses:
  - (B) conferences, presentations, and other learning experiences:
- (vi) other activities that are necessary to foster or promote the activities set out in subparagraphs (i) to (v).

*Requirements for trust deed*

**84 Contents of trust deed of Te Putea Whakatupu Trust**

- (1) To enable Te Putea Whakatupu Trustee Limited to carry out the purpose of Te Putea Whakatupu Trust, the trust deed must provide—
  - (a) that the directors of Te Putea Whakatupu Trustee Limited are entitled to be paid fees and reimbursing allowances or actual and reasonable expenses in accordance with the provisions included in the annual plan of Te Ohu Kai Moana Trustee Limited under section 37(f) and (g); and
  - (b) for the powers of investment of the directors of Te Putea Whakatupu Trustee Limited (and any prohibited investments); and
  - (c) for the manner in which the trust deed may be varied and any restrictions on the way it may be varied; and
  - (d) that the directors of Te Putea Whakatupu Trustee Limited may—
    - (i) make distributions to Maori, mandated iwi organisations, and other Maori organisations for the purpose of Te Putea Whakatupu Trust, subject to any conditions stated in the trust deed or specified by the directors; and
    - (ii) decline to make distributions if they consider that, in a particular case, the iwi concerned can or should be able to provide similar benefits to its members from income derived from settlement assets; and
    - (iii) in relation to any trust income not distributed in a financial year, determine a policy for capitalising, carrying forward, or creating reserves from, that income; and
  - (e) for the directors to commission an audit of Te Putea Whakatupu Trustee Limited under section 105; and
  - (f) for the circumstances when Te Putea Whakatupu Trust may be terminated; and
  - (g) on termination of that Trust, for the payment of the trust funds, in the percentages specified in column 3 of Schedule 3,—
    - (i) to each mandated iwi organisation that has charitable status; or

- (ii) in the case of a mandated iwi organisation that does not have charitable status, to an entity with charitable status nominated by the mandated iwi organisation to benefit the relevant iwi and its members; or
  - (iii) if no mandated iwi organisation exists or no nomination is made under subparagraph (ii), to an entity with charitable status nominated by Te Ohu Kai Moana Trustee Limited to benefit the relevant iwi and its members.
- (2) The trust deed must prohibit Te Putea Whakatupu Trustee Limited from—
  - (a) undertaking any business other than what is necessary for the purpose of the Trust; and
  - (b) expending or distributing trust capital, except on termination of the trust.
- (3) The trust deed may—
  - (a) include any other matter that is not inconsistent with this Act or the constitution of Te Putea Whakatupu Trustee Limited; and
  - (b) be amended subject to—
    - (i) the purpose of Te Putea Whakatupu Trust;
    - (ii) the manner of its variation and any restrictions specified in the trust deed;
    - (iii) the constitution of Te Putea Whakatupu Trustee Limited;
    - (iv) this Act.
- (4) A provision of the trust deed or an amendment to it has no effect to the extent that it is inconsistent with this Act.

#### **85 Annual plan of Te Putea Whakatupu Trustee Limited**

The trust deed of Te Putea Whakatupu Trust must require Te Putea Whakatupu Trustee Limited to prepare, and obtain the approval of Te Ohu Kai Moana Trustee Limited for, an annual plan that includes—

- (a) the distribution policy of Te Putea Whakatupu Trustee Limited; and
- (b) any investment plan of Te Putea Whakatupu Trustee Limited; and
- (c) the budget for Te Putea Whakatupu Trustee Limited; and
- (d) the administrative services available to Te Putea Whakatupu Trustee Limited.

#### **86 Reporting obligations of Te Putea Whakatupu Trustee Limited**

- (1) The trust deed of Te Putea Whakatupu Trust must set out the following reporting, accounting, and auditing obligations of Te Putea Whakatupu Trustee Limited:

- (a) the directors of Te Putea Whakatupu Trustee Limited must report to Te Ohu Kai Moana Trustee Limited within 4 months after the end of each financial year on—
    - (i) the performance of Te Putea Whakatupu Trustee Limited, assessed against its approved annual plan; and
    - (ii) distributions made by Te Putea Whakatupu Trustee Limited, assessed against its distribution policy; and
    - (iii) investments made (if any) and returns on investments (if any); and
    - (iv) any matter required by Te Ohu Kai Moana Trustee Limited in order to meet its reporting obligations; and
  - (b) the directors of Te Putea Whakatupu Trustee Limited must keep separate accounts for and report separately on—
    - (i) the distributions made by Te Putea Whakatupu Trustee Limited; and
    - (ii) the cost of administering Te Putea Whakatupu Trust; and
    - (iii) the cost of administering the distributions; and
    - (iv) the fees (in bands of \$10,000) and reimbursing allowances or actual and reasonable expenses paid to the directors of Te Putea Whakatupu Trustee Limited; and
    - (v) contracts for service entered into by Te Putea Whakatupu Trustee Limited or any of its directors; and
  - (c) the directors must ensure that the accounts of Te Putea Whakatupu Trust are audited annually.
- (2) This section does not limit any reporting obligations of Te Putea Whakatupu Trustee Limited arising under any enactment or rule of law.

*Requirements for constitution*

**87 Constitution of Te Putea Whakatupu Trustee Limited**

- (1) Te Putea Whakatupu Trustee Limited must have—
  - (a) only 1 share that—
    - (i) has no distribution rights; and
    - (ii) must be held by the board of Te Ohu Kai Moana Trustee Limited; and
  - (b) a constitution that is consistent with this Act.
- (2) The constitution must provide—
  - (a) that the role of Te Putea Whakatupu Trustee Limited is restricted to acting as the trustee of Te Putea Whakatupu Trust; and
  - (b) that Te Putea Whakatupu Trustee Limited must have 3 directors; and

- (c) that Te Ohu Kai Moana Trustee Limited must appoint, in accordance with the criteria specified in section 88, and may remove, the directors of Te Putea Whakatupu Trustee Limited; and
  - (d) that a director—
    - (i) is appointed for a term not exceeding 4 years; and
    - (ii) may be reappointed for 1 further term; and
    - (iii) continues in office after the expiry of his or her term until his successor is appointed; and
  - (e) that an extraordinary vacancy of a director does not create a breach of the constitution, so long as Te Ohu Kai Moana Trustee Limited appoints a new director within 3 months of the vacancy arising; and
  - (f) a method by which the board of Te Putea Whakatupu Trustee Limited must address conflicts of interest that may arise for its directors; and
  - (g) that Te Putea Whakatupu Trustee Limited may regulate its own procedure, so long as it provides that—
    - (i) the quorum is 3 for the purpose of transacting any business; and
    - (ii) a meeting may be conducted by teleconference or by any means of communication that allows each director to participate effectively in the proceedings; and
  - (h) a procedure for amending the constitution; and
  - (i) that Te Putea Whakatupu Trustee Limited may be put into voluntary liquidation only if Te Putea Whakatupu Trust is terminated.
- (3) A provision of the constitution of Te Putea Whakatupu Trustee Limited or an amendment to it has no effect to the extent that it is inconsistent with this Act or another enactment or rule of law.

### *Directors*

#### **88 Requirements for appointment of directors**

- (1) The constitution of Te Putea Whakatupu Trustee Limited must specify that the directors of Te Putea Whakatupu Trustee Limited must all be Maori who, collectively,—
- (a) are well versed in matters of tikanga Maori; and
  - (b) are experienced in working with Maori and Maori organisations; and
  - (c) have expertise and experience in human resource development, education, and training.
- (2) In appointing the directors of Te Putea Whakatupu Trustee Limited, Te Ohu Kai Moana Trustee Limited must consult with the National Urban Maori Authority in order to ensure that the directors have knowledge of, and are able to represent, the interests of Maori who reside in urban areas of New Zealand.

- (3) Subsection (2) does not limit the power of Te Ohu Kai Moana Trustee Limited to consider the views of any other person or organisation that it considers has knowledge that is relevant to the interests of Maori who live in urban areas.

### **89 Eligibility for office of director**

- (1) Not more than 1 director of Te Ohu Kai Moana Trustee Limited may also be a director of Te Putea Whakatupu Trustee Limited.
- (2) However, if a director of Te Putea Whakatupu Trustee Limited is a director of Te Ohu Kai Moana Trustee Limited, then that director's alternate may also be a director of Te Ohu Kai Moana Trustee Limited.
- (3) A person who is a director of Te Putea Whakatupu Trustee Limited is not eligible to be, at the same time, a director of—
- (a) Aotearoa Fisheries Limited; or
  - (b) a subcompany; or
  - (c) Te Wai Maori Trustee Limited.
- (4) A person who is a director of an entity listed in subsection (3) must resign as a director of that entity within 5 working days if he or she becomes a director of Te Putea Whakatupu Trustee Limited.
- (5) A person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata is not eligible for appointment as a director of Te Putea Whakatupu Trustee Limited.
- (6) Neither the chairperson nor the deputy chairperson of Te Ohu Kai Moana Trustee Limited or Te Putea Whakatupu Trustee Limited may, at the same time, be the chairperson or deputy chairperson of the other.

### *Payments*

### **90 Payments to Te Putea Whakatupu Trustee Limited**

- (1) Te Ohu Kai Moana Trustee Limited must pay the settlement asset money to Te Putea Whakatupu Trustee Limited, as provided for by section 137(1)(a), to be held on trust for the purpose of Te Putea Whakatupu Trust.
- (2) Te Ohu Kai Moana Trustee Limited must comply with the obligation under subsection (1) on a date to be determined by Te Ohu Kai Moana Trustee Limited in its discretion, but not later than 31 October 2009.
- (3) Subject to the limit specified in section 137(1)(e)(ii), Te Ohu Kai Moana Trustee Limited must, before the date of payment referred to in subsection (2), fund the activities undertaken by Te Putea Whakatupu Trustee Limited, to a maximum of \$1 million in each financial year (including directors' fees provided for under section 84(1)(a) and administrative costs provided for under section 85(c) and (d)), in accordance with the annual plan of Te Putea Whakatupu Trustee Limited approved by Te Ohu Kai Moana Trustee Limited.



- (4) After the date of the payment referred to in subsection (2), no further amounts are payable by Te Ohu Kai Moana Trustee Limited under subsection (3).
- (5) Te Ohu Kai Moana Trustee Limited may make payments of other money as trust capital to Te Putea Whakatupu Trustee Limited, subject to the conditions specified in section 137(2) (if that provision applies).
- (6) Te Putea Whakatupu Trustee Limited is not entitled to receive allocations of settlement quota or income shares from Te Ohu Kai Moana Trustee Limited.

## Subpart 5—Te Wai Maori Trust and Te Wai Maori Trustee Limited

### *Establishment*

#### **91 Interpretation**

In this subpart,—

**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

**freshwater fishing** means fishing activity in relation to freshwater fisheries

**sports fish** has the meaning given to it in section 2(1) of the Conservation Act 1987

**unwanted aquatic life** has the meaning given to it in section 2(1) of the Fisheries Act 1996.

#### **92 Establishment of Te Wai Maori Trust**

- (1) Te Ohu Kai Moana Trustee Limited must, not later than 60 working days after the appointed day, establish by trust deed a trust called Te Wai Maori Trust.
- (2) Neither the rule against perpetuities nor any relevant provisions of the Perpetuities Act 1964—
  - (a) prescribe or restrict the period during which Te Wai Maori Trust may exist in law; or
  - (b) apply to a document entered into to give effect to the Deed of Settlement (including the trust deed required to be entered into under subsection (1)) if the application of that rule or the provisions of that Act would otherwise make a document, or a right or obligation conferred by that document, invalid or ineffective.

#### **93 Trustee of Te Wai Maori Trust**

- (1) Te Wai Maori Trust must have only 1 trustee.
- (2) The trustee of Te Wai Maori Trust must be a company formed under the Companies Act 1993 with the name of Te Wai Maori Trustee Limited.

**94 Purpose of Te Wai Maori Trust**

The purpose of Te Wai Maori Trust 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 Maori interests in freshwater fisheries, but not in a manner that could adversely affect the charitable status (if any) of the Trust.

**95 Functions of Te Wai Maori Trustee Limited**

In achieving the purpose of Te Wai Maori Trust, Te Wai Maori Trustee Limited must—

- (a) manage the trust funds; and
- (b) distribute the annual trust income for activities that include—
  - (i) undertaking or funding research, development, and education related to Maori interests in freshwater fishing; and
  - (ii) promoting the protection and enhancement of freshwater fisheries habitat in lakes, rivers, and other water bodies, particularly those that have traditionally supported iwi and whose shores have been the location of their marae; and
  - (iii) promoting the establishment of freshwater fisheries; and
  - (iv) using its resources to bring direct or indirect benefit to Maori in respect of their freshwater fishing interests.

*Requirements for trust deed***96 Contents of trust deed of Te Wai Maori Trust**

- (1) To enable Te Wai Maori Trustee Limited to carry out the purpose of Te Wai Maori Trust, the trust deed must provide—
  - (a) that the directors of Te Wai Maori Trustee Limited are entitled to be paid fees and reimbursing allowances or actual and reasonable expenses in accordance with the provisions included in the annual plan of Te Ohu Kai Moana Trustee Limited under section 37(f) and (g); and
  - (b) for the powers of investment of the directors of Te Wai Maori Trustee Limited (and any prohibited investments); and
  - (c) for the manner in which the trust deed may be varied and any restrictions on the way it may be varied; and
  - (d) for the directors to commission an audit of Te Wai Maori Trustee Limited under section 105; and
  - (e) for the directors to determine—
    - (i) the circumstances when distributions may be made in accordance with section 98; and

- (ii) in relation to any trust income not distributed in a financial year, a policy for capitalising, carrying forward, or creating reserves from that income; and
- (f) for the circumstances when Te Wai Maori Trust may be terminated; and
- (g) on termination of that Trust, for the payment of the trust funds, in the percentages specified in column 3 of Schedule 3,—
  - (i) to each mandated iwi organisation that has charitable status; or
  - (ii) in the case of a mandated iwi organisation that does not have charitable status, to an entity with charitable status nominated by the mandated iwi organisation, for the benefit of the relevant iwi and its members; or
  - (iii) if no mandated iwi organisation exists or no nomination is made under subparagraph (ii), to an entity with charitable status nominated by Te Ohu Kai Moana Trustee Limited to benefit the relevant iwi and its members.
- (2) The trust deed must prohibit Te Wai Maori Trustee Limited from—
  - (a) undertaking any business other than what is necessary for the purpose of the Trust; and
  - (b) expending or distributing trust capital, except on termination of the trust.
- (3) The trust deed may—
  - (a) include any other matter that is not inconsistent with this Act or the constitution of Te Wai Maori Trustee Limited; and
  - (b) be amended, subject to—
    - (i) the purpose of Te Wai Maori Trust;
    - (ii) the manner of its variation and any restrictions specified in the trust deed;
    - (iii) the constitution of Te Wai Maori Trustee Limited;
    - (iv) this Act.
- (4) A provision of the trust deed or an amendment to it has no effect to the extent that it is inconsistent with this Act.

#### **97 Annual plan of Te Wai Maori Trustee Limited**

The trust deed of Te Wai Maori Trust must require Te Wai Maori Trustee Limited to prepare, and obtain the approval of Te Ohu Kai Moana Trustee Limited for, an annual plan that includes—

- (a) the distribution policy of Te Wai Maori Trustee Limited; and
- (b) any investment plan of Te Wai Maori Trustee Limited; and
- (c) the budget for Te Wai Maori Trustee Limited; and
- (d) the administrative services available to Te Wai Maori Trustee Limited.

**98 Distributions of trust income**

- (1) The directors of Te Wai Maori Trustee Limited may make distributions to Maori, mandated iwi organisations, and other Maori organisations for the purpose of Te Wai Maori Trust, subject to any conditions provided for by the trust deed.
- (2) Before making a distribution, the directors must take into account the extent to which—
  - (a) a proposal will assist in co-ordinating and consolidating the activities of the recipients with the activities of agencies involved in freshwater fisheries and habitat management; and
  - (b) a proposal provides a model that is able to be applied by the groups referred to in subsection (1); and
  - (c) the activities proposed to be undertaken with the distribution are being undertaken by other mandated iwi organisations or agencies; and
  - (d) the functions of Te Wai Maori Trustee Limited are being undertaken by other agencies.

**99 Reporting obligations of Te Wai Maori Trustee Limited**

- (1) The trust deed of Te Wai Maori Trust must set out the following reporting, accounting, and auditing obligations of Te Wai Maori Trustee Limited:
  - (a) the directors of Te Wai Maori Trustee Limited must report to Te Ohu Kai Moana Trustee Limited within 4 months after the end of each financial year on—
    - (i) the performance of Te Wai Maori Trustee Limited, assessed against its approved annual plan; and
    - (ii) distributions made by Te Wai Maori Trustee Limited, assessed against the distribution policy; and
    - (iii) investments made (if any) and returns on investments (if any); and
    - (iv) any matter required by Te Ohu Kai Moana Trustee Limited in order to meet its reporting obligations; and
  - (b) the directors of Te Wai Maori Trustee Limited must keep separate accounts for, and report separately on,—
    - (i) the distributions made by Te Wai Maori Trustee Limited; and
    - (ii) the cost of administering Te Wai Maori Trust; and
    - (iii) the cost of administering the distributions; and
    - (iv) the fees (in bands of \$10,000) and reimbursing allowances or actual and reasonable expenses paid to the directors of Te Wai Maori Trustee Limited; and
    - (v) contracts for service entered into by Te Wai Maori Trustee Limited or any of its directors; and

- (c) the directors must ensure that the accounts of Te Wai Maori Trust are audited annually.
- (2) This section does not limit any reporting obligations of Te Wai Maori Trustee Limited arising under any enactment or rule of law.

*Requirements for constitution*

**100 Constitution of Te Wai Maori Trustee Limited**

- (1) Te Wai Maori Trustee Limited must have—
  - (a) only 1 share that—
    - (i) has no distribution rights; and
    - (ii) must be held by the board of Te Ohu Kai Moana Trustee Limited; and
  - (b) a constitution that is consistent with this Act.
- (2) The constitution must provide—
  - (a) that the role of Te Wai Maori Trustee Limited is restricted to acting as the trustee of Te Wai Maori Trust; and
  - (b) that Te Wai Maori Trustee Limited must have 3 directors; and
  - (c) that Te Ohu Kai Moana Trustee Limited must appoint, in accordance with the criteria specified in section 101, and may remove the directors of Te Wai Maori Trustee Limited; and
  - (d) that a director—
    - (i) is appointed for a term not exceeding 4 years; and
    - (ii) may be reappointed for 1 further term; and
    - (iii) continues in office after the expiry of his or her term until his successor is appointed; and
  - (e) that an extraordinary vacancy of a director does not create a breach of the constitution, so long as Te Ohu Kai Moana Trustee Limited appoints a new director within 3 months of the vacancy arising; and
  - (f) a method by which the board of Te Wai Maori Trustee Limited must address conflicts of interest that may arise for its directors; and
  - (g) that Te Wai Maori Trustee Limited may regulate its own procedure, so long as it provides that—
    - (i) the quorum is 3 for the purpose of transacting any business; and
    - (ii) a meeting may be conducted by teleconference or by any means of communication that allows each director to participate effectively in the proceedings; and
  - (h) a procedure for amending the constitution; and

- (i) that Te Wai Maori Trustee Limited may be put into voluntary liquidation only if Te Putea Whakatupu Trust is terminated.
- (3) A provision of the constitution of Te Wai Maori Trustee Limited or an amendment to it has no effect to the extent that it is inconsistent with this Act or another enactment or rule of law.

### *Directors*

#### **101 Criteria for appointment of directors**

The constitution of Te Wai Maori Trustee Limited must specify that the directors of Te Wai Maori Trustee Limited must all be Maori who, collectively,—

- (a) are well versed in matters of tikanga Maori; and
- (b) are experienced in working with Maori and Maori organisations; and
- (c) are experienced in fisheries management, enhancement, and development; and
- (d) have expertise and experience in matters relevant to freshwater fisheries; and
- (e) have knowledge of the special interest of iwi in freshwater fisheries.

#### **102 Eligibility for office of director**

- (1) Not more than 1 director of Te Ohu Kai Moana Trustee Limited may also be a director of Te Wai Maori Trustee Limited.
- (2) However, if a director of Te Wai Maori Trustee Limited is a director of Te Ohu Kai Moana Trustee Limited, that director's alternate may also be a director of Te Ohu Kai Moana Trustee Limited.
- (3) A person who is a director of Te Wai Maori Trustee Limited is not eligible to be, at the same time, a director of—
  - (a) Aotearoa Fisheries Limited; or
  - (b) a subcompany; or
  - (c) Te Putea Whakatupu Trustee Limited.
- (4) A person who is a director of an entity listed in subsection (3) must resign as a director of that entity within 5 working days if he or she becomes a director of Te Wai Maori Trustee Limited.
- (5) A person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata is not eligible for appointment as a director of Te Wai Maori Trustee Limited.
- (6) Neither the chairperson nor the deputy chairperson of Te Ohu Kai Moana Trustee Limited or Te Wai Maori Trustee Limited may, at the same time, be the chairperson or deputy chairperson of the other.

*Payments*

**103 Payments to Te Wai Maori Trustee Limited**

- (1) Te Ohu Kai Moana Trustee Limited must pay to Te Wai Maori Trustee Limited the settlement asset money, as provided for by section 137(1)(b), to be held on trust for the purpose of Te Wai Maori Trust.
- (2) Te Ohu Kai Moana Trustee Limited must comply with the obligation under subsection (1) on a date to be determined by Te Ohu Kai Moana Trustee Limited in its discretion, but not later than 31 October 2009.
- (3) After the date of payment referred to in subsection (2), Te Ohu Kai Moana Trustee Limited must pay not less than \$1 million per year, until Te Wai Maori Trustee Limited has received in total the sum of \$20 million (including the sum referred to in subsection (1)) from Te Ohu Kai Moana Trustee Limited (but excluding the sums referred to in subsection (4)).
- (4) Subject to the limit specified in section 137(1)(e)(iii), Te Ohu Kai Moana Trustee Limited must, before the date of payment referred to in subsection (2), fund the activities undertaken by Te Wai Maori Trustee Limited (including directors' fees provided for under section 96(1)(a) and administrative costs provided for under section 97(c) and (d)), in accordance with the annual plan of Te Wai Maori Trustee Limited approved by Te Ohu Kai Moana Trustee Limited.
- (5) After the date of payment referred to in subsection (2), no further amounts are payable by Te Ohu Kai Moana Trustee Limited under subsection (4).
- (6) Te Ohu Kai Moana Limited may make payments of other money as trust capital to Te Wai Maori Trustee Limited, subject to the conditions specified in section 137(2) (if that provision applies).
- (7) Te Wai Maori Trustee Limited is not entitled to receive allocations of settlement quota or income shares from Te Ohu Kai Moana Trustee Limited.

Subpart 6—Audits and reviews

**104 Interpretation**

In this subpart, unless the context otherwise requires,—

**auditor** means a person appointed in accordance with section 107

**restrictions on the disposal of settlement assets** means either or both, as the case may be,—

- (a) restrictions imposed on the disposal of the income shares of Aotearoa Fisheries Limited under subpart 3 of Part 2:
- (b) restrictions on the disposal of settlement quota

**restrictions on the disposal of settlement quota** means the restrictions imposed under subpart 2 of Part 4

**reviewer** means a person appointed in accordance with section 121.

*Audit of entities***105 Audits**

- (1) Not later than 4 years after the commencement of this Act,—
  - (a) Te Ohu Kai Moana Trustee Limited must arrange for an audit of Te Ohu Kai Moana Trustee Limited; and
  - (b) Aotearoa Fisheries Limited must arrange for an audit of Aotearoa Fisheries Limited and its subcompanies; and
  - (c) Te Putea Whakatupu Trustee Limited must arrange for an audit of Te Putea Whakatupu Trustee Limited; and
  - (d) Te Wai Maori Trustee Limited must arrange for an audit of Te Wai Maori Trustee Limited.
- (2) The cost of an audit conducted under this section or section 106 must be paid by the entity being audited.

**106 Subsequent audits**

Each of the entities referred to in section 105, or 2 or more jointly, must arrange for subsequent audits to be conducted not later than 4 years after the preceding audit, unless,—

- (a) in the case of Te Ohu Kai Moana Trustee Limited, Te Putea Whakatupu Trustee Limited, or Te Wai Maori Trustee Limited, at least 75% of the mandated iwi organisations and representative Maori organisations at a general meeting convened by Te Ohu Kai Moana Trustee Limited, vote not to conduct an audit of 1 or more of the relevant entities; or
- (b) in the case of Aotearoa Fisheries Limited, the shareholders of at least 75% of the income shares vote at an annual general meeting of Aotearoa Fisheries Limited, not to conduct an audit.

**107 Person to conduct audit**

- (1) Each of the audits referred to in sections 105 and 106 must be carried out by an independent person—
  - (a) appointed by the entity that is to be audited; and
  - (b) who is appropriately qualified to conduct the audit.
- (2) A person appointed to conduct an audit is not required to be—
  - (a) a chartered accountant within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996; or
  - (b) qualified to undertake financial audits.
- (3) In carrying out an audit, the person appointed must—
  - (a) maintain the appropriate degree of impartiality and independence; and



- (b) take all reasonable steps to ensure that his or her judgment is not impaired by any relationship with, or interest in, the entity subject to audit.
- (4) The independence of a person appointed to conduct an audit is not compromised merely because that person has a beneficial interest under this Act.

Section 107(2)(a): amended, on 7 July 2010, by section 10 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

### **108 General scope of audits**

An audit conducted under section 105 or section 106 must consider and report, in relation to the entity being audited, on—

- (a) the objectives established by the board of directors of the entity; and
- (b) the extent to which those objectives are consistent with the effective implementation of the duties and functions of the entity under this Act or any other enactment; and
- (c) the progress made by the board of directors towards achieving the objectives; and
- (d) the policies and strategies established by the board of directors to achieve the objectives and perform the duties and functions of the board and its directors; and
- (e) the effectiveness of the policies and strategies referred to in paragraph (d); and
- (f) the quality and timeliness of the reporting documents prepared to meet the reporting obligations under this Act or another enactment.

### **109 Audit of Te Ohu Kai Moana Trustee Limited**

In the case of an audit of Te Ohu Kai Moana Trustee Limited, the audit must consider and report on—

- (a) the progress that Te Ohu Kai Moana Trustee Limited has made towards allocating and transferring settlement assets; and
- (b) the contribution that Te Ohu Kai Moana Trustee Limited has made towards assisting iwi to meet the requirements for recognition as mandated iwi organisations.

### **110 Audit of Aotearoa Fisheries Limited**

- (1) In the case of Aotearoa Fisheries Limited, an audit must consider and report on—

- (a) the performance of Aotearoa Fisheries Limited in meeting its constitutional requirement to work co-operatively with iwi on commercial matters; and
- (b) the commercial performance of Aotearoa Fisheries Limited in comparison with other participants in the fishing industry, including its net profit

after tax as determined in accordance with generally accepted accounting practice, and changes in the value of the company.

- (2) In this section a reference to Aotearoa Fisheries Limited includes its subcompanies.

### **111 Audits of Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited**

- (1) In the case of Te Putea Whakatupu Trustee Limited, an audit must consider and report on the contribution that Te Putea Whakatupu Trustee Limited has made towards promoting education, training, and research in relation to Maori involvement in fisheries, fishing, and fisheries-related activities.
- (2) In the case of Te Wai Maori Trustee Limited, an audit must consider and report on the contribution that Te Wai Maori Trustee Limited has made in advancing the interests of Maori in freshwater fisheries.

#### *Procedure after completion of audit*

### **112 Procedure for auditor and entity audited**

- (1) As soon as practicable after conducting an audit under section 105 or section 106, the auditor must—
- (a) prepare a written audit report that includes—
- (i) the findings made in the audit; and
- (ii) the recommendations of the auditor; and
- (b) distribute the audit report to—
- (i) each entity that is subject to audit; and
- (ii) Te Ohu Kai Moana Trustee Limited, in the case of an audit of Aotearoa Fisheries Limited, Te Putea Whakatupu Trustee Limited, or Te Wai Maori Trustee Limited.
- (2) Not later than 40 working days after receiving an audit report under subsection (1), each entity subject to audit must—
- (a) prepare a plan specifying the actions that it intends to take to address the findings and recommendations of the audit report; and
- (b) provide a copy of that plan to Te Ohu Kai Moana Trustee Limited.
- (3) After an audit has been completed, an entity subject to audit must include in its next annual report a description of the progress it has made in addressing the matters specified in the plan prepared under subsection (2)(a).

### **113 Procedure for Te Ohu Kai Moana Trustee Limited**

- (1) Not later than 60 working days after receiving an audit report under section 112(1), Te Ohu Kai Moana Trustee Limited must distribute to the members and

- alternate members of Te Kawai Taumata, to all mandated iwi organisations, and to all representative Maori organisations—
- (a) the audit report; and
  - (b) the plan prepared under section 112(2) by each entity that is subject to audit; and
  - (c) in the case of an audit of Aotearoa Fisheries Limited, Te Putea Whakatu-pu Trustee Limited, or Te Wai Maori Trustee Limited, any further plan prepared by Te Ohu Kai Moana Trustee Limited to address the findings and recommendations of the audit report.
- (2) At its next general meeting after it has received an audit report under section 112(1), Te Ohu Kai Moana Trustee Limited must provide for consideration of—
- (a) the audit report; and
  - (b) the plans referred to in subsection (1)(b) and (c), as relevant; and
  - (c) any comments from mandated iwi organisations or representative Maori organisations on the audit report or any plans.

*Requirement for review of entities*

**114 Review of entities**

- (1) Independent reviews must be conducted in accordance with this section and sections 115 to 127.
- (2) For each of the entities listed in subsection (4), the first review must be completed not later than the end of the 11th year after the commencement of this Act.
- (3) Subsequent reviews, which may be of 1 of the entities listed in subsection (4) or of 2 or more jointly, must be commenced—
  - (a) not later than the beginning of the fifth year after the date of completion of the review under subsection (2), if the reviewer found, as provided for in section 124(2), that the interests of the beneficiaries of the Deed of Settlement would be better served by changes to section 161(1) or section 168 (that restrict the disposal of settlement quota to mandated iwi organisations and Te Ohu Kai Moana Group); or
  - (b) not sooner than the beginning of the fifth year after the completion of the preceding review, if at least 75% of mandated iwi organisations agree, at a general meeting of Te Ohu Kai Moana Trustee Limited, that a review should be conducted in relation to—
    - (i) a specified entity or entities; or
    - (ii) the matters set out in section 122(1)(b).
- (4) The entities referred to in subsections (2) and (3) are—

- (a) Te Ohu Kai Moana Trustee Limited; and
- (b) Aotearoa Fisheries Limited; and
- (c) Te Putea Whakatupu Trustee Limited; and
- (d) Te Wai Maori Trustee Limited.

### **115 Funding of reviews**

- (1) Te Ohu Kai Moana Trustee Limited must provide adequate funding for reviews conducted under section 114(2) and (3)(a), including—
  - (a) the budget for a committee of representatives; and
  - (b) remuneration of the members of that committee for attendance at meetings and reimbursing allowances or actual and reasonable expenses to be paid to the members in undertaking their functions under this Act.
- (2) Mandated iwi organisations must fund reviews conducted under section 114(3)(b), in the proportion that each mandated iwi organisation represents of the notional iwi population specified in column 2 of Schedule 3, including—
  - (a) the budget for a committee of representatives; and
  - (b) remuneration and reimbursing allowances or actual and reasonable expenses for the members of a committee of representatives, in accordance with the provisions included in the annual plan of Te Ohu Kai Moana Trustee Limited under section 37(e) and (g).

#### *Committee of representatives*

### **116 Committee of representatives**

- (1) For each review conducted under section 114, a committee of representatives must be appointed.
- (2) A committee of representatives must consist of not more than 11 and not fewer than 6 members.

### **117 Appointment procedure**

- (1) Clauses 1 and 3 of Schedule 8 apply, with the necessary modifications, to the appointment of a committee of representatives.
- (2) Not later than 6 months before the commencement of the year referred to in section 114(2), the chairperson of the board of Te Ohu Kai Moana Trustee Limited must, by written notice,—
  - (a) request those with responsibility under clause 1 of Schedule 8 to commence the process to appoint the members of a committee of representatives; and
  - (b) specify the date by which the appointment of the committee of representatives must be complete, which must be not later than 60 working days after the notice is given.

- (3) In the case of subsequent reviews referred to in section 114(3), not later than 6 months before the commencement of a subsequent review, the chairperson of the board of Te Ohu Kai Moana Trustee Limited must give written notice, as required by subsection (2).
- (4) The appointments to a committee of representatives expire on the day after the date on which the review report is distributed by that committee under section 125(2).

### **118 Functions of committee of representatives**

- (1) The only functions of a committee of representatives are—
  - (a) to set the terms of reference for the review in respect of which the committee has been appointed; and
  - (b) to appoint the reviewer; and
  - (c) to receive and distribute the review report in accordance with section 125.
- (2) The committee of representatives must complete its functions in subsection (1)(a) and (b) not later than 60 working days after the date specified under section 117(2)(b).

### **119 Terms of reference**

- (1) The terms of reference required by section 118(1) must include—
  - (a) the date for the commencement of the review (which must be not later than 6 months after the date of the notice given under section 117(2)(b)); and
  - (b) the date by which the review report must be presented under section 125(1) (which must be not later than 6 months after the commencement date set under paragraph (a)).
- (2) Before finalising the terms of reference for the review, the committee of representatives must, for the purposes of consultation,—
  - (a) provide the draft terms of reference to—
    - (i) all mandated iwi organisations and representative Maori organisations; and
    - (ii) the members of Te Kawai Taumata; and
    - (iii) the entity under review; and
  - (b) allow 20 working days for written comments to be provided to the committee.
- (3) The terms of reference must be consistent with the requirements of sections 122 to 124.

**120 Procedure and remuneration of committee of representatives**

- (1) A committee of representatives must regulate its own procedure.
- (2) However,—
  - (a) a quorum for a meeting of a committee is 6 members; and
  - (b) a committee must not transact business unless the quorum is present at the meeting.
- (3) A meeting of a committee may be conducted by teleconference or by any means of communication that allows the members of the committee to participate effectively in the proceedings.
- (4) As provided for in section 115, the members of a committee are entitled to receive from Te Ohu Kai Moana Trustee Limited or from mandated iwi organisations, as the case may be,—
  - (a) remuneration for attendance at meetings; and
  - (b) reimbursing allowances or actual and reasonable expenses incurred in undertaking the functions of a committee of representatives.

*Conduct of review***121 Reviewer**

- (1) Every review conducted under this subpart must be carried out by an independent person—
  - (a) appointed by the committee of representatives; and
  - (b) appropriately qualified to conduct the review.
- (2) In carrying out a review, the reviewer must—
  - (a) maintain the appropriate degree of impartiality and independence; and
  - (b) take all reasonable steps to ensure that his or her judgment is not impaired by any relationship with, or interest in, the entity under review.
- (3) The independence of a reviewer is not compromised merely because that person has a beneficial interest under this Act.

**122 Scope of review**

- (1) Every review conducted under section 114 must consider and report on—
  - (a) the effect on the entity under review of the governance arrangements provided for by or under this Act as those arrangements relate to—
    - (i) the performance of that entity in achieving its duties and functions; and
    - (ii) the ability of that entity to deliver benefits to the beneficiaries of the entity; and

- (iii) the ability of that entity to contribute to achieving the purposes of the Act; and
  - (b) the effect of the restrictions on the disposal of settlement assets as they relate to the ability of—
    - (i) mandated iwi organisations (and their asset-holding companies and subsidiaries of the asset-holding companies) to deliver benefits to the members of their iwi; and
    - (ii) Aotearoa Fisheries Limited to deliver benefits to its income shareholders; and
  - (c) whether, without creating an inconsistency with the purposes of this Act or with the purpose of Te Ohu Kai Moana, the interests of the beneficiaries of the Deed of Settlement would be better served by changes to—
    - (i) the governance arrangements of an entity;
    - (ii) the restrictions on the disposal of settlement assets.
- (2) In this section,—
  - beneficiary of an entity** means—
    - (a) in the case of Te Ohu Kai Moana Trustee Limited, the beneficiaries of the Deed of Settlement; and
    - (b) in the case of Aotearoa Fisheries Limited, its income shareholders; and
    - (c) in the case of Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited, those individuals and groups entitled to apply for distributions provided for under the distribution policy of the relevant trust deed
  - governance arrangements** include—
    - (a) the procedures and criteria to appoint—
      - (i) the directors of Te Ohu Kai Moana Trustee Limited, Aotearoa Fisheries Limited, Te Putea Whakatupu Trustee Limited, and Te Wai Maori Trustee Limited; and
      - (ii) the members and alternate members of Te Kawai Taumata; and
    - (b) the ownership structure of each entity, including the shareholding structure of Aotearoa Fisheries Limited; and
    - (c) the procedural requirements that enable the beneficiaries of an entity to hold directors accountable for management performance; and
    - (d) the provisions required by this Act for the constitution and the trust deed (if any) of an entity.

### 123 Further relevant considerations

Every review conducted under section 114 must take into account—

- (a) the findings and reports of relevant audits conducted under section 105 or section 106; and
- (b) in each case, the plan prepared under section 112(2) by the entity subject to audit.

#### **124 Limits to recommendations that may be made**

- (1) A reviewer must not recommend a change to the requirement in the trust deeds of Te Ohu Kai Moana, Te Putea Whakatupu Trust, or Te Wai Maori Trust that, upon termination, the trust assets or funds be distributed to iwi in the percentages specified in column 3 of Schedule 3.
- (2) If, in conducting a review under section 114(2), a reviewer finds that the interests of the beneficiaries of the Deed of Settlement would be better served by changes to section 161(1) or section 168 (which restrict the disposal of settlement quota to mandated iwi organisations and Te Ohu Kai Moana Group),—
  - (a) the reviewer must—
    - (i) include the finding in the review report; but
    - (ii) not recommend that the restrictions be changed; and
  - (b) a subsequent review must be carried out, as provided for by section 114(3)(a), not later than 5 years after the completion of the review under section 114(2).
- (3) If, in conducting a review of Te Putea Whakatupu Trustee Limited or Te Wai Maori Trustee Limited under section 114(2) or (3), a reviewer finds that the entity continues to fulfil its purpose under this Act, the reviewer must not recommend that the relevant trust be wound up.
- (4) If a reviewer makes findings of the kind referred to in subsections (2) or (3), mandated iwi organisations must not amend a recommendation to achieve a change to the restriction.

#### *Procedure after completion of review*

#### **125 Report on review**

- (1) As soon as practicable after conducting a review under section 114, a reviewer must—
  - (a) prepare a written report that includes—
    - (i) the findings made in the review; and
    - (ii) the recommendations of the reviewer; and
  - (b) present the review report to—
    - (i) the committee of representatives; and
    - (ii) each entity under review.



- (2) As soon as practicable after receiving the review report, the committee of representatives must distribute the report to—
- (a) Te Ohu Kai Moana Trustee Limited; and
  - (b) all mandated iwi organisations and representative Maori organisations; and
  - (c) the members and alternate members of Te Kawai Taumata.

**126 Consideration of review report by entity under review**

- (1) Not later than 40 working days after receiving a review report under section 125(1), the entity under review may prepare a plan specifying the actions that it intends to take to address the findings and recommendations of the reviewer.
- (2) A plan prepared under subsection (1) must be distributed to—
- (a) Te Ohu Kai Moana Trustee Limited; and
  - (b) all mandated iwi organisations and representative Maori organisations; and
  - (c) the members and alternate members of Te Kawai Taumata.

**127 Consideration of review report**

- (1) At a general meeting of Te Ohu Kai Moana Trustee Limited convened not later than 60 working days after the distribution of a review report under section 125(2), Te Ohu Kai Moana Trustee Limited must make provision on the agenda for consideration of—
- (a) the review report; and
  - (b) any plan prepared under section 126(1) by the entity under review; and
  - (c) any comments from mandated iwi organisations on the review report or on any plan; and
  - (d) any comments from members or alternate members of Te Kawai Taumata on the review report, as provided for in section 56(2)(d).
- (2) At the meeting referred to in subsection (1), the mandated iwi organisations may resolve to—
- (a) adopt all or some of the recommendations set out in the review report; or
  - (b) adopt all or part of the plan prepared under section 126(1); or
  - (c) without creating an inconsistency with the purposes of this Act or the purpose of Te Ohu Kai Moana, amend, and adopt as amended, any of those recommendations.
- (3) If 75% or more of the mandated iwi organisations, representing over 50% of the total notional iwi population, support a resolution made under subsection (2),—
- (a) the entity under review must—

- (i) within a reasonable time implement the resolutions to the extent that they are not inconsistent with this Act or any other enactment or rule of law; and
  - (ii) include in its next annual plan a description of any action required as a result of the resolutions implemented under subparagraph (i); and
- (b) if amendments to the Act are required, Te Ohu Kai Moana Trustee Limited must request the Minister to promote the necessary amendments.

*Requirement to provide information*

**128 Information requested by auditor or reviewer**

Information requested by or on behalf of the auditor in relation to an audit conducted under section 105 or section 106, or by or on behalf of the reviewer in relation to a review conducted under section 114, must be provided promptly by the person or entity that—

- (a) has or controls the information; or
- (b) is contractually entitled to the information; or
- (c) can obtain the information by reasonable effort.

### Part 3

#### Allocation and transfer of settlement assets

**129 Outline of this Part**

- (1) The provisions of this Part govern the allocation and transfer of settlement assets (including settlement money, any surplus funds, and any New Zealand units allocated to Te Ohu Kai Moana Trustee Limited under the fishing allocation plan issued under the Climate Change Response Act 2002) and set out the bases for allocation of—
- (a) inshore quota; and
  - (b) deepwater quota; and
  - (c) harbour quota; and
  - (d) freshwater quota; and
  - (e) settlement quota within Specified Fisheries Management Areas; and
  - (f) Chatham Island allocations; and
  - (g) specified cash allocations.
- (2) It also makes provision for—
- (a) the transfer of settlement assets; and
  - (b) the sale of annual catch entitlement; and

- (c) requirements relating to assets held in trust; and
- (d) the status of settlement assets under the Inland Revenue Acts.

Section 129(1): amended, on 8 December 2009, by section 87(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## Subpart 1—Allocation and transfer of settlement assets

### *Duty*

#### **130 Duty to allocate and transfer settlement assets**

- (1) As soon as is reasonably practicable after Te Ohu Kai Moana Trustee Limited is satisfied that an iwi has met the criteria specified in subsection (3), it must—
  - (a) allocate settlement assets to that iwi in accordance with this Part; and
  - (b) transfer the allocated cash assets to the mandated iwi organisation of the iwi; and
  - (c) transfer the settlement quota and income shares to 1 or more of the asset-holding companies of the mandated iwi organisation, so long as the asset-holding companies comply with section 17(1).
- (2) A transfer of settlement quota under subsection (1) is subject to section 151.
- (3) An iwi must meet the following criteria before settlement assets may be transferred to it:
  - (a) Te Ohu Kai Moana Trustee Limited has recognised a mandated iwi organisation for the iwi under section 13(1); and
  - (b) the mandated iwi organisation holds, for all relevant quota management stocks, registered coastline entitlements as provided for by section 11, including separate entitlements for any relevant harbour quota.

#### *Further circumstance when Te Ohu Kai Moana Trustee Limited must allocate and transfer settlement assets*

#### **131 Interpretation**

In sections 132 to 134,—

**affected iwi** has the meaning it is given in clause 2 of Schedule 6

**named iwi** means an iwi identified in a request made under section 132(2).

#### **132 Application of sections 133 and 134**

- (1) Sections 133 and 134 apply if an iwi—
  - (a) has a mandated iwi organisation recognised by Te Ohu Kai Moana Trustee Limited; but

- (b) cannot finalise all its coastline claims under clause 3 of Schedule 6 solely because 1 or more named iwi do not have a mandated iwi organisation.
- (2) A mandated iwi organisation may, by written notice,—
  - (a) request Te Ohu Kai Moana Trustee Limited to exercise its powers under section 133; and
  - (b) identify any affected iwi that does not have a mandated iwi organisation.
- (3) Before making a request under subsection (2), a mandated iwi organisation must, in relation to any affected iwi that has a mandated iwi organisation,—
  - (a) resolve any dispute and conclude all necessary agreements relevant to its coastline claims in accordance with clauses 6 and 7 of Schedule 6; and
  - (b) request Te Ohu Kai Moana Trustee Limited to register the agreements under clause 8 of Schedule 6.
- (4) A request made under subsection (2) must be accompanied by coastline claims for all quota management stocks and harbour quota relevant to the iwi of the mandated iwi organisation making the request, except to the extent that any coastline entitlements have already been determined for that iwi.

### **133 Procedure if request made under section 132(2)**

- (1) When Te Ohu Kai Moana Trustee Limited receives a request from a mandated iwi organisation under section 132(2), it must, in accordance with the process set out in clause 10 of Schedule 6, complete the verification of the data and agreements for the coastline claims as they relate to affected iwi (other than the named iwi).
- (2) If Te Ohu Kai Moana Trustee Limited is satisfied that the mandated iwi organisation is unable to finalise its coastline claims solely because 1 or more of the named iwi do not have a mandated iwi organisation, Te Ohu Kai Moana Trustee Limited must—
  - (a) give written notice to the recognised iwi organisation of each relevant named iwi—
    - (i) that coastline claims have been made by the mandated iwi organisation; and
    - (ii) of the details of the coastline claims that affect the named iwi; and
    - (iii) that the provisions of section 134 may be invoked for the benefit of the mandated iwi organisation that made the request under section 132(2) on the specified date (which must be 3 years after the date of the notice), if any of the named iwi do not have a mandated iwi organisation on or before that date; and
  - (b) record in the iwi register—

- (i) its determination that the finalisation of coastline claims of that mandated iwi organisation is delayed; and
- (ii) the identity of the relevant named iwi; and
- (iii) a copy of any notice given under paragraph (a).

**134 Allocation and transfer after request under section 132(2)**

- (1) If, before the date specified in the notice issued to a named iwi under section 133(2)(a)(iii), Te Ohu Kai Moana Trustee Limited recognises a mandated iwi organisation for that iwi, the mandated iwi organisation that made the request under section 132(2) must—
  - (a) complete the necessary agreements in accordance with clauses 6 and 7 of Schedule 6; and
  - (b) request Te Ohu Kai Moana Trustee Limited to register those agreements under clause 8 of Schedule 6.
- (2) If, after the date specified in the notice issued to a named iwi under section 133(2)(a)(iii), any agreements required under subsection (1) have been completed, but 1 or more named iwi do not have a mandated iwi organisation, Te Ohu Kai Moana Trustee Limited must proceed to determine coastline entitlements for the mandated iwi organisation that made the request under section 132(2).
- (3) Coastline entitlements determined under subsection (2) must be made in accordance with—
  - (a) section 11 and Schedule 6; and
  - (b) the coastline claims made by the mandated iwi organisation, as supported or modified by any agreements registered under clause 8 of Schedule 6.
- (4) To avoid doubt, the specified points in the coastline claims that would otherwise require the agreement of the named iwi that does not have a mandated iwi organisation must be treated as if they were subject to such an agreement.

*Discretionary power*

**135 Discretion to allocate and transfer**

- (1) If a mandated iwi organisation does not, 2 years or more after the date when it, or the iwi's first mandated iwi organisation (for a mandated iwi organisation that replaced another organisation under section 18E(2)), was recognised by Te Ohu Kai Moana Trustee Limited, hold the registered coastline entitlements required by section 130(3)(b), Te Ohu Kai Moana Trustee Limited may allocate and transfer, in accordance with sections 130(1) and 151, any or all of the following settlement assets to that mandated iwi organisation:
  - (a) non-quota settlement assets:

- (b) settlement quota for which the mandated iwi organisation holds a registered coastline entitlement:
  - (c) settlement quota for which the mandated iwi organisation does not hold a registered coastline entitlement.
- (2) However, if a transfer is made under subsection (1)(c),—
- (a) settlement quota that is to be allocated on the basis of coastline may only be transferred in proportion to the length of coastline of the relevant iwi that Te Ohu Kai Moana Trustee Limited is satisfied is unlikely to be disputed; and
  - (b) in the case of deepwater quota for which a registered coastline entitlement is required, settlement quota that is to be allocated on the basis of population must not be transferred unless a transfer of that quota management stock is made under subsection (2)(a).
- (3) Assets transferred under subsection (1)(a) or (b) must have been allocated to the iwi in accordance with sections 137 and 139 to 141.

Section 135(1): amended, on 16 September 2011, by section 6 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

### **136 Limitations applying if mandated iwi organisation receives settlement quota under section 135**

- (1) If settlement quota is transferred to a mandated iwi organisation under section 135(1)(c), the mandated iwi organisation, or a new organisation recognised in place of that organisation under section 18E(2), must—
- (a) not sell, exchange, or otherwise transfer that quota until it holds registered coastline entitlements for the relevant quota management stock; and
  - (b) where another mandated iwi organisation becomes entitled to any amount of that quota as a result of holding a registered coastline entitlement, transfer the relevant amount of that quota to that mandated iwi organisation without consideration or compensation before the start of the next fishing year.
- (2) This section applies in addition to, and does not limit, the provisions of Part 4.

Section 136(1): amended, on 16 September 2011, by section 7 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

#### *Settlement asset money*

### **137 Transfer of money**

- (1) Te Ohu Kai Moana Trustee Limited must transfer settlement asset money it receives under section 194 as follows:
- (a) \$20 million, without the addition of earnings, to Te Putea Whakatupu Trustee Limited in accordance with section 90(1) and (2); and

- (b) \$10 million, without the addition of earnings, to Te Wai Maori Trustee Limited in accordance with section 103(1) and (2); and
  - (c) \$5 million, with the addition of earnings, to Te Ohu Kai Moana Trustee Limited as capital of Te Ohu Kai Moana; and
  - (d) amounts of money to iwi, as set out in sections 149 and 150, without the addition of earnings or other adjustments; and
  - (e) \$18 million, with the addition of earnings on that amount and on the amounts referred to in paragraphs (a), (b), and (d) until the payments are made under those paragraphs, may be applied by Te Ohu Kai Moana Trustee Limited to fund transitional arrangements, including—
    - (i) funding to enable Te Ohu Kai Moana Trustee Limited to perform its functions, including assisting iwi and recognised iwi organisations under section 34 to meet their obligations under this Act; and
    - (ii) up to \$5 million to Te Putea Whakatapu Trustee Limited under section 90(3); and
    - (iii) up to \$2 million to Te Wai Maori Trustee Limited, under section 103(4); and
  - (f) \$20.7 million, plus earnings, under section 130 or section 135 to mandated iwi organisations in the percentage specified for each iwi in column 3 of Schedule 3.
- (2) Te Ohu Kai Moana Trustee Limited must not make payments of money under section 90(5) or section 103(6) before any obligation under section 138 has been discharged, unless—
- (a) it first submits to the mandated iwi organisation of each iwi listed in Schedule 3 a written proposal to make such a payment; and
  - (b) at least 75% of mandated iwi organisations representing at least 50% of the total notional iwi population specified in column 2 of Schedule 3 support the proposal in writing to Te Ohu Kai Moana Trustee Limited not later than 20 working days after the date when Te Ohu Kai Moana Trustee Limited submitted the proposal to mandated iwi organisations.

### **138 Allocation of surplus funds**

- (1) If the annual plan of Te Ohu Kai Moana Trustee Limited for the year that ends 5 years after the commencement of this Act forecasts an accumulated net positive cash balance, Te Ohu Kai Moana Trustee Limited must comply with subsection (2).
- (2) The net positive cash balance (if any) that exists at the end of the relevant year must be allocated to mandated iwi organisations—
  - (a) in accordance with sections 130 and 135; and
  - (b) in the percentage specified for each iwi in column 3 of Schedule 3.

- (3) However, Te Ohu Kai Moana Trustee Limited may retain all or part of any net positive cash balance to use for specified purposes or projects on behalf of all iwi, so long as it—
  - (a) submits a written proposal to do so to the mandated iwi organisation of each iwi listed in Schedule 3; and
  - (b) at least 75% of mandated iwi organisations, representing at least 50% of the total notional iwi population specified in column 3 of Schedule 3, support the proposal in writing to Te Ohu Kai Moana Trustee Limited not later than 20 working days after the date when Te Ohu Kai Moana Trustee Limited submitted the proposal to mandated iwi organisations.
- (4) Despite subsections (2) and (3), Te Ohu Kai Moana Trustee Limited may set aside up to \$10 million from the net positive cash balance referred to in subsection (2) against its liability to Te Wai Maori Trustee Limited under section 103(3).
- (5) In this section the forecast net positive cash balance referred to in subsection (1) must be determined according to generally accepted accounting practice, after taking into account the amounts allocated under section 137(1)(a) to (d) and (f), but yet to be paid.

### 138A Allocation and transfer of New Zealand units

- (1) In this section—

**New Zealand units** means New Zealand units allocated to Te Ohu Kai Moana Trustee Limited under the fishing allocation plan issued under the Climate Change Response Act 2002

**unallocated quota** means quota held by Te Ohu Kai Moana Trustee Limited on 24 September 2009 and that had not been allocated pursuant to section 130(1), 135, or 151 of this Act at that date.
- (2) When Te Ohu Kai Moana Trustee Limited allocates and transfers unallocated quota to an iwi or a mandated iwi organisation in accordance with section 130(1), 135, or 151 of this Act, Te Ohu Kai Moana Trustee Limited must, at the same time, allocate and transfer New Zealand units associated with that quota to that iwi or mandated iwi organisation in accordance with those provisions.
- (3) Te Ohu Kai Moana Trustee Limited must notify the Minister responsible for the administration of the Climate Change Response Act 2002 of the details of any allocation and transfer of unallocated quota and New Zealand units associated with that quota under subsection (2) no later than 10 working days after the date on which the unallocated quota and associated New Zealand units are allocated and transferred.

Section 138A: inserted, on 8 December 2009, by section 87(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).



*Income shares*

**139 Allocation of income shares**

Te Ohu Kai Moana Trustee Limited must allocate the income shares in Aotearoa Fisheries Limited referred to in section 67(3)(b) to iwi—

- (a) in the percentage specified for each iwi in column 3 of Schedule 3; and
- (b) in accordance with the requirements of sections 130 and 135.

Subpart 2—Bases for allocation of settlement quota

*Inshore quota*

**140 Allocation of inshore quota**

- (1) When allocating inshore quota, Te Ohu Kai Moana Trustee Limited must, after setting aside any harbour quota, allocate to each iwi the same proportion of the settlement quota for each quota management stock that the iwi coastline bears to the total coastline of the quota management area for that stock, as determined in accordance with section 11 and Schedule 6.
- (2) This section applies unless, in the circumstances, sections 142 to 146 are relevant.

*Deepwater quota*

**141 Allocation of deepwater quota**

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

- (a) divide the total settlement quota for each quota management stock into 2 parcels, comprising 25% and 75% of the total amount respectively; and
- (b) allocate to each iwi an amount from the 25% parcel on the same basis as the allocation of inshore quota; and
- (c) allocate the 75% parcel to each iwi in accordance with the percentages specified in column 3 of Schedule 3.

*Chatham zone*

**142 Chatham Island allocations**

- (1) In this section,—

**Chatham iwi** means the Moriori iwi and the Ngati Mutunga (Chathams) iwi

**Chatham zone**—

- (a) means the area within 200 nautical miles of the baseline of the territorial sea around the Chatham Islands, as determined under the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977; and

- (b) includes a single and contiguous shared zone that lies—
- (i) within the area described in paragraph (a); and
  - (ii) within the area that would be within 200 nautical miles of the baseline of the territorial sea around New Zealand if the Chatham Islands were not part of New Zealand; and
  - (iii) between 2 points at which the boundaries of the areas described in subparagraphs (i) and (ii) intersect, at approximately 40°20.7'S 177°58.2'W and 44°06.5'S 178°21.2'E.
- (2) If a quota management area is partly within the Chatham zone, the settlement quota for that quota management stock must be divided for the purpose of allocation into 2 portions in accordance with subsection (3), with—
- (a) 1 portion being attributed to the Chatham zone; and
  - (b) the other portion being attributed to the remaining part of the quota management area to be allocated under section 140 or section 141 or section 144, as if it were an allocation for a complete quota management area.
- (3) If settlement quota for a stock is to be divided under subsection (2), the portion of the quota for the stock attributable to the Chatham zone is given by—

$$(a \div b) \times c$$

where

$$a = a_c - (a_s \div 2)$$

and

$a_c$  means the amount of stock taken in the Chatham zone

$a_s$  means the amount of stock taken from the shared zone

$a_c$  and  $a_s$  are derived from—

- (i) in the case of stocks introduced into the quota management system before 1 October 1999, the total of all commercial catches for the stock for the fishing years commencing on 1 October 1990 and ending on 30 September 2001 (inclusive):
  - (ii) in the case of stocks introduced into the quota management system after 1 October 1999, the total of all commercial catches of the stock for the most recent 5 fishing years of available data
- b means the total of all commercial catches for the stock for the relevant period described in subparagraphs (i) and (ii)
- c means the amount of settlement quota for the stock.
- (4) If a quota management area is wholly within the Chatham zone, all the settlement quota for that stock is attributed to the Chatham zone.
- (5) When allocating settlement quota attributed to the Chatham zone, Te Ohu Kai Moana Trustee Limited must allocate that quota as follows:

- (a) for inshore quota, Te Ohu Kai Moana Trustee Limited must allocate, to each Chatham iwi, the proportion of the settlement quota for each stock, as established in a registered coastline entitlement, either—
  - (i) as agreed between the mandated iwi organisations of the Chatham iwi; or
  - (ii) in the proportion that the iwi coastline bears to the total coastline of the Chatham Islands for that stock as determined in accordance with section 11 and Schedule 6; and
- (b) for deepwater quota, Te Ohu Kai Moana Trustee Limited must—
  - (i) divide the total settlement quota attributed to the Chatham zone for each stock into 2 equal parcels; and
  - (ii) allocate to each Chatham iwi an amount from one parcel on the same basis as inshore quota is allocated under paragraph (a); and
  - (iii) allocate to each iwi the percentage of the other parcel specified in column 3 of Schedule 3.

*Harbour quota*

**143 Allocation of quota within harbours**

- (1) Te Ohu Kai Moana Trustee Limited must allocate harbour quota to iwi whose territory abuts a harbour specified in Part 1 of Schedule 2.
- (2) If more than 1 iwi has its territory abutting a harbour specified in Part 1 of Schedule 2, the mandated iwi organisations of those iwi must take all reasonable steps—
  - (a) to consult with each other; and
  - (b) to agree on the proportion of the harbour quota for each relevant stock that must be—
    - (i) attributed to each iwi; and
    - (ii) used subsequently by the mandated iwi organisation of each iwi in submitting coastline claims for that harbour quota.
- (3) If, after negotiating in good faith, mandated iwi organisations are unable to reach agreement under subsection (2)(b), they may enter into the dispute resolution process provided for in Part 5.
- (4) Harbour quota must be deducted from the total settlement quota for each relevant stock before the general allocation of that stock is made under section 140.
- (5) The classification of settlement quota as harbour quota under section 7 for each quota management stock lapses when all that quota has been allocated.

*Allocations in specified Fishery Management Areas***144 Allocation of settlement quota in quota management areas same as Fishery Management Area 4**

- (1) This section applies if a quota management area for a quota management stock is exactly the same as Fishery Management Area 4.
- (2) When allocating settlement quota for a stock referred to in subsection (1), Te Ohu Kai Moana Trustee Limited must allocate to each iwi that portion of the quota not attributed to the Chatham zone, in accordance with the percentages specified in column 3 of Schedule 3.

**145 Allocation of settlement quota in quota management areas same as Fishery Management Area 6**

- (1) This section applies if a quota management area for a quota management stock is exactly the same as Fishery Management Area 6.
- (2) When allocating settlement quota for a stock referred to in subsection (1), Te Ohu Kai Moana Trustee Limited must allocate that quota to each iwi in accordance with the percentages specified in column 3 of Schedule 3.

**146 Allocation of settlement quota in quota management areas same as Fishery Management Area 10**

- (1) This section applies if a quota management area for a quota management stock is exactly the same as Fishery Management Area 10.
- (2) Te Ohu Kai Moana Trustee Limited must not allocate the settlement quota described in Part 3 of Schedule 1 unless it is satisfied that there is a commercially viable total allowable commercial catch for the relevant quota management stock.
- (3) When allocating settlement quota under subsection (2), Te Ohu Kai Moana Trustee Limited must allocate that quota to each iwi in accordance with the percentages specified in column 3 of Schedule 3.

*Highly migratory species***147 Allocation of settlement quota for highly migratory species**

- (1) This section applies if a quota management stock is for a species listed in Schedule 4B of the Fisheries Act 1996.
- (2) When allocating settlement quota for a stock to which this section applies, Te Ohu Kai Moana Trustee Limited must allocate that quota to each iwi in accordance with the percentages specified in column 3 of Schedule 3.

*Adjustments to number of quota shares available for distribution*

Heading: inserted, on 13 December 2006, by section 5 of the Maori Fisheries Amendment Act 2006 (2006 No 78).

**147A Recalculation of allocations of deepwater stock**

- (1) Subsection (2) applies if—
  - (a) the number of shares for a stock available for distribution is reduced by the application of section 23(1) of the Fisheries Act 1996 as a result of accrued interests arising under section 28N of the Fisheries Act 1983; and
  - (b) deepwater stock has been allocated to an iwi under section 141 or 142; but
  - (c) the quota shares have not been transferred to the iwi.
- (2) Te Ohu Kai Moana Trustee Limited must recalculate the number of quota shares allocated to an iwi, and amend the register accordingly.

Section 147A: inserted, on 13 December 2006, by section 5 of the Maori Fisheries Amendment Act 2006 (2006 No 78).

**147B Allocation of reduced number of quota shares**

The number of quota shares listed in the third column of Schedule 1 for a quota management stock is reduced in the same proportion as the number of settlement quota shares for that stock is reduced if section 23(1) of the Fisheries Act 1996 applies as a result of accrued interests arising under section 28N of the Fisheries Act 1983.

Section 147B: inserted, on 13 December 2006, by section 5 of the Maori Fisheries Amendment Act 2006 (2006 No 78).

*Freshwater quota*

**148 Allocation of freshwater quota**

- (1) When allocating freshwater quota, Te Ohu Kai Moana Trustee Limited must allocate that quota to each iwi whose territory falls wholly or partly within the quota management area for each quota management stock.
- (2) If more than 1 iwi has its territory within a quota management area, an allocation of freshwater quota under subsection (1) may be made by Te Ohu Kai Moana Trustee Limited only—
  - (a) in accordance with an agreement entered into by the mandated iwi organisations of all the iwi whose territory is wholly or partly within the quota management area, that sets out how the settlement quota for the quota management area is to be divided among those iwi; or
  - (b) if there is no agreement between the mandated iwi organisations of the iwi whose territory is wholly or partly within the quota management area, as identified under subsection (1), in the proportion that the popula-

tion of each iwi living within the quota management area bears to the combined population of those iwi living within the quota management area.

- (3) For the purpose of subsection (2)(b), the population of an iwi living within a quota management area must be determined from the 2001 census.

*Alteration of quota management areas under Fisheries Act 1996*

Heading: inserted, on 13 December 2006, by section 6 of the Maori Fisheries Amendment Act 2006 (2006 No 78).

**148A Consequence of altering quota management area**

- (1) This section applies to Te Ohu Kai Moana Trustee Limited if—
- (a) a quota management area is altered under section 25 of the Fisheries Act 1996; and
  - (b) settlement quota for that area has not been fully allocated under this Act.
- (2) Te Ohu Kai Moana Trustee Limited must—
- (a) first calculate all entitlements to settlement quota for the relevant stock as if the quota management area had not been altered under section 25 of the Fisheries Act 1996; and
  - (b) then convert the amount of the quota shares for the stock to the shares relevant to the altered quota management area, applying the method set out in either—
    - (i) the quota owner agreement entered into under section 25A of the Fisheries Act 1996 for that stock; or
    - (ii) the plan approved by the Minister under section 25B of the Fisheries Act 1996 for that stock.

Section 148A: inserted, on 13 December 2006, by section 6 of the Maori Fisheries Amendment Act 2006 (2006 No 78).

*Cash allocations*

**149 Additional cash in lieu of shortfall in settlement quota**

- (1) This section applies if there are fewer than 10 000 000 shares for a quota management stock listed in Part 1 of Schedule 1, but only if the value of these shares is greater than \$100.
- (2) When transferring settlement quota for stocks referred to in subsection (1), Te Ohu Kai Moana Trustee Limited must, at the time of transfer, pay to any mandated iwi organisations of iwi that receive an allocation of that quota the amount in cash specified for that stock in column 4 of Part 1 of Schedule 1 in the same proportion that the quota is distributed.

**150 Specific cash transfers to certain iwi**

- (1) Te Ohu Kai Moana Trustee Limited must pay the stated sum of money to the mandated iwi organisation of each of the following iwi at the time when the iwi is entitled to have settlement assets transferred to it under section 130:
  - (a) Te Atiawa ki Whakarongotai, the sum of \$398,039:
  - (b) Ngai Takoto, the sum of \$556,184:
  - (c) Ngati Whare, the sum of \$585,234:
  - (d) Ngati Maru, the sum of \$463,348:
  - (e) Ngati Hauiti, the sum of \$385,247:
  - (f) Ngati Pukenga, the sum of \$264,544:
  - (g) Ngati Manawa, the sum of \$72,841.
- (2) The payments under subsection (1) are in addition to any other entitlements of the iwi under this Act.

Subpart 3—Transfer of settlement assets

**151 Transfer of allocated settlement quota**

- (1) Te Ohu Kai Moana Trustee Limited must transfer settlement quota allocated under section 130 in accordance with this section.
- (2) If the mandated iwi organisation of an iwi to which settlement quota has been allocated wishes and is eligible to receive ownership of that quota,—
  - (a) it must, not later than 6 months before the start of the next fishing year applicable to that quota management stock (or a lesser period that Te Ohu Kai Moana Trustee Limited agrees is practicable in the circumstances), make written request to Te Ohu Kai Moana Trustee Limited to transfer some or all of that allocated settlement quota; and
  - (b) Te Ohu Kai Moana Trustee Limited must transfer the quota requested by the mandated iwi organisation to an asset-holding company of that mandated iwi organisation before the start of the next fishing year that applies to each stock.
- (3) In relation to settlement quota allocated to an iwi under section 130 but not transferred by Te Ohu Kai Moana Trustee Limited, the mandated iwi organisation must, not later than the end of the year which is 4 years after the commencement of this Act, notify Te Ohu Kai Moana Trustee Limited as to whether the members of that iwi wish the allocated settlement quota—
  - (a) to continue to be managed by Te Ohu Kai Moana Trustee Limited on behalf of the iwi; or
  - (b) to be transferred to an asset-holding company of the mandated iwi organisation; or
  - (c) to be consolidated with other quota for sale under section 172.

**152 Offer of annual catch entitlement**

- (1) Te Ohu Kai Moana Trustee Limited must, unless 1 or more of the conditions in subsection (3) apply, offer the annual catch entitlement derived from settlement quota that has not been transferred under section 130 or section 135—
  - (a) to mandated iwi organisations; and
  - (b) in a manner that reflects as closely as possible, based on the available information, the bases for allocation of settlement quota to iwi under subpart 2, including, in relation to settlement quota allocated on the basis of coastline entitlement, agreements between groups of mandated iwi organisations on the division of annual catch entitlements to be offered to them.
- (2) Te Ohu Kai Moana Trustee Limited may, as it sees fit,—
  - (a) offer to sell the annual catch entitlement that would otherwise be offered to a mandated iwi organisation under subsection (1) to Aotearoa Fisheries Limited or its nominated subcompany at commercial rates; or
  - (b) sell that annual catch entitlement on the open market; or
  - (c) in the circumstances referred to in subsection (3)(c), determine the amount of annual catch entitlement to be offered to each affected mandated iwi organisation.
- (3) Subsection (2) applies only if—
  - (a) there is no mandated iwi organisation or recognised iwi organisation for an iwi; or
  - (b) Te Ohu Kai Moana Trustee Limited considers that the recognised iwi organisation has not demonstrated reasonable progress in meeting the criteria set out in section 14; or
  - (c) in the case of a particular group of iwi,—
    - (i) there is sufficient information to satisfy subsection (1)(b) for the group as a whole, but not for 1 or more individual iwi of that group; and
    - (ii) the mandated iwi organisations of the group as a whole are unable to agree on a division of the annual catch entitlement to be offered to them.
- (4) Te Ohu Kai Moana Trustee Limited must hold in trust the net proceeds of a sale under subsection (2)(a) or (b) (after deducting its reasonable costs and expenses) to be transferred to the relevant mandated iwi organisation when it is established or when the matters referred to in subsection (3)(b) or (c) are remedied or settled.
- (5) Te Ohu Kai Moana Trustee Limited may prescribe the terms and conditions for offering annual catch entitlement under subsection (1) or subsection (2)(c)—



- (a) by describing in its draft annual plan distributed in accordance with section 36(1)(c), or in a panui distributed to all mandated iwi organisations and recognised iwi organisations,—
  - (i) the proposed terms and conditions for offering annual catch entitlements; and
  - (ii) the reason for the charges (if any) to be levied for annual catch entitlements against mandated iwi organisations; and
  - (iii) how Te Ohu Kai Moana Trustee Limited proposes to use the expected net revenue (if any) from these charges; and
- (b) after taking into account the response of mandated iwi organisations and recognised iwi organisations.

#### Subpart 4—Miscellaneous

##### *Assets held in trust*

#### **153 When settlement assets must be held in trust**

- (1) Unless Te Ohu Kai Moana Trustee Limited exercises its discretion under section 135(1), it must hold in trust for each iwi that does not comply with section 130(3)—
  - (a) the income shares that would otherwise be transferred to each mandated iwi organisation; and
  - (b) any dividends that relate to those shares.
- (2) Te Ohu Kai Moana Trustee Limited is entitled to withhold from any dividends held in trust under subsection (1)(b) the reasonable costs incurred in administering the income shares and dividends.

##### *Status of settlement assets for purposes of Inland Revenue Acts and other enactments*

#### **154 Status of settlement assets**

- (1) For the purposes of the Inland Revenue Acts, the value of the settlement assets transferred under this Part to a mandated iwi organisation or to an asset-holding company (including settlement quota and income shares) is included in the available subscribed capital of the company, trust, or other body to which the assets are transferred.
- (2) Income tax, goods and services tax, gift duty, any tax duty levy, and any other charge imposed or provided for under the Inland Revenue Acts or any other enactment do not apply to allocations or transfers of settlement assets—
  - (a) by Te Ohu Kai Moana Trustee Limited to—
    - (i) mandated iwi organisations; or
    - (ii) asset-holding companies required by section 12(1)(d); or

- (iii) Te Putea Whakatupu Trustee Limited; or
- (iv) Te Wai Maori Trustee Limited; and
- (b) by an asset-holding company to any of its subsidiaries established under section 16(3), so long as that allocation or transfer is completed within 12 months of the transfer of settlement assets by Te Ohu Kai Moana Trustee Limited to the relevant asset-holding company under section 151.

## Part 4

### Settlement quota interests, sales and exchanges of settlement quota, related restrictions, and option to purchase

#### 155 Outline of this Part

This Part provides for the following matters:

- (a) the registration under the Fisheries Act 1996 of a settlement quota interest against quota shares owned by asset-holding companies or subsidiaries of asset-holding companies; and
- (b) a general restriction on the transfer of settlement quota; and
- (c) the basis on which settlement quota may be disposed of; and
- (d) exceptions to the general constraint on disposal, including provisions for the exchange, of settlement quota; and
- (e) an option to purchase (right of first refusal), with a procedure for selling bundles of assets that include settlement quota; and
- (f) a power for Te Ohu Kai Moana Trustee Limited to make further rules for the sale or exchange of settlement quota.

#### 156 Interpretation

In this Part, **bundle of assets** means a bundle that contains 1 or more stocks of settlement quota and may contain other assets, including non-quota settlement assets and non-settlement assets.

#### Subpart 1—Registration of settlement quota interests

#### 157 Registration of settlement quota interests

- (1) Te Ohu Kai Moana Trustee Limited must, in accordance with section 152A of the Fisheries Act 1996, apply to the chief executive of the Ministry of Fisheries for registration of settlement quota interests—
  - (a) within 20 working days after the appointed day and before any transactions are made involving the specified shares, against—
    - (i) quota shares listed in Schedule 1; and

- (ii) quota shares allocated, before the appointed day, under section 44 of the Fisheries Act 1996; and
  - (b) against further quota shares allocated under section 44 of the Fisheries Act 1996 after the appointed day.
- (2) The quota shares referred to in subsection (1) become settlement quota when the settlement quota interest is registered under section 152A of the Fisheries Act 1996.

**158 General restriction on transfer of settlement quota**

- (1) Settlement quota must not be transferred except—
  - (a) on application under subsection (2), with the authorisation of Te Ohu Kai Moana Trustee Limited (which must not be withheld if it is satisfied that the requirements of this Part for the transfer have been met by the registered owner of the settlement quota); or
  - (b) as ordered by the Court; or
  - (c) through forfeiture to the Crown under the Fisheries Act 1996.
- (2) An application to transfer settlement quota must be submitted to the chief executive of the Ministry of Fisheries by the registered owner and Te Ohu Kai Moana Trustee Limited jointly in the prescribed form.

**159 Quota may be treated as settlement quota**

- (1) A mandated iwi organisation may request Te Ohu Kai Moana Trustee Limited in writing to treat any quota owned by the asset-holding company of that mandated iwi organisation as settlement quota.
- (2) A request must not be made under subsection (1) until the mandated iwi organisation has—
  - (a) notified the proposal to the adult members of the iwi in accordance with subclause (3) of kaupapa 4 of Schedule 7; and
  - (b) obtained the approval of not less than 75% of the adult members of the iwi who vote—
    - (i) at a general meeting of the mandated iwi organisation called for the purpose; or
    - (ii) by postal ballot; and
  - (c) obtained the approval of any party that holds a mortgage or caveat registered against the quota.
- (3) A public notice given under subsection (2)(a) must specify the quota management stock and the number of quota shares affected by the proposal.

**160 Application for registration**

- (1) This section applies if Te Ohu Kai Moana Trustee Limited—

- (a) is acting in accordance with its duty under section 157; or
  - (b) is satisfied that a mandated iwi organisation making a request under section 159(1) has complied with section 159(2) and (3); or
  - (c) has consented to a proposal for an exchange under section 174 of settlement quota for quota other than settlement quota.
- (2) Te Ohu Kai Moana Trustee Limited and the registered owner of the quota jointly (or Te Ohu Kai Moana Trustee Limited alone if it is the registered owner of the quota) must—
- (a) request the chief executive of the Ministry of Fisheries to register a settlement quota interest against the quota shares; and
  - (b) specify which quota management stock is the subject of the request; and
  - (c) specify the number of quota shares to which the request applies.
- (3) If, in the case of an exchange contemplated by subsection (1)(c), a request is made to remove a settlement quota interest from settlement quota, Te Ohu Kai Moana Trustee Limited and the registered owner of the quota jointly (or Te Ohu Kai Moana Trustee Limited alone if it is the registered owner of the quota) must—
- (a) request the chief executive of the Ministry of Fisheries to remove the settlement quota interest from the quota shares; and
  - (b) specify which quota management stock is the subject of the request; and
  - (c) specify the number of quota shares to which the request applies.

## Subpart 2—Restrictions on, and procedures for, disposal of settlement quota

### 161 Restrictions on disposal of settlement quota

- (1) A mandated iwi organisation must not—
- (a) sell its settlement quota, except to—
    - (i) another mandated iwi organisation; or
    - (ii) an entity within Te Ohu Kai Moana Group; or
  - (b) gift its settlement quota.
- (2) A mandated iwi organisation must not sell any settlement quota earlier than 2 years after the date of the first transfer of settlement quota by Te Ohu Kai Moana Trustee Limited to the mandated iwi organisation of the relevant iwi.
- (3) If an entity within Te Ohu Kai Moana Group or a mandated iwi organisation sells or relinquishes control over a subsidiary, subcompany, asset-holding company, or subsidiary of an asset-holding company that holds settlement quota, that quota must be treated as the property of Te Ohu Kai Moana Trustee Limited or of the mandated iwi organisation, as appropriate.

- (4) Unless the exceptions under subpart 3 apply, a sale of settlement quota must be made in accordance with—
- (a) this subpart; and
  - (b) any rules made by Te Ohu Kai Moana Trustee Limited under section 176.

Section 161(2): amended, on 16 September 2011, by section 8 of the Maori Fisheries Amendment Act 2011 (2011 No 74).

### **162 Prerequisites to sale of settlement quota**

- (1) A mandated iwi organisation may sell settlement quota only if, before sale, the mandated iwi organisation selling the quota has—
- (a) notified the proposal to the adult members of the iwi in accordance with subclause (3) of kaupapa 4 of Schedule 7; and
  - (b) obtained the prior approval of not less than 75% of the adult members of the iwi who vote—
    - (i) at a general meeting of the mandated iwi organisation called for the purpose; or
    - (ii) by postal ballot.
- (2) A notice given under subsection (1)(a) must specify,—
- (a) in the public notice, the approximate proportion of the total value of the settlement quota of the iwi that is affected by the proposal; and
  - (b) in the case of a private notice to an adult member of the iwi,—
    - (i) the amount of settlement quota of the iwi affected by the proposal; and
    - (ii) a reasonable estimate of the likely market value of that settlement quota.
- (3) An approval obtained under subsection (1)(b) may give a power for the mandated iwi organisation to sell—
- (a) specified settlement quota; or
  - (b) settlement quota generally up to a specified limit that must not exceed 10% of the total value of the settlement quota held by the asset-holding companies or any subsidiary of the asset-holding companies of the mandated iwi organisation; or
  - (c) settlement quota approved for sale in accordance with a programme set out in the annual plan approved under kaupapa 11(b)(iii) of Schedule 7.
- (4) For transactions involving settlement quota, an approval obtained under subsection (1)(b) is valid from the date on which it is given—
- (a) for a term not exceeding 15 months; or

- (b) in the case of an approval of the kind referred to in subsection (3)(b), for the term specified in the approval, which must not exceed 12 months.
- (5) The terms referred to in subsection (4) do not limit the term of a transaction or series of transactions referred to in section 167.

### *Option to purchase*

#### **163 Offer of option to purchase**

- (1) A mandated iwi organisation may sell settlement quota in accordance with this subpart only if it first offers every other mandated iwi organisation and Te Ohu Kai Moana Group an opportunity to bid for the settlement quota.
- (2) In offering an opportunity to bid under subsection (1), a mandated iwi organisation that wishes to sell, as a single lot, a bundle of assets that includes 1 or more stocks of settlement quota must provide for—
  - (a) single bids to be made for the total bundle of assets; and
  - (b) a set of bids to be made for lots covering all the assets in the bundle, including separate bids for each individual settlement quota stock.
- (3) However, a mandated iwi organisation that wishes to sell freshwater settlement quota must not include that quota in a bundle of assets that contains inshore or deepwater settlement quota.
- (4) A bid submitted under subsection (1) is binding until the conclusion of the sale process required by this subpart.

#### **164 Procedure for selling bundle of assets**

If bids have been received under section 163(1) to purchase a bundle of assets as a single lot, the mandated iwi organisation offering to sell must—

- (a) calculate the sum of the highest bids received under section 163(2)(b) for each of the asset lots; and
- (b) either—
  - (i) notify all bidders of its intention to proceed with the sale as a bundle of assets or as separate lots, whichever yields the higher total cash return based on the bids received; or
  - (ii) withdraw the settlement quota from sale.

#### **165 Procedure to determine right to purchase**

If assets offered for sale under section 163 include inshore or freshwater settlement quota, the first option to purchase must be given—

- (a) in the case of inshore settlement quota, to Te Ohu Kai Moana Group and every mandated iwi organisation that holds a registered coastline entitlement for any inshore stock offered:

- (b) in the case of freshwater settlement quota, to Te Ohu Kai Moana Group and every mandated iwi organisation whose territory is wholly or partly within a relevant quota management area.

**166 Basis on which sale must proceed**

- (1) The vendor must sell to a party that, having been offered the settlement quota under section 165, matches the highest bid obtained under section 163(1), unless—
  - (a) the vendor decides not to sell; or
  - (b) an alternative procedure has been provided for in rules made under section 176.
- (2) If the highest bid is matched by bids from more than 1 party referred to in section 165, the vendor may—
  - (a) negotiate with those parties; or
  - (b) conduct a second bidding process between or amongst those other bidders; or
  - (c) withdraw the settlement quota from sale.
- (3) If no party referred to in section 165 matches the highest bid obtained under section 163(1), the vendor must sell to the party that submitted the highest bid under section 163(1), unless—
  - (a) the vendor decides not to sell; or
  - (b) an alternative procedure has been provided for in rules made under section 176.
- (4) If there are 2 matching highest bids obtained under section 163(1) that are not matched by a party referred to in section 165, the vendor may—
  - (a) negotiate with those parties; or
  - (b) conduct a second bidding process between or amongst those other bidders; or
  - (c) withdraw the settlement quota from sale.
- (5) To avoid doubt, subsections (3) and (4) apply to any sale of settlement quota to which section 165 does not apply.

**167 Other constraints on disposal**

- (1) Section 162 applies if a mandated iwi organisation proposes to enter into a transaction with any party by way of, for example, an option, security, mortgage, or guarantee or series of transactions that could, if the rights under the transaction were exercised, result in—
  - (a) the sale of settlement quota; or
  - (b) the iwi being disentitled, for a period of more than 5 years, to—

- (i) the income from annual catch entitlements arising from that quota; or
  - (ii) the control or use of the annual catch entitlements arising from that quota.
- (2) Section 162 must be complied with before a transaction referred to in subsection (1) is entered into, but the other provisions of this subpart do not apply at that time.
- (3) If a third party to a transaction referred to in subsection (1) exercises a right to sell, or requires a sale of, settlement quota, sections 161(1) and 163 to 166 apply as if the seller were the mandated iwi organisation referred to in subsection (1).
- (4) In this section, **third party** means a party not entitled to hold settlement quota.

#### **168 Application of this subpart to Te Ohu Kai Moana Group**

- (1) If an entity within Te Ohu Kai Moana Group acquires settlement quota under this subpart, sections 161(1) and 163 to 166 apply to that entity as if it were a mandated iwi organisation.
- (2) An entity within Te Ohu Kai Moana Group must not sell settlement quota unless it—
  - (a) passes a special resolution, in compliance with its constitutional documents, authorising it to exercise, in relation to settlement quota, either—
    - (i) a specific power of sale; or
    - (ii) a general power of sale; and
  - (b) complies with any rules made under section 176.

#### **169 When sale of settlement quota must be allowed**

- (1) Te Ohu Kai Moana Trustee Limited must allow a sale of settlement quota if it has ascertained that—
  - (a) in the case of a sale by a mandated iwi organisation,—
    - (i) the 2-year period referred to in section 161(2) has elapsed; and
    - (ii) the mandated iwi organisation has obtained the approval required by section 162(1)(b); and
  - (b) in the case of a sale by a mandated iwi organisation or by an entity within Te Ohu Kai Moana Group, the offer of an option to purchase has been made as required by sections 163 to 166.
- (2) If a mandated iwi organisation or an entity within Te Ohu Kai Moana Group proposes to sell settlement quota, it must provide documentation to Te Ohu Kai Moana Trustee Limited, supported by a statutory declaration if Te Ohu Kai Moana Trustee Limited so requires, to establish the matters relevant under subsection (1).



- (3) Te Ohu Kai Moana Trustee Limited—
- (a) must include in the iwi register a record of all transfers of settlement quota to or by asset-holding companies or their subsidiaries; and
  - (b) may make or amend rules under section 176 regarding the evidence required to establish the matters referred to in subsection (1).

**170 Remedy for breach of requirements under this subpart**

- (1) If a contract for the sale of settlement quota, including a transaction or series of transactions referred to in section 167(1), is in breach of sections 161 to 168 or rules made under section 176, the Court may make orders as it thinks fit, including orders—
- (a) to cancel the contract or transaction:
  - (b) to vest in the vendor the settlement quota that was the subject of the contract or transaction:
  - (c) to vest in the buyer the consideration for the contract or transaction:
  - (d) consistent with section 161, if the buyer has on-sold, or has granted any interest in, or security over, the settlement quota:
  - (e) that the costs of the applicant be met by the parties to the sale or transaction.
- (2) Orders made under subsection (1) may be made—
- (a) on the application of—
    - (i) any party; or
    - (ii) an adult member of an iwi whose mandated iwi organisation is a party; or
    - (iii) a mandated iwi organisation; or
    - (iv) an entity within Te Ohu Kai Moana Group; and
  - (b) on the terms and conditions that the Court thinks fit, so long as the quota shares are not vested other than in a mandated iwi organisation or an entity within Te Ohu Kai Moana Group.
- (3) In the case of a breach of sections 161 to 168 or rules made under section 176, subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 does not apply.

Section 170(3): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

**Subpart 3—Exceptions to application of subpart 2**

*Quota sold to wholly-owned entities*

**171 Settlement quota sold to wholly-owned entities**

Subpart 2 does not apply to—

- (a) Te Ohu Kai Moana Group if the sales are to 1 or more of the entities within Te Ohu Kai Moana Group; or
- (b) transfers between or among asset-holding companies wholly owned by the same mandated iwi organisation or subsidiaries of those asset-holding companies.

*Small parcels of settlement quota*

**172 Rationalisation of small parcels of settlement quota**

- (1) In this section, **small parcel of settlement quota** means an amount of settlement quota that has—
  - (a) an estimated value of less than \$100 or a greater amount as set in a rule made under section 176; and
  - (b) been allocated to an iwi but not yet transferred to it under section 130.
- (2) A mandated iwi organisation may request Te Ohu Kai Moana Trustee Limited to retain a small parcel of settlement quota allocated to its iwi to be consolidated with other small parcels and subsequently offered for sale by tender.
- (3) A mandated iwi organisation must, before making a request under this section, comply with section 162, but is otherwise not bound by the provisions of subpart 2.
- (4) Te Ohu Kai Moana Trustee Limited must—
  - (a) record in the iwi register—
    - (i) the number of quota shares of each quota stock retained by it under this section; and
    - (ii) the iwi to which the quota shares are allocated; and
  - (b) before the end of the year that is 5 years after the commencement of this Act, offer for sale the consolidated settlement quota shares, in accordance with sections 163 to 166; and
  - (c) pay the net proceeds of the quota shares sold under paragraph (b) to the mandated iwi organisation of the iwi to which the settlement quota was first allocated, in proportion to the number of quota shares so allocated.

*Quota exchange*

**173 Exception for quota exchanges**

- (1) Subpart 2 does not apply to the exchange of settlement quota for any other quota of the same market value.
- (2) A mandated iwi organisation or an entity within the Te Ohu Kai Moana Group, in offering settlement quota in an exchange referred to in subsection (1), may do so only in exchange for quota that is either—
  - (a) entirely settlement quota; or

- (b) entirely quota other than settlement quota.
- (3) To avoid doubt, settlement quota may be used in exchanges with parties other than the entities within Te Ohu Kai Moana Group or mandated iwi organisations.

**174 Procedure and criteria for exchange**

- (1) Before a mandated iwi organisation may exchange settlement quota under section 173, it must—
  - (a) advise Te Ohu Kai Moana Trustee Limited, for each quota management stock, of—
    - (i) the number of settlement quota shares it proposes to offer for exchange; and
    - (ii) an estimate of the fair market value of those shares, determined in accordance with any rules made under section 176(2)(g); and
    - (iii) the stock and the number of shares to be received by the mandated iwi organisation in exchange for the settlement quota referred to in subparagraph (i); and
    - (iv) whether the quota to be received is settlement quota; and
    - (v) an estimate of the fair market value of the quota shares to be received, determined in accordance with any rules made under section 176(2)(g); and
  - (b) obtain the consent of Te Ohu Kai Moana Trustee Limited to the exchange; and
  - (c) ensure that the exchange complies with the policy on exchanges, as expressed in the annual plan of the mandated iwi organisation.
- (2) The mandated iwi organisation must provide to Te Ohu Kai Moana Trustee Limited documentation, supported by a statutory declaration if Te Ohu Kai Moana Trustee Limited so requires, to establish the matters referred to in subsection (1).
- (3) Te Ohu Kai Moana Trustee Limited must not allow an exchange involving settlement quota unless it is satisfied that—
  - (a) the exchange is for quota or bundles of quota of an equivalent market value; and
  - (b) each mandated iwi organisation involved in the exchange has complied with the policy of the mandated iwi organisation on exchanges, as notified in its annual plan.
- (4) If Te Ohu Kai Moana Trustee Limited is satisfied that the requirements of subsection (3) are met, and allows the proposed exchange, it must ensure that, after the exchange, settlement quota interests—
  - (a) remain registered against any settlement quota received in the exchange:

- (b) are registered against any non-settlement quota received in the exchange.
- (5) If the quota received in an exchange was not previously settlement quota, Te Ohu Kai Moana Trustee Limited must ensure that the settlement quota interest is removed from the quota offered for exchange.
- (6) Te Ohu Kai Moana Trustee Limited may make or amend rules under section 176 regarding the evidence required to establish the matters referred to in subsection (3).

*Breach of restrictions applying to exchanges*

**175 Remedy for breach of restrictions**

- (1) If settlement quota is exchanged in breach of section 173 or section 174, the Court may make orders as it thinks fit, including orders—
  - (a) to cancel the contract or transaction:
  - (b) to return the assets and any consideration to the prior owner:
  - (c) consistent with section 161, if a party to the exchange has on-sold or further exchanged the settlement quota, or has granted an interest in it or security over it:
  - (d) that the costs of the applicant be met by the parties to the sale or transaction.
- (2) Orders may be made under subsection (1) on the application of—
  - (a) any party; or
  - (b) an adult member of an iwi whose mandated iwi organisation is a party; or
  - (c) a mandated iwi organisation; or
  - (d) an entity within Te Ohu Kai Moana Group.
- (3) In the case of a breach of section 173 or rules made under section 176, subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 does not apply.

Section 175(3): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

**Subpart 4—Additional rules for quota sales and exchanges**

**176 Additional rules**

- (1) Te Ohu Kai Moana Trustee Limited may make and amend, in accordance with section 54, rules that must be complied with in every sale or exchange of settlement quota under this Part.
- (2) The rules may include, but are not limited to, the following matters:
  - (a) the notice required to be given to persons eligible to purchase settlement quota, and the form and content of the notice:

- (b) any methodology for the tender and sale processes, including notice periods and deadlines for responses to offers:
  - (c) identification of the parties referred to in sections 163 to 166:
  - (d) express exceptions to the prohibition against mandated iwi organisations accepting any price other than the highest unconditional bid:
  - (e) the sale of bundles of inshore settlement quota by a mandated iwi organisation or Te Ohu Kai Moana Trustee Limited in accordance with sections 163 to 166:
  - (f) the means for determining a purchaser, if more than 1 mandated iwi organisation or Te Ohu Kai Moana Trustee Limited bids the same price for the same settlement quota:
  - (g) the means for determining fair market value for settlement quota that is exchanged, and the resolution of disputes as to that value:
  - (h) the recovery of costs by Te Ohu Kai Moana Trustee Limited for the administrative processes required by sections 158 to 169 and 173 and 174, to be paid by, or deducted from, a mandated iwi organisation:
  - (i) the means for determining the appropriate estimated value for the purpose of section 172(1):
  - (j) the information that must be supplied to Te Ohu Kai Moana Trustee Limited to establish compliance with the requirements of this Part, the form of that information, and the time within which it must be supplied.
- (3) The matters that are provided for in the rules made under subsection (1) may apply to—
- (a) a named mandated iwi organisation, all mandated iwi organisations, or mandated iwi organisations of a category specified in the notice; and
  - (b) specified settlement quota, all settlement quota, or settlement quota of a category specified in the notice.

## **Part 5**

### **Dispute resolution**

#### **177 Outline of this Part**

This Part provides a process for the resolution of disputes over specified decisions, including—

- (a) a requirement that those decisions be notified to the parties involved; and
- (b) the application of an extended jurisdiction for the Maori Land Court.

#### **178 Purpose of this Part**

- (1) The purpose of this Part is—

- (a) to impose a general obligation on all persons making decisions specified in section 180(1) to give notice of the decision in accordance with section 179; and
- (b) to provide for an independent and transparent process for the resolution of disputes arising in relation to the specified decisions; and
- (c) to provide for certain matters relevant to disputed decisions.

### Subpart 1—Procedure for resolution of disputes

#### **179 Notification of specified decisions**

- (1) A person who makes a decision specified in section 180(1) must notify the parties in writing of—
  - (a) the nature of the decision that has been made; and
  - (b) if requested by a party, the principal reasons for the decision.
- (2) Subsection (1)(b) applies only to the extent that it is not inconsistent with any other enactment or rule of law.
- (3) Notification required by subsection (1) may be made by publication in the *Gazette* or in another publication that the decision maker considers appropriate.

#### *Application of Part*

#### **180 Application of this Part to specified decisions**

- (1) This Part applies to disputes that arise between or among the specified parties over—
  - (a) the classification of quota by Te Ohu Kai Moana Trustee Limited under section 7, between Te Ohu Kai Moana Trustee Limited and 1 or more mandated iwi organisations;
  - (b) a determination of a coastline entitlement by Te Ohu Kai Moana Trustee Limited under section 11, between or among Te Ohu Kai Moana Trustee Limited and 1 or more mandated iwi organisations;
  - (c) the division of disputed coastline that is the subject of a written agreement provided to Te Ohu Kai Moana Trustee Limited in support of an interim coastline claim made under clause 4 of Schedule 6 and for which a coastline entitlement has been determined, between or among Te Ohu Kai Moana Trustee Limited and the parties to that agreement;
  - (d) whether an organisation seeking recognition or claiming continued recognition as a mandated iwi organisation meets the criteria in section 14, between Te Ohu Kai Moana Trustee Limited and 1 or more mandated iwi organisations;

- (e) which of 2 or more organisations claiming to be qualified as the mandated iwi organisation for an iwi is to be recognised by Te Ohu Kai Moana Trustee Limited under section 13(1), between Te Ohu Kai Moana Trustee Limited and 1 or more mandated iwi organisations:
- (f) a proposal by Te Ohu Kai Moana Trustee Limited to make or amend a rule under section 25, between Te Ohu Kai Moana Trustee Limited and an affected mandated iwi organisation:
- (g) whether a recognised iwi organisation has failed to comply with section 28(2), between Te Ohu Kai Moana Trustee Limited and that recognised iwi organisation:
- (h) whether a mandated iwi organisation has remedied a breach of the conditions on which assistance was given to it by Te Ohu Kai Moana Trustee Limited under section 34(i) or (j), between Te Ohu Kai Moana Trustee Limited and the mandated iwi organisation to which the conditions applied:
- (i) compliance with the requirements for calling or conducting meetings under clause 1 or clause 7 of Schedule 8, between—
  - (i) 1 or more mandated iwi organisations; or
  - (ii) 1 or more representative Maori organisations; or
  - (iii) any combination of those organisations; or
  - (iv) a person who has been removed from Te Kawai Taumata and a mandated iwi organisation or a representative Maori organisation:
- (j) a decision by Te Ohu Kai Moana Trustee Limited under section 135(1) or (2), between a relevant mandated iwi organisation and Te Ohu Kai Moana Trustee Limited:
- (k) harbour quota to be allocated to an iwi under section 143, between—
  - (i) mandated iwi organisations; or
  - (ii) Te Ohu Kai Moana Trustee Limited and 1 or more mandated iwi organisations:
- (l) freshwater quota to be allocated to an iwi under section 148, between—
  - (i) mandated iwi organisations; or
  - (ii) Te Ohu Kai Moana Trustee Limited and 1 or more mandated iwi organisations:
- (m) an allegation made by an adult member of an iwi that, in relation to a matter addressed in this Act, a decision, act, or omission of the mandated iwi organisation of that person's iwi is contrary to—
  - (i) this Act; or
  - (ii) the constitutional documents or policies of the mandated iwi organisation.

- (2) In this section, **relevant**, in relation to a mandated iwi organisation, means the organisation to which the decision relates directly, but does not include a third party to that decision.

### **181 Resolution of disputes**

- (1) If a dispute arises in relation to a specified decision referred to in section 180(1) and the parties are unable, within a reasonable time, to resolve the dispute, they must, acting in good faith,—
- (a) endeavour to agree on a process for resolving the dispute, including (but not limited to) all or any of the following:
    - (i) further negotiations;
    - (ii) mediation;
    - (iii) determination of the dispute by an independent expert; and
  - (b) before proceeding to take any other action under this Part, engage in the process agreed under paragraph (a).
- (2) Unless Te Ohu Kai Moana Trustee Limited is a party to the dispute, a party may refer the dispute to Te Ohu Kai Moana Trustee Limited for determination if—
- (a) the parties cannot agree on a dispute resolution process under subsection (1)(a); or
  - (b) the timetable for the dispute resolution process is not being complied with; or
  - (c) the dispute resolution process does not resolve the dispute.

### **182 Reference to Maori Land Court**

- (1) This section applies if—
- (a) Te Ohu Kai Moana Trustee Limited is one of the parties to a dispute referred to in section 180(1); or
  - (b) resolution is unable to be reached under section 181.
- (2) A party to a dispute may, except in a dispute over a decision referred to in section 180(1)(g), refer the dispute to the Maori Land Court under section 26B of Te Ture Whenua Maori Act 1993 to obtain—
- (a) advice on an appropriate dispute resolution process for the purposes of section 181(1);
  - (b) a non-binding ruling on a question of fact or law to assist in the conduct of the dispute resolution process.
- (3) The Maori Land Court may make a determination under section 26C of Te Ture Whenua Maori Act 1993 if, on a reference to it under subsection (2), it is of the view that the parties have taken reasonable steps to resolve a dispute resolution process provided for under section 181(1).



- (4) If Te Ohu Kai Moana Trustee Limited declines to determine a dispute under section 181(2), it must refer it to the Maori Land Court for determination under section 26C of Te Ture Whenua Maori Act 1993.
- (5) A party to a dispute that has been referred to Te Ohu Kai Moana Trustee Limited under section 181(2) may subsequently refer to the Maori Land Court, for determination under section 26C of Te Ture Whenua Maori Act 1993,—
  - (a) the decision of Te Ohu Kai Moana Trustee Limited:
  - (b) the dispute, if Te Ohu Kai Moana Trustee Limited does not make a determination within a reasonable time.

### **183 Effect of reference or application etc to Maori Land Court**

- (1) This section applies to—
  - (a) a dispute that may be referred to the Maori Land Court under section 182:
  - (b) an application by Te Ohu Kai Moana Trustee Limited under section 185(1):
  - (c) an action taken by Te Ohu Kai Moana Trustee Limited in reliance on section 186:
  - (d) an application made under section 187:
  - (e) an order made by a Judge under section 26M of Te Ture Whenua Maori Act 1993.
- (2) Until a matter referred to in subsection (1)(a) to (d) has been determined under section 26C of Te Ture Whenua Maori Act 1993 and all rights of appeal for that matter have been exercised in full, a person who is a party to the matter or order must not—
  - (a) apply for review under the Judicial Review Procedure Act 2016; or
  - (b) commence proceedings for a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction in relation to that decision.
- (3) Until all rights of appeal in relation to an order referred to in subsection (1)(e) have been exercised in full, a person who is a party to the matter which is the subject of the order must not—
  - (a) apply for review under the Judicial Review Procedure Act 2016; or
  - (b) commence proceedings for a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction in relation to that decision.

Section 183(2)(a): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

Section 183(3)(a): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

## Subpart 2—Other matters relevant to disputed decisions

### **184 Implementation of decision**

- (1) A specified decision referred to in section 180(1) may be implemented by the decision maker before the expiry of the period of time referred to in subsection (2), but only to the extent that its implementation does not deprive a party that disputes the decision of the benefit of, or any remedy available under, the dispute resolution process set out in this Part.
- (2) A decision may be fully enforced if no party has commenced the dispute resolution process within 30 working days after receiving notification of the decision under section 179.
- (3) If, within that 30-working day period, all parties notified of a decision under section 180 advise the decision maker that they do not wish to invoke the dispute resolution process, that waiver is binding on the parties.

### **185 Powers of Te Ohu Kai Moana Trustee Limited in relation to mandated iwi organisations**

- (1) Whether or not the processes in sections 181 and 182 have been followed by the parties that dispute a decision referred to in section 180(1)(d) or (e), Te Ohu Kai Moana Trustee Limited may apply to the Maori Land Court under section 26C of Te Ture Whenua Maori Act 1993 for an order denying or suspending recognition of a mandated iwi organisation on the ground that—
  - (a) it fails to meet 1 or more of the criteria set out in section 14; or
  - (b) it is not making reasonable efforts to meet the requirements to enable it to qualify to receive settlement assets under section 130.
- (2) An application referred to in subsection (1) must explain fully why, in the opinion of Te Ohu Kai Moana Trustee Limited, the mandated iwi organisation has failed to meet 1 or more of the relevant criteria.

### **186 Other powers not limited**

Despite sections 181 and 182, Te Ohu Kai Moana Trustee Limited may take any action against a mandated iwi organisation for a breach of any condition of assistance given under section 34(i) and (j).

### **187 Dispute resolution in relation to reorganisation of specified mandated iwi organisations**

- (1) If a dispute arises in relation to the matters provided for by or under section 20, a party to the dispute may apply to the Maori Land Court under section 26C(d) of Te Ture Whenua Maori Act 1993 for a determination by order in accordance with that Act.
- (2) An application made to the Maori Land Court in reliance on this section must, at the same time, be notified to every affected party.

## Part 6

### Transitional and miscellaneous provisions, repeal, and amendments

#### 188 Outline of this Part

This Part sets out transitional provisions relating to—

- (a) the transfer of the existing undertaking of the Treaty of Waitangi Fisheries Commission to Te Ohu Kai Moana Trustee Limited; and
- (b) the saving of various existing agreements and exemptions; and
- (c) the payment of any taxation refunded in respect of the Treaty of Waitangi Fisheries Commission or any of its companies; and
- (d) the position of the employees and agents of the Treaty of Waitangi Fisheries Commission in the transfer; and
- (e) the application of the Inland Revenue Acts and other enactments and the protection of specified names; and
- (f) the repeal of the Maori Fisheries Act 1989, and consequential amendments.

#### 189 Interpretation

- (1) In this Part, unless the context otherwise requires,—

**existing undertaking** includes all assets, whether in the form of quota shares, interests, rights, or liabilities, that, immediately before the appointed day, are owned, controlled, or held by—

- (a) the Treaty of Waitangi Fisheries Commission; or
- (b) any company or other commercial entity, to the extent that it is owned or controlled by the Treaty of Waitangi Fisheries Commission

**liabilities** includes liabilities, debts, charges, duties, and obligations of the Treaty of Waitangi Fisheries Commission (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere).

### Subpart 1—Transitional provisions

#### *Powers, savings, and validations*

#### 190 Powers of Treaty of Waitangi Fisheries Commission

In the period between the commencement of this Act and the appointed day, the Treaty of Waitangi Fisheries Commission has the powers, functions, duties, rights, responsibilities, liabilities, and exemptions of Te Ohu Kai Moana Trustee Limited.

**191 Agreements for sale of annual catch entitlements**

- (1) If the Treaty of Waitangi Fisheries Commission has, before the commencement of this Act, entered into agreements with iwi for the sale of annual catch entitlements, those sales may be completed in accordance with the agreements, even if they do not comply with section 152(1), (2), (3), or (5).
- (2) However, the Treaty of Waitangi Fisheries Commission must comply with section 152(4).

**192 Certain exemptions saved**

A consent to an exemption granted to the Treaty of Waitangi Fisheries Commission under section 28W of the Fisheries Act 1983 or under section 60 of the Fisheries Act 1996 must be treated as if the consent had been granted to Aotearoa Fisheries Limited.

**193 Validation of certain decisions, etc**

- (1) A decision, action, recommendation, appointment, undertaking, or transaction made, taken, or entered into in good faith and with reasonable care by a person or body, and during the periods referred to in subsection (2), is as valid as if it had been made, taken, or entered into under this Act.
- (2) Subsection (1) applies to a decision, action, recommendation, appointment, undertaking, or transaction made, taken, or entered into—
  - (a) by—
    - (i) the Minister of Maori Affairs in appointing directors under section 45:
    - (ii) the Treaty of Waitangi Fisheries Commission or a member of that Commission:
    - (iii) an employee or agent of that Commission:
  - (b) between either—
    - (i) 1 January 2003 and the commencement of this Act; or
    - (ii) the commencement of this Act and the appointed day.

*Transfer from Treaty of Waitangi Fisheries Commission***194 Treaty of Waitangi Fisheries Commission dissolved and existing undertaking vested**

- (1) On and from the appointed day,—
  - (a) the Treaty of Waitangi Fisheries Commission is dissolved; and
  - (b) the term of office of every member of that Commission expires; and
  - (c) the existing undertaking of that Commission vests in Te Ohu Kai Moana Trustee Limited, except to the extent that it is already vested in Aotearoa Fisheries Limited or its subcompanies, as contemplated by section 75(2).

- (2) A member of the Treaty of Waitangi Fisheries Commission is not entitled to compensation as a result of the expiry under this section of his or her term of office.

**195 Payment of taxation refunds (if any)**

- (1) This section applies if, after the appointed day, the Commissioner of Inland Revenue grants a refund in respect of taxation paid at any time before the appointed day by the Treaty of Waitangi Fisheries Commission or any company or subsidiary of a company owned by that Commission.
- (2) The Commissioner of Inland Revenue must pay the full amount of the assessed refund (if any), together with any interest payable under Part 7 of the Tax Administration Act 1994, to Te Ohu Kai Moana Trustee Limited.
- (3) The monies (if any) paid to Te Ohu Kai Moana Trustee Limited under subsection (2)—
- (a) must not be reported in the audited financial statements of Aotearoa Fisheries Limited, or of any company or subsidiary referred to in subsection (1); and
  - (b) to avoid doubt, do not form part of the consolidated group net profit after tax of the consolidated group for the purpose of section 76(2); but
  - (c) must be reported in the audited financial statements of Te Ohu Kai Moana Trustee Limited.

**196 Classification of quota shares allocated to Treaty of Waitangi Fisheries Commission**

Te Ohu Kai Moana Trustee Limited must, not later than 6 months after the appointed day,—

- (a) determine the appropriate classification, in accordance with sections 8 and 9, for quota shares allocated to the Treaty of Waitangi Fisheries Commission under section 44 of the Fisheries Act 1996—
- (i) at any time before the commencement of this Act, and not included in Schedule 1;
  - (ii) between the commencement of this Act and the appointed day; and
- (b) publish in the *Gazette*—
- (i) the classification of the stock; and
  - (ii) whether harbour quota applies to that stock; and
  - (iii) the quantity, if any, of each harbour quota for the stock.

*Final report***197 Final report of Treaty of Waitangi Fisheries Commission**

- (1) Not later than 6 months after the appointed day, Te Ohu Kai Moana Trustee Limited must prepare a statement of the financial position and other statements of accounts necessary to show fully the financial position of the Treaty of Waitangi Fisheries Commission and the financial results of its operations for the period beginning on 1 October 2003 and ending with the close of the day immediately before the appointed day.
- (2) As soon as is reasonably practicable after the completion of the obligation referred to in subsection (1), Te Ohu Kai Moana Trustee Limited must provide the final report to the Minister of Maori Affairs.
- (3) The Minister of Maori Affairs must present the final report to the House of Representatives as soon as is reasonably practicable after receiving it from Te Ohu Kai Moana Trustee Limited.
- (4) In this section, **final report** means—
  - (a) the statement of financial position of the Treaty of Waitangi Fisheries Commission and other information referred to in subsection (1); and
  - (b) an audit report prepared by the Auditor-General on the statement referred to in paragraph (a).

**198 References in instruments**

- (1) A reference (express or implied) to the Treaty of Waitangi Fisheries Commission in an enactment (other than in this Act), or in an instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the appointed day, must be read as a reference to Te Ohu Kai Moana Trustee Limited.
- (2) A reference (express or implied) to an officer of the Treaty of Waitangi Fisheries Commission in an enactment, or in an instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the appointed day, must be read as a reference to—
  - (a) the corresponding employee of Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited; or
  - (b) if there is no corresponding employee, an employee of Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited designated by Te Ohu Kai Moana Trustee Limited.
- (3) This section is subject to section 214.

**199 Status of contracts and other instruments**

- (1) In subsection (2), **contracts and other instruments** means contracts, agreements, conveyances, deeds, leases, licences, other instruments, undertakings, notices, and any binding rulings made under Part 5A of the Tax Administration

Act 1994 (whether in writing or not), entered into by, made with, given to or by, or addressed to the Treaty of Waitangi Fisheries Commission (whether alone or with another person) before the appointed day and having effect immediately before the appointed day.

- (2) Contracts and other instruments are binding on, and enforceable by, against, or in favour of, Te Ohu Kai Moana Trustee Limited and have effect for the purposes of the Inland Revenue Acts as if Te Ohu Kai Moana Trustee Limited and not the Treaty of Waitangi Fisheries Commission had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

#### **200 Status of existing securities**

- (1) A security held by the Treaty of Waitangi Fisheries Commission as security for a debt or other liability to that Commission incurred before the appointed day—
  - (a) is available to Te Ohu Kai Moana Trustee Limited as security for the discharge of that debt or liability; and
  - (b) if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to Te Ohu Kai Moana Trustee Limited incurred on or after the appointed day.
- (2) Te Ohu Kai Moana Trustee Limited is entitled to the same rights and priorities, and is subject to the same liabilities, in relation to the security as the Treaty of Waitangi Fisheries Commission would be if this Act had not been passed.

#### **201 Continuation of proceedings**

- (1) An action, arbitration, proceeding, or cause of action that was pending or existing by, against, or in favour of the Treaty of Waitangi Fisheries Commission, or to which that Commission was a party, before the appointed day may be continued and enforced by against, or in favour of Te Ohu Kai Moana Trustee Limited.
- (2) It is not necessary to amend a pleading, writ, or other document to continue the action, arbitration, proceeding, or other cause of action.

#### **202 Matters not affected by transfer to Te Ohu Kai Moana Trustee Limited**

Nothing effected or authorised by this Act—

- (a) places the Treaty of Waitangi Fisheries Commission, Te Ohu Kai Moana Trustee Limited, or any other person in breach of a contract or confidence, or breach of trust, or makes any of them guilty of a civil wrong; or
- (b) entitles a person to terminate, cancel, or amend a contract or arrangement, or to accelerate the performance of an obligation, or to impose a penalty or increased charge; or

- (c) places the Treaty of Waitangi Fisheries Commission, Te Ohu Kai Moana Trustee Limited, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of an asset, right, or liability or the disclosure of information; or
- (d) releases a surety in whole or in part from an obligation; or
- (e) invalidates or discharges a contract.

### 203 Books and documents to remain evidence

- (1) A document, matter, or thing that would have been admissible in evidence for or against the Treaty of Waitangi Fisheries Commission is, on and after the appointed day, admissible in evidence for or against Te Ohu Kai Moana Trustee Limited.
- (2) For the purpose of this section, **document** has the meaning given to it in section 4 of the Evidence Act 2006.

Section 203(2): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

### 204 Registers

- (1) The Registrar General of Land, Commercial Fisheries Services Limited, or any other person charged with keeping books or registers is not required to change the name of the Treaty of Waitangi Fisheries Commission to Te Ohu Kai Moana Trustee Limited in the books or registers, or in a document, solely because of the provisions of this Act.
- (2) If Te Ohu Kai Moana Trustee Limited presents an instrument referred to in subsection (3) to a registrar or other person, the presentation of that instrument is, in the absence of evidence to the contrary, sufficient proof that the property is vested in Te Ohu Kai Moana Trustee Limited on behalf of Te Ohu Kai Moana, as specified in the instrument.
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must—
  - (a) be executed or purport to be executed by Te Ohu Kai Moana Trustee Limited; and
  - (b) relate to an existing undertaking held, managed, or controlled by the Treaty of Waitangi Fisheries Commission immediately before the appointed day; and
  - (c) be accompanied by a certificate by Te Ohu Kai Moana Trustee Limited that the property was vested in Te Ohu Kai Moana Trustee Limited under this Act.



## Subpart 2—Employees and agents

### 205 Interpretation

In this subpart,—

**transferred employee** means a person employed by the Treaty of Waitangi Fisheries Commission immediately before the appointed day who becomes an employee of Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited on the appointed day

**Treaty of Waitangi Fisheries Commission** includes Aotearoa Fisheries Limited, the company referred to in section 12 of the Maori Fisheries Act 1989.

### 206 Liability of employees and agents

- (1) A person who, at any time before the appointed day, held office as a member of the Treaty of Waitangi Fisheries Commission or who was an officer, employee, agent, or representative of that Commission, is not personally liable in respect of an act or thing done or omitted to be done by him or her before the appointed day in the exercise or bona fide purported exercise of an authority conferred by or under the Maori Fisheries Act 1989, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or any other enactment.
- (2) This section applies only—
  - (a) in the absence of actual fraud; and
  - (b) if the act or omission does not amount to an offence under any enactment or rule of law.

### 207 Transfer of existing employees

On the appointed day, each employee of the Treaty of Waitangi Fisheries Commission becomes an employee of Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited, as determined by the Treaty of Waitangi Fisheries Commission.

### 208 Terms and conditions of employment of transferred employees

- (1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before the appointed day.
- (2) Subsection (1)—
  - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited, as the case may be; and
  - (b) does not apply to a transferred employee who receives a subsequent appointment with Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited.

**209 Continuity of employment**

For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of a transferred employee, the transfer of the employee from the Treaty of Waitangi Fisheries Commission to Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited, as the case may be, does not, of itself, break the employment of that person, or the period of his or her employment by the Treaty of Waitangi Fisheries Commission as having been a period of service with Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited, as the case may be.

**210 No compensation for technical redundancy**

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that—

- (a) the position held by the employee with the Treaty of Waitangi Fisheries Commission has ceased to exist; or
- (b) the employee has ceased, as a result of his or her transfer to Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited, to be an employee of the Treaty of Waitangi Fisheries Commission.

**Subpart 3—Miscellaneous provisions****211 Application of Inland Revenue Acts and other enactments**

- (1) For the purposes of the Inland Revenue Acts, binding rulings under those Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy or other charge, the Treaty of Waitangi Fisheries Commission and Te Ohu Kai Moana Trustee Limited are the same person.
- (2) For the purposes of the Inland Revenue Acts, Te Ohu Kai Moana Trustee Limited must be treated as having held, at all times since the interests were acquired by the Treaty of Waitangi Fisheries Commission, the voting interests and market value interests that they receive from that Commission under this Act.

**212 Protection of names**

- (1) No person may be incorporated or registered under any enactment or in any other manner using any of the following names:
  - (a) Te Ohu Kai Moana; or
  - (b) Te Kawai Taumata; or
  - (c) Te Putea Whakatupu Trust; or
  - (d) Te Wai Maori Trust.
- (2) No person, other than the person to whom the name applies, either alone or with another person, may operate or carry on business or activities—
  - (a) under a name specified in subsection (1); or

- (b) under any other name, knowing that the name so resembles a specified name as to be likely to mislead a person.
- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$1,000.
- (4) It is a defence in any prosecution for an offence against subsection (3) if the defendant proves that, either alone or with any other person or persons, the defendant has carried on business continuously under the name to which the prosecution relates from any date before the commencement of this Act.

Section 212(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### Subpart 4—Repeal and consequential amendments

##### **213 Enactment repealed**

The Maori Fisheries Act 1989 (1989 No 159) is repealed on and from the appointed day.

##### **214 Amendments to other enactments**

On and from the appointed day, the enactments specified in Schedule 9 are amended in the manner indicated in that schedule.

## Schedule 1 Quota shares

ss 5, 34, 146

### Part 1 Quota shares allocated to Treaty of Waitangi Fisheries Commission under section 40 of the Maori Fisheries Act 1989

Quota management stock code	Description	Number of quota shares to be allocated under Part 3	Shortfall in value of quota shares (\$)
BAR1	IN	9 154 221	128,860
BAR4	IN*	9 988 235	201
BAR5	IN	10 000 000	nil
BAR7	IN	9 778 523	21,479
BCO1	IN	9 709 368	380
BCO2	IN	10 000 000	nil
BCO3	IN	6 267 975	84,758
BCO4	IN*	9 481 931	26,062
BCO5	IN	9 900 993	13,505
BCO7	IN	10 000 000	nil
BCO8	IN	10 000 000	nil
BNS1	IN	8 612 700	287,865
BNS2	IN	8 680 520	48,800
BNS3	DW	6 760 168	359,621
BNS7	DW	10 000 000	nil
BNS8	DW	7 500 000	12,115
BYX1	IN	10 000 000	nil
BYX2	IN	10 000 000	nil
BYX3	DW	10 000 000	nil
BYX7	DW	6 708 074	5,639
BYX8	DW	10 000 000	nil
CRA1	IN	9 303 231	173,508
CRA2	IN	10 000 000	nil
CRA3	IN	10 000 000	nil
CRA4	IN	10 000 000	nil
CRA5	IN	10 000 000	nil
CRA6	IN*	10 000 000	nil
CRA7	IN	10 000 000	nil
CRA8	IN	10 000 000	nil
CRA9	IN	10 000 000	nil
ELE1	IN	10 000 000	nil

<b>Quota management stock code</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>	<b>Shortfall in value of quota shares (\$)</b>
ELE2	IN	10 000 000	nil
ELE3	IN	9 014 095	68,177
ELE5	IN	10 000 000	nil
ELE7	IN	10 000 000	nil
FLA1	IN	9 947 865	2,144
FLA2	IN	10 000 000	nil
FLA3	IN	10 000 000	nil
FLA7	IN	9 975 407	722
GMU1	IN	9 833 593	5,255
GMU2	IN	10 000 000	nil
GMU3	IN	10 000 000	nil
GMU7	IN	10 000 000	nil
GUR1	IN	10 000 000	nil
GUR2	IN	9 999 145	nil
GUR3	IN	10 000 000	nil
GUR7	IN	9 957 921	1,146
GUR8	IN	10 000 000	nil
HAK1	DW	9 812 104	35,467
HAK4	DW†	10 000 000	nil
HAK7	DW	10 000 000	nil
HOK1	DW	10 000 000	nil
HPB1	IN	7 695 508	185,302
HPB2	IN	9 906 085	5,036
HPB3	IN	9 756 192	10,784
HPB4	IN†	10 000 000	nil
HPB5	IN	9 986 705	480
HPB7	IN	10 000 000	nil
HPB8	IN	9 997 503	nil
JDO1	IN	10 000 000	nil
JDO2	IN	10 000 000	nil
JDO3	IN	10 000 000	nil
JDO7	IN	10 000 000	nil
JMA7	DW	9 999 919	nil
LIN1	IN	9 800 907	3,162
LIN2	IN	10 000 000	nil
LIN3	IN	9 624 660	91,377
LIN4	DW†	10 000 000	nil
LIN5	DW	8 849 370	208,971
LIN6	DW†	10 000 000	nil

<b>Quota management stock code</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>	<b>Shortfall in value of quota shares (\$)</b>
LIN7	DW	7 662 577	515,887
MOK1	IN	9 935 296	1,359
MOK3	IN	8 347 091	5,940
MOK4	IN*	9 529 436	346
MOK5	IN	9 690 100	245
OEO1	DW	10 000 000	nil
OEO3A	DW	10 000 000	nil
OEO4	DW†	10 000 000	nil
OEO6	DW†	10 000 000	nil
ORH1	DW	10 000 000	nil
ORH2A	DW	10 000 000	nil
ORH2B	DW	10 000 000	nil
ORH3A	DW	10 000 000	nil
ORH3B	DW	8 096 630	2,750,865
ORH7A	DW	10 000 000	nil
ORH7B	DW	10 000 000	nil
PAU1	IN	9 948 187	nil
PAU2	IN	8 243 390	675,362
PAU3	IN	7 356 874	532,730
PAU4	IN*	9 199 401	549,003
PAU5A	IN	10 000 000	nil
PAU5B	IN	10 000 000	nil
PAU5D	IN	10 000 000	nil
PAU6	IN	10 000 000	nil
PAU7	IN	10 000 000	nil
PHC1	IN	10 000 000	nil
RCO1	IN	7 377 282	2,218
RCO2	IN	9 999 640	nil
RCO3	IN	9 995 723	1,252
RCO7	IN	9 997 841	134
SCH1	IN	9 776 953	17,139
SCH2	IN	10 000 000	nil
SCH3	IN	8 775 780	nil
SCH4	IN*	10 000 000	nil
SCH5	IN	9 712 027	19,339
SCH7	IN	8 812 748	nil
SCH8	IN	9 876 709	nil
SKI1	IN	9 999 348	nil
SKI2	IN	9 991 507	214

<b>Quota management stock code</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>	<b>Shortfall in value of quota shares (\$)</b>
SKI3	IN	9 986 884	nil
SKI7	IN	10 000 000	nil
SNA1	IN	9 934 489	131,360
SNA2	IN	8 829 327	62,026
SNA3	IN	9 758 514	nil
SNA7	IN	9 017 500	23,586
SNA8	IN	8 465 133	740,949
SPO1	IN	9 932 318	3,903
SPO2	IN	9 574 340	nil
SPO3	IN	7 926 166	167,993
SPO7	IN	9 421 999	23,455
SPO8	IN	9 721 290	8,035
SQU1J	IN	10 000 000	nil
SQU1T	DW	9 999 982	nil
SQU6T	DW†	10 000 000	nil
STA1	IN	10 000 000	nil
STA2	IN	4 352 632	5,198
STA3	IN	10 000 000	nil
STA4	IN*	9 332 654	12,960
STA5	IN	10 000 000	nil
STA7	IN	10 000 000	nil
STA8	IN	10 000 000	nil
SWA1	DW	9 625 469	28,930
SWA3	DW	9 197 787	103,471
SWA4	DW	9 999 998	nil
TAR1	IN	9 894 046	18,795
TAR2	IN	9 865 861	nil
TAR3	IN	9 593 345	nil
TAR4	IN*	10 000 000	nil
TAR5	IN	10 000 000	nil
TAR7	IN	9 987 230	743
TAR8	IN	10 000 000	nil
TRE1	IN	9 996 105	276
TRE2	IN	9 997 388	nil
TRE3	IN	7 314 815	1,044
TRE7	IN	9 999 754	nil
WAR1	IN	10 000 000	nil
WAR2	IN	9 994 202	128
WAR3	IN	10 000 000	nil

<b>Quota management stock code</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>	<b>Shortfall in value of quota shares (\$)</b>
WAR7	IN	9 999 795	nil
WAR8	IN	9 999 141	nil
Total		1 444 584 253	8,185,701

\* For allocation of this inshore quota see sections 144 and 145.

† For allocation of this deepwater quota see sections 144 and 145.

Where fewer than 10 000 000 shares are shown for any quota management stock, see section 149. Where the amount shown in column 4 is nil, that is because the value is less than \$100.

Schedule 1 Part 1 BNS2: amended, on 13 December 2006, by section 7(1)(a) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 1 SCH3: amended, on 13 December 2006, by section 7(1)(b) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 1 SCH7: amended, on 13 December 2006, by section 7(1)(c) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 1 SCH8: amended, on 13 December 2006, by section 7(1)(d) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 1 SPO2: amended, on 13 December 2006, by section 7(1)(e) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 1 TAR2: amended, on 13 December 2006, by section 7(1)(f) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 1 TAR3: amended, on 13 December 2006, by section 7(1)(g) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

## Part 2

### Quota shares allocated to Treaty of Waitangi Fisheries Commission under section 44 of the Fisheries Act 1996

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
ANC1	IN	20 000 000
ANC2	IN	20 000 000
ANC3	IN	20 000 000
ANC4	IN*	20 000 000
ANC7	IN	20 000 000
ANC8	IN	20 000 000
ANG11	FW	20 000 000
ANG12	FW	20 000 000
ANG13	FW	20 000 000
ANG14	FW	20 000 000
ANG15	FW	20 000 000
ANG16	FW	20 000 000



<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
BUT1	IN	20 000 000
BUT2	IN	20 000 000
BUT3	IN	20 000 000
BUT4	IN*	20 000 000
BUT5	IN	20 000 000
BUT6	DW†	20 000 000
BUT7	IN	20 000 000
BYA1	IN	20 000 000
BYA2	IN	20 000 000
BYA3	IN	20 000 000
BYA4	IN*	20 000 000
BYA5	IN	20 000 000
BYA7	IN	20 000 000
BYA8	IN	20 000 000
BYA9	IN	20 000 000
CDL1	DW	20 000 000
CDL2	DW	20 000 000
CDL3	DW	20 000 000
CDL4	DW†	20 000 000
CDL5	DW	20 000 000
CDL6	DW	20 000 000
CDL7	DW	20 000 000
CDL8	DW	20 000 000
CDL9	DW	20 000 000
CHC1	DW	20 000 000
CHC2	DW	20 000 000
CHC3	DW	20 000 000
CHC4	DW†	20 000 000
CHC5	DW†	20 000 000
CHC6	DW	20 000 000
CHC7	DW	20 000 000
CHC8	DW	20 000 000
CHC9	DW	20 000 000
COC1A	IN	20 000 000
COC3	IN	20 000 000
COC7A	IN	20 000 000
COC7B	IN	20 000 000
DAN1	IN	20 000 000
DAN2	IN	20 000 000
DAN3	IN	20 000 000
DAN4	IN*	20 000 000

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
DAN5	IN	20 000 000
DAN7	IN	20 000 000
DAN8	IN	20 000 000
DAN9	IN	20 000 000
DSU1	IN	20 000 000
DSU2	IN	20 000 000
DSU3	IN	20 000 000
DSU4	IN*	20 000 000
DSU5	IN	20 000 000
DSU7	IN	20 000 000
DSU8	IN	20 000 000
DSU9	IN	20 000 000
EMA1	IN	20 000 000
EMA2	IN	20 000 000
EMA3	IN	20 000 000
EMA7	IN	20 000 000
FRO1	DW	20 000 000
FRO2	DW	20 000 000
FRO3	DW	20 000 000
FRO4	DW†	20 000 000
FRO5	DW	20 000 000
FRO6	DW†	20 000 000
FRO7	DW	20 000 000
FRO8	DW	20 000 000
FRO9	DW	20 000 000
GAR1	IN	20 000 000
GAR2	IN	20 000 000
GAR3	IN	20 000 000
GAR4	IN*	20 000 000
GAR7	IN	20 000 000
GAR8	IN	20 000 000
GSC1	IN	20 000 000
GSC3	IN	20 000 000
GSC5	IN	20 000 000
GSC6A	DW†	20 000 000
GSC6B	DW†	20 000 000
GSH1	IN	20 000 000
GSH2	IN	20 000 000
GSH3	IN	20 000 000
GSH4	DW†	20 000 000
GSH5	DW	20 000 000

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
GSH6	DW†	20 000 000
GSH7	DW	20 000 000
GSH8	DW	20 000 000
GSH9	DW	20 000 000
GSP1	DW	20 000 000
GSP5	DW	20 000 000
GSP7	DW	20 000 000
HOR1	IN	20 000 000
HOR2	IN	20 000 000
HOR3	IN	20 000 000
HOR4	IN*	20 000 000
HOR5	IN	20 000 000
HOR6	DW†	20 000 000
HOR7	IN	20 000 000
HOR8	IN	20 000 000
HOR9	IN	20 000 000
JMA1	IN	19 999 098
JMA3	DW	19 999 978
KIC1	DW	20 000 000
KIC2	DW	20 000 000
KIC3	DW	20 000 000
KIC4	DW†	20 000 000
KIC5	DW	20 000 000
KIC6	DW†	20 000 000
KIC7	DW	20 000 000
KIC8	DW	20 000 000
KIC9	DW	20 000 000
KIN1	IN	20 000 000
KIN2	IN	20 000 000
KIN3	IN	20 000 000
KIN4	IN*	20 000 000
KIN7	IN	20 000 000
KIN8	IN	20 000 000
LEA1	IN	20 000 000
LEA2	IN	20 000 000
LEA3	IN	20 000 000
LEA4	IN*	20 000 000
LFE17	FW	20 000 000
MDI1	IN	20 000 000
MDI2	IN	20 000 000
MDI3	IN	20 000 000

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
MDI4	IN*	20 000 000
MDI5	IN	20 000 000
MDI7	IN	20 000 000
MDI8	IN	20 000 000
MDI9	IN	20 000 000
MMI1	IN	20 000 000
MMI2	IN	20 000 000
MMI3	IN	20 000 000
MMI4	IN*	20 000 000
MMI5	IN	20 000 000
MMI7	IN	20 000 000
MMI8	IN	20 000 000
MMI9	IN	20 000 000
OYS7	IN	20 000 000
OYU5	IN	20 000 000
PAD1	IN	20 000 000
PAD2	IN	20 000 000
PAD3	IN	20 000 000
PAD4	IN*	20 000 000
PAD5	IN	20 000 000
PAD6	IN*	20 000 000
PAD7	IN	20 000 000
PAD8	IN	20 000 000
PAD9	IN	20 000 000
PDO1	IN	20 000 000
PDO2	IN	20 000 000
PDO3	IN	20 000 000
PDO4	IN*	20 000 000
PDO5	IN	20 000 000
PDO7	IN	20 000 000
PDO8	IN	20 000 000
PDO9	IN	20 000 000
PIL1	IN	20 000 000
PIL2	IN	20 000 000
PIL3	IN	20 000 000
PIL4	IN*	20 000 000
PIL7	IN	20 000 000
PIL8	IN	20 000 000
QSC3	IN	20 000 000
RBY1	IN	20 000 000
RBY2	IN	20 000 000

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
RBY3	IN	20 000 000
RBY4	IN*	20 000 000
RBY5	IN	20 000 000
RBY6	DW†	20 000 000
RBY7	IN	20 000 000
RBY8	IN	20 000 000
RBY9	IN	20 000 000
RIB1	DW	20 000 000
RIB2	DW	20 000 000
RIB3	DW	20 000 000
RIB4	DW†	20 000 000
RIB5	DW	20 000 000
RIB6	DW†	20 000 000
RIB7	DW	20 000 000
RIB8	DW	20 000 000
RIB9	DW	20 000 000
RSK1	IN	20 000 000
RSK3	IN	20 000 000
RSK7	IN	20 000 000
RSK8	IN	20 000 000
SAE1	IN	20 000 000
SAE2	IN	20 000 000
SAE3	IN	20 000 000
SAE4	IN*	20 000 000
SAE5	IN	20 000 000
SAE7	IN	20 000 000
SAE8	IN	20 000 000
SAE9	IN	20 000 000
SBW1	DW	20 000 000
SBW6A	DW†	20 000 000
SBW6B	DW†	20 000 000
SBW6I	DW†	20 000 000
SBW6R	DW†	20 000 000
SCA1	IN	20 000 000
SCA4	IN	20 000 000
SCACS	IN	20 000 000
SCC1A	IN	20 000 000
SCC1B	IN	20 000 000
SCC2A	IN	20 000 000
SCC2B	IN	20 000 000
SCC3	IN	20 000 000

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
SCC4	IN*	20 000 000
SCC5A	IN	20 000 000
SCC5B	IN	20 000 000
SCC6	DW†	20 000 000
SCC7A	IN	20 000 000
SCC7B	IN	20 000 000
SCC7D	IN	20 000 000
SCC8	IN	20 000 000
SCC9	IN	20 000 000
SFE17	FW	20 000 000
SPE1	IN	20 000 000
SPE2	IN	20 000 000
SPE3	IN	20 000 000
SPE4	DW†	20 000 000
SPE5	DW	20 000 000
SPE6	DW†	20 000 000
SPE7	DW	20 000 000
SPE8	DW	20 000 000
SPE9	DW	20 000 000
SPR1	IN	20 000 000
SPR3	IN	20 000 000
SPR4	IN*	20 000 000
SPR7	IN	20 000 000
SSK1	DW	20 000 000
SSK3	DW	20 000 000
SSK7	DW	20 000 000
SSK8	DW	20 000 000
SUR1A	IN	20 000 000
SUR1B	IN	20 000 000
SUR2A	IN	20 000 000
SUR2B	IN	20 000 000
SUR3	IN	20 000 000
SUR4	IN*	20 000 000
SUR5	IN	20 000 000
SUR7A	IN	20 000 000
SUR7B	IN	20 000 000
SUR8	IN	20 000 000
SUR9	IN	20 000 000
TRU1	IN	20 000 000
TRU2	IN	20 000 000
TRU3	IN	20 000 000

<b>Quota management stock</b>	<b>Description</b>	<b>Number of quota shares to be allocated under Part 3</b>
TRU4	IN*	20 000 000
TRU5	IN	20 000 000
TRU6	DW†	20 000 000
TRU7	IN	20 000 000
TRU8	IN	20 000 000
TRU9	IN	20 000 000
WWA1	DW	20 000 000
WWA2	DW	20 000 000
WWA3	DW	20 000 000
WWA4	DW†	20 000 000
WWA5	DW	20 000 000
WWA6	DW†	20 000 000
WWA7	DW	20 000 000
WWA8	DW	20 000 000
WWA9	DW	20 000 000
YEM1	IN	20 000 000
YEM2	IN	20 000 000
YEM3	IN	20 000 000
YEM4	IN*	20 000 000
YEM5	IN	20 000 000
YEM6	DW†	20 000 000
YEM7	IN	20 000 000
YEM8	IN	20 000 000
YEM9	IN	20 000 000
Total		5 639 999 076

\* For the allocation of this inshore quota see sections 144 and 145.

† For the allocation of this deepwater quota see sections 144 and 145.

Schedule 1 Part 2 CHC1: amended, on 13 December 2006, by section 7(2)(a) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC2: amended, on 13 December 2006, by section 7(2)(b) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC3: amended, on 13 December 2006, by section 7(2)(c) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC4: amended, on 13 December 2006, by section 7(2)(d) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC5: amended, on 13 December 2006, by section 7(2)(e) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC6: amended, on 13 December 2006, by section 7(2)(f) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC7: amended, on 13 December 2006, by section 7(2)(g) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC8: amended, on 13 December 2006, by section 7(2)(h) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

Schedule 1 Part 2 CHC9: amended, on 13 December 2006, by section 7(2)(i) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

### Part 3

#### Quota shares referred to in section 146

Quota management stock	Quota shares
ANC10	20 000 000
BAR10	10 000 000
BCO10	10 000 000
BNS10	10 000 000
BUT10	20 000 000
BYX10	10 000 000
CDL10	20 000 000
CHC10	20 000 000
CRA10	10 000 000
ELE10	10 000 000
EMA10	20 000 000
FLA10	10 000 000
FRO10	20 000 000
GAR10	20 000 000
GMU10	10 000 000
GSC10	20 000 000
GSH10	20 000 000
GUR10	10 000 000
HAK10	10 000 000
HOK10	10 000 000
HOR10	20 000 000
HPB10	10 000 000
JDO10	10 000 000
KIC10	20 000 000
KIN10	20 000 000
JMA10	10 000 000
LEA10	20 000 000
LIN10	10 000 000
MOK10	10 000 000
OEO10	10 000 000
ORH10	10 000 000
PAD10	20 000 000
PAU10	10 000 000
PIL10	20 000 000



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<b>Quota management stock</b>	<b>Quota shares</b>
RBY10	20 000 000
RCO10	10 000 000
RIB10	20 000 000
RSK10	20 000 000
SCC10	20 000 000
SCH10	10 000 000
SKI10	10 000 000
SNA10	10 000 000
SPE10	20 000 000
SPO10	10 000 000
SPR10	20 000 000
SQU10T	10 000 000
SSK10	20 000 000
STA10	10 000 000
SUR10	20 000 000
SWA10	10 000 000
TAR10	10 000 000
TRE10	10 000 000
TRU10	20 000 000
WAR10	10 000 000
WWA10	20 000 000
YEM10	20 000 000
Total	840 000 000

## Schedule 2

### Harbours and harbour quota

ss 5, 7, 8, 143(1), (2)

#### Part 1

#### Harbours and harbour entrance points

Harbours	Entrance	Longitude	Latitude
<i>North Island</i>			
Parengarenga	North	172°59.355'	34°31.343'
	South	172°59.417'	34°31.846'
Houhora	North	173°09.348'	34°49.544'
	South	173°09.264'	34°49.641'
Rangaunu	North	173°15.772'	34°53.061'
	South	173°17.153'	34°51.843'
Mangonui	North	173°31.480'	34°58.927'
	South	173°31.680'	34°58.798'
Whangaroa	North	173°45.418'	35°0.127'
	South	173°46.011'	35°0.413'
Upper Bay of Islands—Te Puna Inlet	North	174°04.088'	35°11.740'
	South	174°04.244'	35°12.779'
Upper Bay of Islands—Waikare Inlet	North	174°04.665'	35°14.709'
	South	174°06.704'	35°15.135'
Whangaruru	North	174°22.531'	35°22.755'
	South	174°22.167'	35°24.886'
Whangarei	North	174°31.791'	35°51.841'
	South	174°30.057'	35°50.585'
Mangawhai	North	174°27.790'	35°53.984'
	South	174°27.674'	35°54.479'
Whitianga	North	175°44.852'	36°47.563'
	South	175°46.086'	36°49.305'
Tairua	North	175°52.061'	37°0.413'
	South	175°51.798'	37°0.527'
Tauranga—Katikati entrance	North	175°59.492'	37°28.002'
	South	175°59.745'	37°28.455'
Tauranga—Mt Maunganui entrance	North	176°09.646'	37°38.252'
	South	176°10.086'	37°38.246'
Ohiwa	North	177°08.751'	37°59.276'
	South	177°09.629'	37°59.377'
Aotea and Kawhia—Kawhia	North	174°46.862'	38°05.191'
	South	174°46.460'	38°05.391'
Aotea and Kawhia—Aotea	North	174°47.829'	38°01.084'

<b>Harbours</b>	<b>Entrance</b>	<b>Longitude</b>	<b>Latitude</b>
	South	174°47.981'	38°01.189'
Raglan	North	174°50.465'	37°48.089'
	South	174°50.497'	37°48.318'
Port Waikato	North	174°42.540'	37°22.049'
	South	174°42.312'	37°22.460'
Manukau	North	174°31.848'	37°02.052'
	South	174°32.507'	37°02.950'
Kaipara	North	174°09.438'	36°23.270'
	South	174°11.705'	36°25.989'
Hokianga	North	173°21.416'	35°31.511'
	South	173°21.822'	36°32.553'
<i>Marlborough Sounds</i>			
Croisilles Harbour	North	173°40.262'	41°02.322'
	South	173°35.629'	41°03.211'
Pelorus Sound	North (Clay Point)	174°01.398'	40°54.737'
	South (Alligator Head)	174°09.531'	40°58.180'
Queen Charlotte Sound (northern entrance)	North (Cape Jackson)	174°18.896'	40°59.742'
	South (Cape Koamaru)	174°22.957'	41°05.389'
Queen Charlotte South (East and West Head entrance)	North (East Head)	174°19.358'	41°12.748'
	South (West Head)	174°18.913'	41°12.918'

**Part 2**  
**Harbour quota (expressed as quota shares)**

Fishstocks	FLA1	FLA7	GMU1	GURI	RCO7	SCH1	SCH7	SNA1	SNA7	SNA8	SPO1	SPO7	TRE1	TRE7
<i>Harbours</i>														
Parengatenga	34 000		50 000					2 000					40 000	
Houhora	8 000		20 000										20 000	
Rangauu	34 000		50 000					2 000					30 000	
Mangonui	34 000		60 000					2 000					26 000	
Whangaroa	34 000												13 000	
Upper Bay of Islands	17 000		50 000					4 000						
Whangaruru	17 000		20 000					4 000					13 000	
Whangarei	168 000		300 000			75 000		22 000		64 000			467 000	
Mangawhai	16 000		30 000					4 000					3 000	
Whitianga														
Tairua														
Tauranga	51 000		2 000					27 000					467 000	
Ohwa													30 000	
Aotea and Kawhia	24 000		50 000							4 000				13 000
Raglan	24 000		50 000							4 000				13 000
Port Waikato	16 000		700 000											13 000
Manukau	827 000		1 749 000	9 000		100				7 000	667 000		125 000	
Kaipara	1 238 000		2 446 700	15 000		430 000				3 900	459 300		124 100	
Hokianga	80 000		80 000			45 000				18 000	64 000		66 000	
Marlborough Sounds		96 000			16 000	94 000			250 000			90 000		

Fishstocks	BUTI	BUT7	COCIA	EMAI	EMA7	GARI	GAR7	JMA1	JMA7	LEA2	OYS7	PAD1	PAD7	SPE1	SPE7
<i>Harbours</i>															
Parengarenga				700				160						3 800	
Houhora				400				100						1 900	
Rangaunu				3 300				700						17 100	
Mangonui				700				200						3 800	
Whangaroa	400 000			2 000		2 200 000		600				333 800		7 400	
Upper Bay of Islands	300 000			1 500		1 649 100		400				250 000		5 200	
Whangaruru	60 000			300		274 500		100				41 900		1 000	
Whangarei	760 000		20 000 000	3 800		4 123 600		1 100				625 000		13 300	
Whitianga												57 400			
Tauranga				1 600		3 837 900		600				1 410 800			
Aotea/Kawhia					900										
Raglan									100						
Port Waikato									200						
Manukau									900						
Kaipara									100						
Marlborough Sounds		5 549 200							64 300	271 200	20 000 000	406 800			2 340 000

	SSK7	SSK8	SUR7A	YEM1	YEM7	YEM9
<b>Fishstocks</b>						
<i>Harbours</i>						
Parengarenga						
Houhora						
Rangaunu						
Mangonui				911 100		
Whangaroa				684 400		
Upper Bay of Islands				113 300		
Whangaruru				1 708 900		
Whangarei						
Whitianga						
Tauranga				4 522 500		
Aotea/Kawhia						1 017 300
Raglan						4 069 300
Port Waikato		17 164 000				11 072 000
Manukau		920 000				
Kaipara						
Marlborough Sounds	103 900		5 304 300		14 940 000	

### Schedule 3

#### Iwi (listed by groups of iwi) and notional iwi populations

ss 5, 10

Name of iwi and group	Notional iwi population	Percentage of total notional iwi population	Number of members required on register of iwi members to meet requirements of section 14(d)
<b>A TAITOKERAU</b>			
Ngati Whatua	13 113	1.931	3 000
Te Rarawa	11 998	1.767	2 800
Te Aupouri	8 168	1.203	2 100
Ngati Kahu	7 244	1.067	1 900
Ngati Kuri	4 841	0.713	1 400
Ngati Wai	4 115	0.606	1 300
Ngapuhi/Ngati Kahu ki Whaingaroa	2 040	0.300	800
Ngai Takoto	509	0.075	200
	<b>52 028</b>	<b>7.662</b>	
<b>B NGAPUHI</b>			
Ngapuhi	107 242	15.791	21 400
	<b>107 242</b>	<b>15.791</b>	
<b>C TAINUI</b>			
Waikato	46 526	6.851	9 300
Ngati Maniapoto	30 857	4.543	6 100
Iwi of Hauraki <sup>(1)</sup>	13 622	2.006	3 100
Ngati Raukawa (ki Waikato)	9 051	1.333	2 300
	<b>100 056</b>	<b>14.733</b>	
<b>D TE ARAWA WAKA</b>			
Te Arawa <sup>(2)</sup>	40 533	5.968	8 100
Ngati Tuwharetoa	34 226	5.040	6 800
	<b>74 759</b>	<b>11.008</b>	
<b>E MATAATUA</b>			
Tuhoe	29 726	4.377	5 900
Ngati Awa	13 252	1.951	3 000
Ngaiterangi	10 451	1.539	2 500
Whakatohea	10 107	1.488	2 500
Ngati Ranginui	6 631	0.976	1 700
Ngai Tai	2 266	0.334	900
Ngati Manawa	1 567	0.231	600
Ngati Pukenga	1 243	0.183	500
Ngati Whare	701	0.103	300
	<b>75 944</b>	<b>11.182</b>	

Name of iwi and group	Notional iwi population	Percentage of total notional iwi population	Number of members required on register of iwi members to meet requirements of section 14(d)
<b>F POROURANGI</b>			
Ngati Porou	63 613	9.367	12 700
Te Whanau a Apanui	10 113	1.489	2 500
	<b>73 726</b>	<b>10.856</b>	
<b>G TAKITIMU</b>			
Ngati Kahungunu	53 478	7.874	10 600
Te Aitanga a Mahaki	4 501	0.663	1 400
Rongowhakaata	3 728	0.549	1 300
Ngai Tamanuhiri	1 207	0.178	500
	<b>62 914</b>	<b>9.264</b>	
<b>H HAUAURU</b>			
Te Atiawa (Taranaki)	14 147	2.083	3 200
Te Atihaunui a Paparangi	9 780	1.440	2 400
Taranaki	6 001	0.884	1 600
Ngati Ruanui	5 675	0.836	1 500
Rangitane (North Island)	3 321	0.489	1 200
Nga Rauru	3 285	0.484	1 200
Nga Ruahine	3 276	0.482	1 200
Ngati Apa (North Island)	2 461	0.362	900
Muaupoko	1 901	0.280	800
Ngati Mutunga (Taranaki)	1 652	0.243	700
Ngati Tama (Taranaki)	1 201	0.177	500
Ngati Hauti	1 039	0.153	400
Ngati Maru (Taranaki)	907	0.134	400
	<b>54 646</b>	<b>8.047</b>	
<b>I TE MOANA O RAUKAWA</b>			
Ngati Raukawa (ki te Tonga)	19 698	2.900	3 900
Ngati Toa Rangatira	5 202	0.766	1 500
Te Atiawa (Wellington)	1 761	0.259	760
Te Atiawa (Te Tau Ihu)	1 965	0.289	800
Ngati Kuia	1 266	0.186	500
Rangitane (Te Tau Ihu)	1 258	0.185	500
Ngati Koata	885	0.130	400
Ngati Rarua	805	0.119	400
Ngati Apa ki te Waipounamu	649	0.096	300
Ngati Tama (Te Tau Ihu)	628	0.092	300
Atiawa ki Whakarongotai	493	0.073	200
	<b>34 610</b>	<b>5.095</b>	



Name of iwi and group	Notional iwi population	Percentage of total notional iwi population	Number of members required on register of iwi members to meet requirements of section 14(d)
<b>J WAIPOUNAMU/REKOHU</b>			
Ngai Tahu	41 496	6.110	8 200
Ngati Mutunga (Chathams)	1 132	0.167	500
Moriori	601	0.088	300
	<b>43 229</b>	<b>6.365</b>	
<b>Total notional iwi population</b>	<b>679 154</b>		

**Notes—Iwi of Hauraki and Te Arawa**

- (1) The iwi of Hauraki, whose notional population is set out in column 2 of this schedule, must be treated as one iwi for the purposes of Part 3.

The iwi of Hauraki are:

Ngati Hako  
 Ngati Hei  
 Ngati Maru  
 Ngati Paoa  
 Patukirikiri  
 Ngati Porou ki Harataunga, ki Mataroa  
 Ngati Pukenga ki Waiau  
 Ngati Rahiri Tumutumu  
 Ngai Tai  
 Ngati Tamatera  
 Ngati Tara Tokanui  
 Ngati Whanaunga.

- (2) The iwi of Te Arawa, whose notional population is set out in column 2 of this schedule, must be treated as one iwi for the purposes of Part 3.

The iwi of Te Arawa are:

Ngati Makino  
 Ngati Pikiao  
 Ngati Rangiteaorere  
 Ngati Rangitahi  
 Ngati Rangiwewehi  
 Ngati Tahu/Ngati Whaoa

Tapuika

Tarawhai

Tuhourangi

Te Ure o Uenuku-Kopako/Ngati Whakaue

Waitaha.

**Schedule 4**  
**Organisations that are recognised iwi organisations (as at the  
commencement of this Act)**

ss 5, 27

<b>Name of iwi and group</b>	<b>Organisation</b>
<b>A TAITOKERAU</b>	
Ngati Whatua	Te Runanga o Ngati Whatua
Te Rarawa	Te Runanga o Te Rarawa
Ngati Kahu	Te Runanga-a-iwi o Ngati Kahu
Ngati Kuri	Ngatikuri Trust Board Incorporated
Ngati Wai	Ngati Wai Trust Board
Ngapuhi/Ngati Kahu ki Whaingaroa	Te Runanga o Whaingaroa
Ngai Takoto	RONAN Trust
<b>B NGAPUHI</b>	
Ngapuhi	Te Runanga a Iwi o Ngapuhi
<b>C TAINUI</b>	
Waikato	Waikato Raupatu Lands Trust
Ngati Maniapoto	Maniapoto Maori Trust Board
Iwi of Hauraki	Hauraki Maori Trust Board
Ngati Raukawa (ki Waikato)	Raukawa Trust Board
<b>D TE ARAWA WAKA</b>	
Te Arawa (ten iwi)	Te Kotahitanga o Te Arawa Waka Fisheries Trust Board
Ngati Tuwharetoa	Ngati Tuwharetoa Marine Fisheries Committee
<b>E MATAATUA</b>	
Tuhoe	Tuhoe-Waikaremoana Maori Trust Board
Ngati Awa	Te Runanga o Ngati Awa
Ngaiterangi	Ngaiterangi Iwi Society Incorporated
Whakatohea	Whakatohea Maori Trust Board
Ngati Ranginui	Ngati Ranginui Iwi Society Incorporated
Ngai Tai	Ngaitai Iwi Authority
Ngati Manawa	Te Runanga o Ngati Manawa
Ngati Pukenga	Ngati Pukenga Iwi ki Tauranga Society Incorporated
Ngati Whare	Te Runanga o Ngati Whare Iwi Trust
<b>F POROURANGI</b>	
Ngati Porou	Te Runanga o Ngati Porou
Te Whanau a Apanui	Te Runanga o Te Whanau
<b>G TAKITIMU</b>	
Ngati Kahungunu	Ngati Kahungunu Iwi Incorporated
Te Aitanga a Mahaki	Te Aitanga a Mahaki Trust

<b>Name of iwi and group</b>	<b>Organisation</b>
Rongowhakaata	Rongowhakaata Charitable Trust
Ngai Tamanuhiri	Ngai Tamanuhiri Whanui Charitable Trust
<b>H HAUAURU</b>	
Te Atiawa (Taranaki)	Te Atiawa Iwi Authority Incorporated
Te Atihaunui a Paparangi	Whanganui River Maori Trust Board
Taranaki	Te Runanga o Taranaki Iwi Incorporated
Ngati Ruanui	Te Runanga o Ngati Ruanui Trust
Rangitane (North Island)	Te Runanganui o Rangitane Incorporated
Nga Rauru	Nga Rauru Iwi Authority Society Incorporated
Nga Ruahine	Nga Ruahine Iwi Authority
Ngati Apa (North Island)	Te Runanga o Ngati Apa Society Incorporated
Muaupoko	Muaupoko Tribal Authority Incorporated
Ngati Mutunga (Taranaki)	Ngati Mutunga Iwi Authority Incorporated
Ngati Tama (Taranaki)	Te Runanga o Ngati Tama
Ngati Hauti	Te Runanga o Ngati Hauti
Ngati Maru (Taranaki)	Ngati Maru Pukehou Trust
<b>I TE MOANA O RAUKAWA</b>	
Ngati Raukawa (ki te Tonga)	Te Runanga o Raukawa Incorporated
Ngati Toa Rangatira	Te Runanga o Toa Rangatira Incorporated
Te Atiawa (Te Tau Ihu)	Te Atiawa Manawhenua ki te Tau Ihu Trust
Ngati Kuia	Te Runanga o Ngati Kuia Charitable Trust
Rangitane (Te Tau Ihu)	Te Runanga a Rangitane o Wairau Incorporated
Ngati Koata	Ngati Koata No Rangitoto ki te Tonga Trust
Ngati Rarua	Ngati Rarua Iwi Trust
Ngati Apa ki te Waipounamu	Ngati Apa ki te Ra To Incorporated
Ngati Tama (Te Tau Ihu)	Ngati Tama Manawhenua ki te Tau Ihu Trust
Atiawa ki Whakarongotai	Te Runanga o Ati Awa ki Whakarongotai Incorporated
<b>J WAIPOUNAMU/REKOHU</b>	
Ngai Tahu	Te Runanga o Ngai Tahu
Moriiori	Hokotehi Moriiori Trust

## **Schedule 5**

### **Representative Maori organisations**

ss 5, 29

Federation of Maori Authorities  
Manukau Urban Maori Authority  
Maori Women's Welfare League  
New Zealand Maori Council  
Te Runanga o Nga Maata Waka Incorporated  
Te Runanganui o te Upoko o Te Ika Association Incorporated  
Te Whanau O Waipareira Trust.

## Schedule 6

### Methodology for determination of coastline entitlements

s 11(1), (2)

#### 1 Overview of methodology and status of examples

- (1) The methodology by which the coastline entitlements of iwi must be determined in respect of quota management stocks comprises—
  - (a) the process set out in clauses 2 to 11 which must be followed in making determinations under section 11; and
  - (b) a geographic information system computation model, described in clauses 12 to 14, that is based on—
    - (i) a specified map database of the coastline of New Zealand; and
    - (ii) specified decision rules; and
    - (iii) matters relevant to creating and maintaining the computation model.
- (2) An example used in this schedule is only illustrative of the provision to which it relates, and does not limit the provision.
- (3) If an example and the provision to which it relates are inconsistent, the provision prevails.

### Part 1

#### Determination of coastline entitlements

##### *Process for making coastline claim*

#### 2 Interpretation

In this Part,—

**affected iwi** means, in relation to a coastline claim for a particular quota management stock, an iwi whose mandated iwi organisation has made, or is likely to make, coastline claims that abut, overlap, or are contained within, the specified points used in the coastline claims of the claimant iwi for that stock

**coastal boundary point** means any point on the mean high-water mark whose co-ordinates are defined under the Fisheries Act 1996

**coastal endpoint** means a point on the mean high-water mark that is defined in the description of a quota management area under the Fisheries Act 1996

**harbour entrance point** means a point on the mean high-water mark on either the northern or southern entrance of the harbour, the co-ordinates of which are listed in Part 1 of Schedule 2

**specified point** means a point on the coastline that complies with clause 3(2)(b).

### 3 Method of making coastline claim

- (1) To enable Te Ohu Kai Moana Trustee Limited to make a determination of the coastline entitlements of an iwi as required by section 11, the mandated iwi organisation of that iwi must submit to Te Ohu Kai Moana Trustee Limited—
  - (a) a coastline claim for each quota management stock included in Schedule 1 for which the iwi is entitled to receive an allocation based on coastline under sections 140 to 142; and
  - (b) coastline claims for each stock for which harbour quota is listed in Part 2 of Schedule 2 and for which the iwi is entitled to receive an allocation under section 143.
- (2) A coastline claim for each stock must identify—
  - (a) the quota management stock; and
  - (b) 2 specified points on the coastline, each of which must be—
    - (i) a coastal boundary point; or
    - (ii) a harbour entrance point; or
    - (iii) a point on the mean high-water mark with co-ordinates certified by a registered cadastral surveyor; and
  - (c) a percentage representing the proportion of the coastline between the 2 specified points that the mandated iwi organisation is claiming for that stock; and
  - (d) all affected iwi for that claim.
- (3) A coastline claim submitted under this clause may—
  - (a) contain all, or only some, of the coastline claims necessary to enable Te Ohu Kai Moana Trustee Limited to determine all the coastline entitlements for the mandated iwi organisation, as required by section 130(3)(b):
  - (b) be an interim coastline claim as provided for in clause 4 or a supplementary coastline claim as provided for in clause 5.

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#### Example relating to clause 3

Either of the points may be a point on the mean high-water mark taken from the description of the relevant quota management area boundary for the stock, as set out in Part 3 of Schedule 1 of the Fisheries Act 1996 or otherwise defined under that Act.

If the 2 specified points mark out the 2 extremities of a claimant's territory, the percentage claimed would be 100%.

If a mandated iwi organisation has agreed a percentage split with other mandated iwi organisations, they may set out the points marking out the whole area to which the agreement relates, and the percentage of that area assigned by agreement to the claimant iwi.

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#### 4 Interim coastline claims

- (1) If 2 mandated iwi organisations are unable to reach agreement to allow their coastline claims to be made under clause 3, but are able to agree in writing to the geographical extent of the coastline under dispute, each may submit an interim coastline claim based on the undisputed coastline.
- (2) An interim coastline claim must comply with the requirements of clause 3, except that it must exclude the area of coastline under dispute.
- (3) Following verification under clause 10, an interim coastline claim may be used to determine under clause 11 a coastline entitlement that is then registered as an interim coastline entitlement.
- (4) An interim coastline entitlement for a quota management stock satisfies the requirements of section 130(3)(b) for that stock.

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#### Example relating to clauses 4 and 5

##### *Interim and supplementary claims*

Iwi A and iwi B have overlapping claims to a section of coastline. They sign an agreement to exclude the coastline between points X and Y. They may then make interim coastline claims as provided for by clause 3(3)(b), which may allow them to qualify for allocation of settlement assets. The quota allocated on the basis of the coastline length between points X and Y must be held back by Te Ohu Kai Moana Trustee Limited until the dispute is resolved.

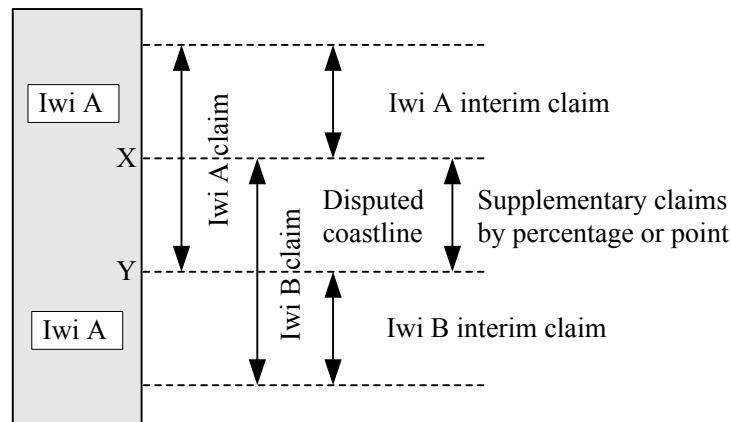
Following allocation on this basis, where iwi are unable to agree on a boundary point within the section of coastline between points X and Y, they may be able to agree on a percentage split for that section without nominating a boundary point. This is provided for in clause 3.

For example, iwi A and B may agree that, in order to finalise the allocation of settlement quota without conceding to the relevance of a particular point on the coast as a tribal boundary,—

- 40% of the quota to be allocated on the basis of the disputed coastline should go to iwi A; and
- 60% to iwi B.

Both iwi could then submit a supplementary coastline claim to Te Ohu Kai Moana Trustee Limited as provided for by clause 3(3)(b), nominating points X and Y as the specified points and the agreed percentage for their iwi (40% for iwi A and 60% for iwi B).





- (5) To avoid doubt, this clause does not apply to a claim for harbour quota.

Schedule 6 Part 1 clause 4(5): added, on 13 December 2006, by section 8(1) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

## 5 Supplementary coastline claims

- (1) If, after the registration of an interim coastline entitlement, a dispute referred to in clause 4(1) is resolved, the affected mandated iwi organisations may make supplementary coastline claims for relevant stocks within the coastline that was the subject of the dispute.
- (2) A supplementary coastline claim—
- must be made—
    - using the method set out in clause 3; and
    - solely in respect of the coastline previously in dispute; and
  - must not be submitted as an interim coastline claim for the coastline previously in dispute.

## 6 Endorsements required in support of claim

- (1) Any coastline claim submitted under clause 3 must be accompanied by endorsements from the mandated iwi organisation of each iwi that is an affected iwi in respect of the claim.
- (2) Endorsements may be presented in the form of either or both of the following:
- copies of signed multi-party mandated iwi organisation agreements that include the affected iwi;
  - signed written statements from the mandated iwi organisations of the affected iwi.
- (3) Agreements or statements presented under subclause (2) must set out—
- the stocks for which the iwi is an affected iwi for the purpose of the claims being made; and

- (b) for each stock, the agreement of the mandated iwi organisation of the affected iwi to the specified point or points in respect of which it is an affected iwi; and
  - (c) for each stock for which the mandated iwi organisation of the affected iwi has made or intends to make a coastline claim between the specified points identified for that stock by the claimant, the agreement of the mandated iwi organisation of the affected iwi to the percentage stated in the coastline claim; and
  - (d) in the case of an agreement supporting an interim coastline claim under clause 4, 2 specified points that define the disputed portion of coastline.
- (4) The co-ordinates of all specified points, except harbour entrance points or coastal boundary points, must be supported in a report from a registered cadastral surveyor.
- (5) If any part of a claim has been the subject of dispute resolution under clause 9, the documentation of that process may be used to support a claim instead of the endorsements referred to in subclause (1), but the documentation must clearly set out the information required under subclause (3).

## **7 Agreements**

Before a mandated iwi organisation submits a claim under clause 3 to Te Ohu Kai Moana Trustee Limited, it must take reasonable steps to reach agreements, in relation to the data required by clause 3(2), with every affected iwi as to the matters set out under clause 6(3)(a) to (c).

## **8 Registration of agreements**

- (1) A mandated iwi organisation may, at any time, request Te Ohu Kai Moana Trustee Limited to verify and subsequently place on the iwi register any agreement made by mandated iwi organisations relating to coastline claims to which it is a party.
- (2) If a request is made under subclause (1), Te Ohu Kai Moana Trustee Limited must attempt to verify the agreement by the procedures set out in clause 10.
- (3) If Te Ohu Kai Moana Trustee Limited is able to verify an agreement under subclause (2), it must record the details of the agreement on the iwi register.
- (4) The registration of an agreement under this clause binds the parties to the terms of the agreement for any coastline claims to which it is relevant, unless the agreement is withdrawn by written consent of all the parties.

## **9 Dispute resolution**

- (1) If a mandated iwi organisation is unable to reach an agreement required by clause 7, the dispute must be resolved in accordance with sections 181 and 182.
- (2) Once resolutions are reached under the dispute resolution process,—

- (a) the points and percentages settled in that process must be included in any relevant coastline claim submitted under clause 3(1); and
- (b) the signed documentation of the resolution of the dispute must be included with the endorsement of the claim required by clause 6(1).

*Process for verifying coastline claims and determining entitlements*

**10 Verification of coastline claim**

- (1) After receiving a coastline claim under clause 3, Te Ohu Kai Moana Trustee Limited must—
  - (a) attempt to verify that all the data required by clause 3 or clause 6(3)(d) has been supplied for each stock for which a claim is made; and
  - (b) attempt to verify that each specified point is—
    - (i) a coastal boundary point; or
    - (ii) a harbour entrance point; or
    - (iii) is shown as a co-ordinate that has been provided by, and is supported in a report from, a registered cadastral surveyor; and
  - (c) satisfy itself that,—
    - (i) for each stock for which a coastline claim is made, there are endorsements as required by clause 6(1); and
    - (ii) if a claim for a stock is for less than 100% of the coastline between the specified points, the total of the percentages of the coastline between the specified points assigned to the iwi in the agreement supporting that claim is 100%; and
    - (iii) if any part of a coastline claim has been the subject of a dispute resolution process in accordance with clause 9, there is appropriately authorised documentation of the outcome of the process to support the claim.
- (2) If Te Ohu Kai Moana Trustee Limited is not able to verify an aspect of a coastline claim, it must refer that matter back to the claimant.
- (3) A claimant may clarify the matter referred to it under subclause (2) and resubmit its coastline claim in respect of the affected quota management stocks.

**10A Determination of entitlements for harbour quota**

- (1) This clause applies when Te Ohu Kai Moana Trustee Limited, after receiving a coastline claim for harbour quota,—
  - (a) has verified the matters set out in clause 10(1)(a) and (b); and
  - (b) is satisfied as to the matters set out in clause 10(1)(c).
- (2) Te Ohu Kai Moana Trustee Limited must determine coastline entitlements for harbour quota by multiplying the percentage set out in the claim (as required

by clause 3(2)(c)) by the total number of harbour quota shares for the relevant stock and harbour.

- (3) For each harbour quota stock, the percentage set out in the claim and the number of shares resulting from the calculation made under subclause (2) together describe the coastline entitlement for the claimant iwi.

Schedule 6 Part 1 clause 10A: inserted, on 13 December 2006, by section 8(2) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

## **11 Determination of entitlements other than for harbour quota**

- (1) Before the determination of a coastline entitlement under this clause, Te Ohu Kai Moana Trustee Limited must determine the length of the relevant quota management area by applying the 2 coastal endpoints for the area as input to the computation model described in Part 2 of this schedule.
- (2) When Te Ohu Kai Moana Trustee Limited has verified the matters set out in clause 10(1)(a) and (b) and is satisfied of the matters set out in clause 10(1)(c), it must determine coastline entitlements as follows:
- (a) for each coastline claim, the data representing the 2 specified points must be applied as input to the computation model to produce output that represents the coastline length between the 2 points; and
  - (b) using the coastline length of the relevant quota management area determined under subclause (1), the percentage of the quota management area coastline represented by the result obtained from the calculation under paragraph (a) must be determined; and
  - (c) the result obtained from the determination under paragraph (b) must be multiplied by the percentage set out in the claim, as required by clause 3(2)(c); and
  - (d) the result obtained from the calculation under paragraph (c) must be multiplied by the total number of settlement quota shares to be allocated on the basis of coastline for the stock that is the subject of the claim.
- (3) For each stock, the results obtained from calculations made under subclause (2)(c) and (d) together describe the coastline entitlement for the claimant iwi.

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### **Examples for clause 11**

- If the stock is an inshore stock, the entitlement is a percentage of the total settlement quota for that stock, and the equivalent number of quota shares.
- If the stock is a deepwater stock, the entitlement is a percentage of the part of the settlement quota that is allocated on the basis of coastline (ie, 25% of the total settlement quota for the stock, and the equivalent number of quota shares).

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Schedule 6 Part 1 clause 11 heading: amended, on 13 December 2006, by section 8(3) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

### **11A Recalculation of entitlements**

- (1) Subsection (2) applies if—
  - (a) the number of shares for a stock available for distribution is reduced by the application of section 23(1) of the Fisheries Act 1996 as a result of accrued rights arising under section 28N of the Fisheries Act 1983; and
  - (b) an iwi entitlement to a stock has been calculated and registered under clause 10A or 11; but
  - (c) the quota shares have not been transferred to the iwi.
- (2) Te Ohu Kai Moana Trustee Limited must recalculate the number of shares of the entitlement and amend the register.

Schedule 6 Part 1 clause 11A: inserted, on 13 December 2006, by section 8(4) of the Maori Fisheries Amendment Act 2006 (2006 No 78).

## **Part 2 Computation model**

### **12 Requirement for computation model**

- (1) Before making the first calculation of coastline lengths to be used to determine coastline entitlements for the purposes of section 11, Te Ohu Kai Moana Trustee Limited must ensure that an appropriate computation model is created for the purpose of calculating coastline lengths between 2 specified coordinates on the mean high-water mark.
- (2) Te Ohu Kai Moana Trustee Limited must ensure that, after the first application under clause 11 of the computation model to produce results to be used to determine a coastline entitlement, there are no alterations to—
  - (a) the software, algorithms, or computer code of the model; or
  - (b) the specified baselines; or
  - (c) the specified decision rules; or
  - (d) the hardware platform for the model.
- (3) Subclause (2) does not exclude alterations to the model unless the alteration would mean that a recalculation of a coastline length, using the input data used for a completed determination under clause 11, would produce an output differing from the original result by more than 1%.
- (4) Te Ohu Kai Moana Trustee Limited must ensure that the records of all input data applied to, and output data derived from, the computation model for determining coastline entitlements are preserved for not less than 10 years.

### **13 Specified baselines**

- (1) The computation model used for determining coastline entitlements must use the following baselines:

- (a) the map database created for the purpose by Land Information New Zealand from the 1:50 000 topographical map series; and
  - (b) the coastal endpoints of each quota management area; and
  - (c) the harbour entrance points.
- (2) Coastlines must be defined along the line of the mean high-water mark.
- (3) For each quota management area, Te Ohu Kai Moana Trustee Limited must specify a date upon which the coastal endpoints referred to in subclause (1) are definitive, and any later change to the quota management area under the Fisheries Act 1996 has no effect for the purpose of determining coastline entitlements under this Act.

#### 14 Decision rules for computation model

The calculation of coastline lengths must be based on the following decision rules in relation to the specified geographical features:

##### *River mouth*

- (a) Rivers are cut off where the mean high-water mark meets the natural entrance points of the river, and the distance across the river mouth is included in the coastline length.

##### *Bays*

- (b) A bay is an indentation of the coast,—
- (i) the area of which is not less than the area of a semicircle with a diameter drawn across the mouth of the indentation; and
  - (ii) the length of the diameter referred to in subparagraph (i) is 10 km or less.
- (c) The straight line drawn across the mouth of a bay is substituted for the actual coastline of the bay in the calculation of coastline length.
- (d) The presence of islands at the mouth of, or within, an indentation does not affect the calculations necessary to determine whether an indentation is a bay.

##### *Offshore islands*

- (e) An offshore island is a naturally formed area of land that, at mean high-water tides, is—
- (i) surrounded by water; but
  - (ii) not submerged by water.
- (f) The coastlines of the following offshore islands must be counted as coastlines of the relevant quota management areas:
- (i) Stewart/Rakiura:
  - (ii) Great Barrier/Aotea:
  - (iii) Motiti.

- (g) The coastlines of other offshore islands must be counted as coastlines of the relevant quota management area if Te Ohu Kai Moana Trustee Limited is satisfied that 1 or more iwi have—
- (i) ahi kaaroa (both long-term and current habitation on the island); and
  - (ii) a traditional and separate fishery associated with the island; and
  - (iii) current occupation of the island, as shown by the presence of marae and other communal structures.

*Chatham Islands*

- (h) For the purpose of calculating the coastline in the Chatham zone, only the coastlines of the following islands are relevant:
- (i) Chatham Island; and
  - (ii) Pitt Island.

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

s 17

The kaupapa set out in this schedule—

- (a) must be provided for in the constitutional documents of every mandated iwi organisation; but
- (b) only apply for the purposes of this Act.

*Kaupapa of iwi representation*

**Kaupapa 1**

- (1) All adult members of an iwi must have the opportunity, at intervals not exceeding 3 years, to elect the directors, trustees, or officeholders, as the case may be, of the mandated iwi organisation of the iwi.
- (2) Elections for individual offices may be held at different times, and for different terms of office. However, no person elected to office may hold office for a period longer than 3 years without facing re-election.

**Kaupapa 2**

All adult members of an iwi—

- (a) have voting rights—
  - (i) in elections for the appointment of directors, trustees, or other officeholders of the mandated iwi organisation; and
  - (ii) on amendments to the constitutional documents of the mandated iwi organisation; and
  - (ia) on the recognition of a new mandated iwi organisation in place of the existing mandated iwi organisation; and
  - (iii) in relation to the disposal of income shares under section 70; and
  - (iv) in relation to the disposal of settlement quota under sections 159 and 162; and
- (b) may put forward proposals for constitutional change for the consideration of the directors, trustees, or other officeholders, as the case may be.

**Kaupapa 3**

- (1) A mandated iwi organisation must ensure that voting rights of iwi members are able to be exercised at appropriate times in an election of directors, trustees, or other officeholders, in accordance with the constitutional documents and policies of the mandated iwi organisation, but iwi members have no right to vote in respect of the appointment of the employees of a mandated iwi organisation.



- (2) If a mandated iwi organisation has electronic voting facilities, every adult member of the iwi has the right to vote by electronic means, but electronic voting must not be the only means by which a member may vote.

*Notification of meetings*

**Kaupapa 4**

- (1) A general meeting of a mandated iwi organisation must be notified by a public notice that must include—
- (a) the date and time of the meeting and its venue; and
  - (b) the agenda for the meeting; and
  - (c) where any relevant explanatory documents may be viewed or obtained; and
  - (d) any other information specified by or under this Act.
- (2) In the case of the general meeting of a mandated iwi organisation required by section 17(2) (which relates to ratification of the constitutional documents of the mandated iwi organisation), the meeting must be notified by both—
- (a) a public notice that gives—
    - (i) the information required under subclause (1); and
    - (ii) advice that a vote is to be taken to ratify the constitutional documents of the mandated iwi organisation; and
  - (b) a private notice, sent to every adult member on the register of iwi members, that gives—
    - (i) the information required for the public notice; and
    - (ii) a copy of the ballot paper for the vote to be taken at the meeting; and
    - (iii) advice as to the address to which, and the date by which, the completed ballot paper must be returned.
- (3) In the case of a general meeting of a mandated iwi organisation required by kaupapa 2 (which relates to elections), section 18 (which relates to changing a constitutional document), section 70 (which relates to the disposal of income shares), or by sections 159 or 162 (which relate to the conversion and disposal of settlement quota), the mandated iwi organisation—
- (a) must give a public notice that includes—
    - (i) the information required under subclause (1)(a); and
    - (ii) the matter or issues on which the vote is to be taken; and
  - (b) must give a private notice with the information required under subclause (2)(b) to any adult member of the iwi who,—

- (i) at the time of registering on the register of iwi members, made a written request to be sent a private notice and postal ballot papers for every meeting relating to 1 or more of the relevant provisions; or
  - (ii) whether or not on the register, makes a written request for a private notice in respect of a particular meeting.
- (4) However, in the case of a general meeting of a mandated iwi organisation required by section 18B(4) (which relates to recognition of a new organisation in place of the existing organisation), the meeting must be notified by both—
  - (a) a public notice that includes—
    - (i) the information required under subclause (1); and
    - (ii) advice that a vote is to be taken to approve the proposal to have the new organisation recognised in place of the existing organisation; and
    - (iii) if the new organisation seeks recognition by meeting the criteria in section 14, advice that a vote is to be taken to ratify the constitutional documents of the new organisation; and
  - (b) a private notice, sent to every adult member on the register of iwi members, that includes—
    - (i) the information required for the public notice; and
    - (ii) a copy of the ballot paper for the vote or votes to be taken at the meeting; and
    - (iii) advice as to the address to which, and the date by which, the completed ballot paper must be returned.

### *Iwi membership*

#### **Kaupapa 5**

Every mandated iwi organisation must—

- (a) have, and maintain in a current state, a register of iwi members—
  - (i) that includes the name, date of birth, and contact details of every member of the iwi who applies for registration; and
  - (ii) that is available for inspection by registered members of the iwi; and
- (b) provide for—
  - (i) adult members of the iwi to register themselves; and
  - (ii) other members to be registered by a parent or legal guardian; and
  - (iii) persons registering on the register of iwi members to be able to state whether they wish to receive a private notice for general meetings and postal ballot papers relating to the matters listed in subclause (3) of kaupapa 4; and

- (c) make ongoing efforts to register all iwi members.

### **Kaupapa 6**

- (1) The policy of a mandated iwi organisation relating to the rights of whangai or other persons who do not descend from a primary ancestor of the iwi must be—
- (a) determined in accordance with the tikanga of the iwi; and
  - (b) stated in the constitutional documents of the mandated iwi organisation
- (2) In this kaupapa, whangai refers to a person adopted by a member of an iwi in accordance with the tikanga of that iwi, but who does not descend from a primary ancestor of the iwi.

### *Accountability*

### **Kaupapa 7**

- (1) Every mandated iwi organisation is accountable for its performance to all the members of the iwi, including members not living within its territory, and therefore has reporting responsibilities in relation to—
- (a) its own performance; and
  - (b) the performance of—
    - (i) its asset-holding companies; and
    - (ii) any joint venture or other entity that conducts business using the settlement assets of the mandated iwi organisation.
- (2) Each year, each mandated iwi organisation must hold a general meeting at which it provides an opportunity for the members of the iwi to consider—
- (a) the annual report for the previous financial year, made available not less than 20 working days before the meeting, that reports against the objectives set out in the annual plan for the previous year, including—
    - (i) information on the steps taken by the mandated iwi organisation to increase the number of registered members; and
    - (ii) a comparison of its performance against the objectives set out in the annual plan, including—
      - (A) changes in shareholder or member value; and
      - (B) dividend performance or profit distribution; and
    - (iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets; and
    - (iv) a report giving information of the sales and exchanges of settlement quota in the previous year, including—

- (A) the quantity of settlement quota held by the asset-holding company of the mandated iwi organisation in that year; and
  - (B) the value of settlement quota sold or exchanged; and
  - (C) the identity of the purchaser or other party to the exchange; and
  - (D) any transaction with settlement quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and
  - (E) the settlement quota interests that have been registered against the quota shares of the mandated iwi organisation; and
  - (F) the value of income shares sold, exchanged, or acquired; and
- (v) a report on the interactions of the mandated iwi organisation in fisheries matters—
- (A) with other entities within the iwi; and
  - (B) with other mandated iwi organisations; and
  - (C) with Te Ohu Kai Moana Trustee Limited; and
- (vi) any changes made under section 18 to the constitutional documents of the mandated iwi organisation or those of its asset-holding companies or any subsidiaries of the asset-holding companies; and
- (b) an annual plan for the next financial year, that must include—
- (i) the objectives of the annual plan; and
  - (ii) the policy of the mandated iwi organisation in respect of sales and exchanges of settlement quota; and
  - (iii) any changes in that policy from the policy for the previous year; and
  - (iv) any proposal to change the constitutional documents of any fishing company owned by the mandated iwi organisation; and
- (c) in relation to every asset-holding company of a mandated iwi organisation or any subsidiary of an asset-holding company that receives settlement assets,—
- (i) an annual report on—
    - (A) the performance of that asset-holding company or any of its subsidiaries; and
    - (B) the investment of money of that asset-holding company or any of its subsidiaries; and
    - (C) the matters set out in paragraph (b) of kaupapa 11; and

- (ii) any proposal to change the constitutional documents of the asset-holding company or any of its subsidiaries.
- (3) Information referred to in this kaupapa must be made available in writing on request by any member of the iwi.

### **Kaupapa 8**

There must be a dispute resolution mechanism to deal with disputes between members of the iwi and the mandated iwi organisation relating to matters arising under this Act, including a means to deal with disputes raised by persons whose applications for registration are not accepted.

#### *Ownership of iwi fisheries assets*

### **Kaupapa 9**

- (1) If a mandated iwi organisation wishes to have its own fishing operation, utilising annual catch entitlement from its settlement quota to harvest, process, or market fish, or to be involved in a joint venture for those purposes, it must establish a fishing enterprise separate from, but responsible to, the mandated iwi organisation to undertake those operations.
- (2) An enterprise set up to undertake such operations must be a separate entity from the asset-holding company or subsidiary established by an asset-holding company to which any settlement quota or income shares of the iwi are transferred.

#### *Governance*

### **Kaupapa 10**

The elected directors, trustees, or officeholders, as the case may be, of a mandated iwi organisation must not comprise more than 40% of the total number of directors, trustees, or officeholders of an asset-holding company, a subsidiary established by an asset-holding company, or a fishing enterprise established in accordance with Kaupapa 9.

### **Kaupapa 11**

Every mandated iwi organisation must exercise strategic governance over—

- (a) its asset-holding companies, any subsidiary of an asset-holding company, and any fishing company or joint venture referred to in Kaupapa 9; and
- (b) the process to examine and approve annual plans that set out—
  - (i) the key strategies for the use and development of iwi fisheries assets;
  - (ii) the expected financial return on the assets;
  - (iii) any programme to—

- (A) manage the sale of annual catch entitlements derived from the settlement quota held by asset-holding companies or their subsidiaries:
- (B) reorganise the settlement quota held by asset-holding companies or their subsidiaries, as by buying and selling settlement quota in accordance with this Act.

Schedule 7 Kaupapa 2(a)(iia): inserted, on 16 September 2011, by section 9(1) of the Maori Fisheries Amendment Act 2011 (2011 No 74).

Schedule 7 Kaupapa 4(4): added, on 16 September 2011, by section 9(2) of the Maori Fisheries Amendment Act 2011 (2011 No 74).

## Schedule 8 Te Kawai Taumata

s 55

### Part 1 Procedures for appointments of members and alternate members of Te Kawai Taumata

#### *Appointments*

#### **1 Appointment of Te Kawai Taumata members**

- (1) This clause applies—
  - (a) to the initial appointments of members and alternate members under sections 55 and 57; and
  - (b) to subsequent appointments that must be made when—
    - (i) the term of office of a member or alternate member expires under clause 5; or
    - (ii) a member or alternate member is removed under clause 6; or
    - (iii) a member or alternate member dies or resigns.
- (2) In the case of the initial appointments referred to in subclause (1)(a), the mandated iwi organisation of the first iwi named in each group of iwi set out in Schedule 3 (except Group B—NGAPUHI) must—
  - (a) appoint a time and place to hold a meeting of the representatives of the mandated iwi organisations of every iwi in the group; and
  - (b) give not less than 10 working days' notice of the meeting to all mandated iwi organisations in the same group, or other period of notice previously agreed by them; and
  - (c) advise Te Ohu Kai Moana Trustee Limited of the name of the member and the alternate member appointed to Te Kawai Taumata by the mandated iwi organisations of that group of iwi.
- (3) In the case of a subsequent appointment referred to in subclause (1)(b), the requirements of subclause (2) apply only to the group of iwi that needs to make an appointment.
- (4) In the case of Group B—NGAPUHI, as set out in Schedule 3, the mandated iwi organisation must—
  - (a) appoint a time and place to hold a meeting of the directors, trustees, or office holders; and

- (b) give not less than 10 working days' notice of the meeting to all directors, trustees, or office holders, or any other period of notice previously agreed by them; and
  - (c) advise Te Ohu Kai Moana Trustee Limited of the name of the member and alternate member appointed to Te Kawai Taumata by the directors, trustees, or office holders of the mandated iwi organisation.
- (5) The first representative Maori organisation named in Schedule 5 must—
  - (a) appoint a time and place to hold a meeting of 1 representative from each representative Maori organisation; and
  - (b) give not less than 10 working days' notice of the meeting to every other representative Maori organisation, or other period of notice previously agreed by them; and
  - (c) advise Te Ohu Kai Moana Trustee Limited of the name of the member and the alternate member appointed to Te Kawai Taumata by the representative Maori organisations.
- (6) A notice given under subclause (2)(b) or subclause (4)(b) or subclause (5)(b) may be combined with a notice given under clause 7 or clause 8.

## **2 Purpose of meetings**

The only purpose and business of the meetings referred to in clause 1(2)(a), (4)(a), and (5)(a) is to appoint a member of Te Kawai Taumata, an alternate member, or both, unless clause 6 applies.

## **3 Voting to appoint or remove members or alternate members**

- (1) At meetings held for the purposes of clause 1 or clause 6,—
  - (a) each mandated iwi organisation has 1 vote:
  - (b) each representative Maori organisation has 1 vote:
  - (c) in the case of Ngapuhi, each director, trustee, or office holder of the mandated iwi organisation of Ngapuhi has 1 vote.
- (2) The votes cast on behalf of the iwi of Hauraki and the iwi of Te Arawa must, in each case, represent the majority view of the respective group.
- (3) If Ngati Hine or Rongomaiwahine withdraws from the mandated iwi organisation of Ngapuhi or Ngati Kahungunu, as the case may be, as provided for by section 20, the votes cast on behalf of Ngapuhi or Ngati Kahungunu must, in each case, take into account the view of the withdrawing iwi.
- (4) If a group of iwi listed in column 1 of Schedule 3 or the representative Maori organisations have not appointed their member and alternate member of Te Kawai Taumata by the date when the members and alternate members of Te Kawai Taumata must appoint directors under section 46(1), the appointed members or alternate members of Te Kawai Taumata must carry out their function of appointing directors without a member or alternate member appointed by the



relevant group of iwi or the representative Maori organisation, as the case may be.

- (5) A decision to appoint or remove a member or alternate member of Te Kawai Taumata must be based on the votes cast at the meeting, so long as not less than 75% of those entitled to vote are present.

#### **4 Vacancies or irregularities in appointment**

- (1) Despite a vacancy in the membership of Te Kawai Taumata, its appointed members or alternate members may perform their functions, provided there is a quorum.
- (2) The decisions of the members or alternate members of Te Kawai Taumata are not affected if a member's appointment, or that of an alternate member, is defective.

#### *Term of office*

#### **5 Term of office of members and alternate members**

- (1) A member of Te Kawai Taumata and an alternate member—
  - (a) is appointed for a term of office not exceeding 4 years; and
  - (b) is eligible for reappointment; but
  - (c) may not hold office for more than 2 consecutive terms.
- (2) Subject to clause 6, a member and alternate member continues in office until—
  - (a) he or she is reappointed; or
  - (b) his or her successor is appointed.
- (3) However, the term of office of an alternate member expires when the term of office of the relevant member expires.

#### *Removal of members*

#### **6 Removal of Te Kawai Taumata members**

- (1) A member or alternate member of Te Kawai Taumata may be removed from office without compensation at any time by a majority, as the case may be, of the mandated iwi organisations, the representative Maori organisations, or the directors, trustees, or office holders of the mandated iwi organisation of Ngapuhi entitled to appoint that member.
- (2) The procedures of clauses 7 to 9 apply to the removal of a member or alternate member from office.

#### **7 Procedure for removal of Te Kawai Taumata members by mandated iwi organisation**

- (1) A mandated iwi organisation entitled to participate in a meeting convened under clause 1(2) and (4) to appoint a member or alternate member of Te Ka-

wai Taumata may convene a meeting to decide whether that member or alternate member should be removed from office.

- (2) A mandated iwi organisation that convenes a meeting under subclause (1) must—
  - (a) appoint a time and place for the meeting; and
  - (b) give not less than 10 working days' notice of the meeting to all mandated iwi organisations in the same group of iwi, or another period of notice previously agreed by the parties; and
  - (c) give the member or alternate member concerned not less than 10 working days' notice of the meeting, its purpose, and a reasonable opportunity to be heard; and
  - (d) advise Te Ohu Kai Moana Trustee Limited of the outcome of the meeting held under subclause (1).
- (3) In the case of the mandated iwi organisation of Ngapuhi, the procedure set out in subclause (2) must be observed in relation to its directors, trustees, or office holders.

## **8 Procedure for removal of Te Kawai Taumata member by representative Maori organisation**

- (1) A representative Maori organisation entitled to participate in a meeting convened under clause 1(5) to appoint a member or alternate member of Te Kawai Taumata may convene a meeting to decide whether that member or alternate member should be removed from office.
- (2) A representative Maori organisation that convenes a meeting under subclause (1) must—
  - (a) appoint a time and place for the meeting; and
  - (b) give not less than 10 working days' notice of the meeting to every other representative Maori organisation, or another period of notice previously agreed by the parties; and
  - (c) give the member or alternate member concerned not less than 10 working days' notice of the meeting, its purpose, and a reasonable opportunity to be heard; and
  - (d) advise Te Ohu Kai Moana Trustee Limited of the outcome of the meeting referred to in subclause (1).

## **9 Meetings to remove members**

- (1) The only purposes of the meetings referred to in clauses 7 and 8 are—
  - (a) to remove a member or alternate member of Te Kawai Taumata; and
  - (b) to appoint a new member or alternate member.

- (2) Resolutions to remove and appoint members or alternate members must be voted on separately.

## **Part 2**

### **Procedure of Te Kawai Taumata**

#### **10 Procedure**

Except as otherwise provided in this Act, the members or alternate members of Te Kawai Taumata may regulate the procedures of Te Kawai Taumata.

#### *Chairperson and deputy chairperson of Te Kawai Taumata*

#### **11 Chairperson and deputy chairperson**

- (1) The members of Te Kawai Taumata must elect one member as the chairperson of Te Kawai Taumata, and another member as the deputy chairperson.
- (2) The chairperson of Te Kawai Taumata (and the deputy chairperson when acting as chairperson) must act only—
- (a) with the authority of the members or their alternate members; and
  - (b) in accordance with their directions.
- (3) Te Kawai Taumata must elect an existing member to hold the office of chairperson or deputy chairperson if the chairperson or deputy chairperson—
- (a) resigns from office; or
  - (b) vacates office as a member of Te Kawai Taumata; or
  - (c) is removed from office under clause 6.

#### *Meetings of Te Kawai Taumata*

#### **12 Meetings**

- (1) The chairperson—
- (a) may, as he or she considers necessary, call meetings of Te Kawai Taumata to—
    - (i) consider whether any action is necessary under section 46 or section 49(2); or
    - (ii) appoint or remove directors of Te Ohu Kai Moana Trustee Limited under section 46 or section 49(2), as the case may be; and
  - (b) must, if requested by at least 2 members, call a meeting of Te Kawai Taumata, provided the meeting relates to a matter referred to in subclause (1)(a).
- (2) The chairperson of Te Kawai Taumata must determine the date, time, and place of each meeting of Te Kawai Taumata and must give not less than 10 working days' written notice to the members and alternate members of—

- (a) the date, time, and place of the meeting; and
- (b) the agenda for the meeting.
- (3) Notice need not be given under subclause (2)—
  - (a) to a member who for the time being is absent from New Zealand; or
  - (b) in respect of an adjourned meeting.
- (4) If all members who are entitled to receive notice give their consent, the requirement to notify a meeting may be waived.
- (5) A member who is unable to participate in a meeting must notify that fact to—
  - (a) the chairperson; and
  - (b) the appropriate alternate member.
- (6) An alternate member may only participate in a meeting if the member is unable to do so.

### **13 Meeting to remove director**

If the chairperson of Te Kawai Taumata (or the deputy chairperson when acting as the chairperson) calls a meeting under clause 12(1) for the purpose of removing a director of Te Ohu Kai Moana Trustee Limited,—

- (a) the director concerned must be given not less than 10 working days' notice of the meeting and its purpose, and must be given a reasonable opportunity to be heard; and
- (b) clause 17(4) does not apply.

### **14 Teleconference meetings**

- (1) A meeting may be conducted by teleconference or by any means of communication that allows each member or his or her alternate member to participate effectively in the proceedings.
- (2) All the provisions in this schedule relating to the meetings of Te Kawai Taumata apply to a meeting held in accordance with this clause.

### **15 Conduct of meetings**

- (1) The chairperson of Te Kawai Taumata must preside at all meetings of Te Kawai Taumata.
- (2) If the chairperson is not present—
  - (a) the deputy chairperson, if present, must preside; or
  - (b) if the deputy chairperson is not present, the members present must elect one of their number to preside.
- (3) A record must be kept in the minute book of all decisions taken at every meeting, signed by the person presiding at the meeting.
- (4) The signed minutes of the proceedings of a meeting are evidence—

- (a) of the proceedings; and
- (b) unless the contrary is proved, that the meeting was properly convened and the proceedings were properly conducted.

**16 Quorum**

- (1) A quorum for a meeting of Te Kawai Taumata is not fewer than 6 members or alternate members present at the meeting and entitled to vote.
- (2) No business may be transacted at a meeting of Te Kawai Taumata unless a quorum is present.

**17 Voting to appoint or remove directors of Te Ohu Kai Moana Trustee Limited**

- (1) Except as provided in subclause (3),—
  - (a) each member present has 1 vote; and
  - (b) each alternate member present on behalf of a member has 1 vote.
- (2) All decisions relating to the appointment or removal of a director of Te Ohu Kai Moana Trustee Limited must be decided by a majority of the votes cast by the members or alternate members present and entitled to vote.
- (3) Despite clause 11(2), in the case of an equality of votes, the chairperson or member presiding has a casting vote.
- (4) A written resolution signed by all members is effective for all purposes as a resolution passed at a meeting of Te Kawai Taumata and may comprise more than 1 copy of the resolution, each signed by 1 or more of the members of Te Kawai Taumata.

*Remuneration*

**18 Remuneration for members of Te Kawai Taumata**

The members and alternate members of Te Kawai Taumata are entitled to receive from Te Ohu Kai Moana Trustee Limited—

- (a) remuneration for their attendance at meetings; and
- (b) reimbursing allowances or actual and reasonable expenses incurred in undertaking the function of Te Kawai Taumata.

**19 Administration**

The chairperson of Te Ohu Kai Moana Trustee Limited, after consultation with the chairperson of Te Kawai Taumata, must include in the annual plan of Te Ohu Kai Moana Trustee Limited a budget for the expenses of Te Kawai Taumata, including a budget for the provision of administrative services.

## Schedule 9

### Consequential amendments

s 214

**Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16)***Amendment(s) incorporated in the Act(s).***Fisheries Act 1996 (1996 No 88)***Amendment(s) incorporated in the Act(s).***Human Rights Amendment Act 2001 (2001 No 96)***Amendment(s) incorporated in the Act(s).***Income Tax Act 1994 (1994 No 164)***Amendment(s) incorporated in the Act(s).***Income Tax Act 2004 (2004 No 35)***Amendment(s) incorporated in the Act(s).***Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31)***Amendment(s) incorporated in the Act(s).***Public Audit Act 2001 (2001 No 10)***Amendment(s) incorporated in the Act(s).***Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (1992 No 121)***Amendment(s) incorporated in the Act(s).*

## Maori Fisheries Amendment Act 2006

Public Act	2006 No 78
Date of assent	12 December 2006
Commencement	see section 2

### 1 Title

This Act is the Maori Fisheries Amendment Act 2006.

### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

### 9 Validation

- (1) Subsection (2) applies if, before the commencement of this Act,—
  - (a) Te Ohu Kai Moana Trustee Limited has applied under section 157 for the registration of a settlement quota interest; and
  - (b) the chief executive has registered a settlement quota interest against quota shares under section 152A of the Fisheries Act 1996.
- (2) An application or registration referred to in subsection (1) must be treated as having been made or effected in compliance with the reduced number of quota shares set out in section 7(1).
- (3) Subsection (4) applies if, before the commencement of this Act, Te Ohu Kai Moana Trustee Limited has allocated and transferred quota shares for fishstocks listed in section 7(1) in accordance with the reduced number of quota shares provided for by that subsection.
- (4) Every allocation and transfer referred to in subsection (3) must be treated as if each complied with the requirements of the principal Act.

## Reprints notes

### 1 *General*

This is a reprint of the Maori Fisheries Act 2004 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Judicial Review Procedure Act 2016 (2016 No 50): section 24

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Criminal Procedure Act 2011 (2011 No 81): section 413

Maori Fisheries Amendment Act 2011 (2011 No 74)

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 10

Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57): section 87

Maori Fisheries Amendment Act 2006 (2006 No 78)

Evidence Act 2006 (2006 No 69): section 216