

TE OHU
KAIMOANA



MĀORI FISHERIES TRUST

MĀORI FISHERIES REVIEW:
SECOND REPORT TO THE
MINISTER FOR PRIMARY
INDUSTRIES

Draft amendments to the Māori Fisheries Act 2004

28 August 2017

28 August 2017

The Honourable Nathan Guy
Minister for Primary Industries
Parliament Buildings
WELLINGTON

Tenā koe e te Minita

Nei rā ano te mihi ki tēnei kaupapa nui a ngā iwi o Aotearoa mai anō i tōna orokotīmatatanga taea noatia ki tēnei pūrongo. E tika ana kia mihi te hunga nā rātou tēnei kaupapa i kōkiri, i arataki i roto i ngā tau maha hei painga mō ngā iwi o te motu.

Nō reira, nei rā te hua o te arotake o te kaupapa nei me ngā whiriwhiringa o ngā iwi hei whakaaroarotanga mōu e te Minita. Nō reira, tēnā koe i roto i ngā āhuatanga o te wā.

On 30 September 2016, we reported to you on the results of the Māori Fisheries Review, carried out in accordance with the Māori Fisheries Act 2004.

As a result of the 1992 Fisheries Settlement, the Treaty of Waitangi Fisheries Commission was established to develop an allocation model. The final model had 96% support from iwi and was accepted by the Government for passage through Parliament. The legislation enacted by Parliament included a review of the arrangements that govern the centrally held settlement assets, as well as the restrictions on the sale of settlement assets outside the Māori pool. The review had to be completed by the 12th year following enactment of the legislation.

Following completion of the review in 2015, iwi resolved to change the arrangements that govern their centrally held Fisheries Settlement entities. The Act requires Te Ohu Kaimoana to request that you promote the legislative amendments required to implement their collective decisions.

The September 2016 report was the culmination of two years of analysis carried out by iwi, independent reviewers and Te Ohu. That report outlined the basis of the review, the resolutions iwi supported, and the extensive engagement process Te Ohu has carried out with iwi to decide how their decisions should be implemented.

That report also included the implementation plan for the resolutions, identifying the changes that will require legislative amendments, and an overview of the Māori Fisheries Act, identifying where amendments will need to be made.

We are providing you with this second report to better assist with the drafting of legislative amendments in line with the decisions iwi have made. The report includes a copy of the Maori Fisheries Act 2004 containing comprehensive draft amendments. The amendments are intended to be used as a guide for officials and Parliamentary Counsel to ensure the decisions made by iwi are reflected appropriately in the final legislation.

It is important to iwi that this legislation proceeds as quickly as possible within the Government's legislative timetable. I seek your advice on what you consider will be the likely timetable so that there are reasonable expectations on all sides and Te Ohu and iwi can make suitable preparations to transition to the new regime. We will make Te Ohu staff available to work with your officials to achieve this important change for iwi.

A handwritten signature in blue ink, appearing to read "Jamie Smith". The signature is written in a cursive style with a checkmark at the end of the first name.

Chair
Te Ohu Kaimoana

Contents

| | |
|--|----|
| Part A: Introduction and background | 4 |
| Purpose | 5 |
| Introduction | 5 |
| Guiding principles | 6 |
| Implementation plan and related amendments..... | 7 |
| The Māori Fisheries Act 2004 | 7 |
| Trust Deeds and Constitutions..... | 7 |
| Codes of Governance | 8 |
| Implementation approach | 8 |
| PART B: Outline of draft amendments to the Māori Fisheries Act..... | 10 |
| Introductory parts of the Māori Fisheries Act including key concepts and definitions | 11 |
| Basis for amendments | 11 |
| Te Ohu Kai Moana..... | 16 |
| Resolutions..... | 16 |
| Basis for amendments | 16 |
| Distribution of surplus funds | 17 |
| Key elements of a compulsory levy | 18 |
| Aotearoa Fisheries Ltd | 28 |
| Resolutions..... | 28 |
| Basis for amendments | 28 |
| Minimum dividend requirement | 30 |
| Change of name | 31 |
| Other matters | 31 |
| Trading AFL shares | 31 |
| Te Pūtea Whakatupu | 39 |
| Resolutions..... | 39 |
| Basis for amendments | 39 |
| Te Wai Māori..... | 42 |
| Resolutions..... | 42 |
| Basis for amendments | 42 |
| Definition of freshwater fisheries | 42 |
| Future reviews | 46 |
| Resolutions..... | 46 |
| Basis for amendments | 46 |

| | |
|--|----|
| Audit and review provisions | 46 |
| Simpler trading processes for settlement quota | 53 |
| Resolutions..... | 53 |
| Basis for amendments | 53 |
| Timeframe for ACE sales | 53 |
| Exchanges..... | 54 |
| Other matters including retaining the current tax status of entities | 59 |
| Resolutions..... | 59 |
| Basis for amendments | 59 |
| Redeemable preference shares (RPS)..... | 59 |
| Retaining current tax status..... | 59 |
| Amendments to Schedules of the Māori Fisheries Act | 62 |
| Basis for amendments | 62 |
| Technical amendments..... | 62 |
| MIO constitutions – electoral provisions..... | 62 |
| Restrictions on directors of AHCs | 62 |
| Timing of implementation once the MFA amendments are passed | 65 |
| | |
| APPENDIX 1: Background to the draft amendments..... | 69 |
| Changes sought by iwi | 70 |
| Introduction | 70 |
| The 2015 Review | 70 |
| Establishment of the Iwi Working Group..... | 72 |
| A “Straw Tangata” | 73 |
| The IWG’s proposal..... | 75 |
| IWG proposals supported by iwi..... | 76 |
| Implementing Te Ohu’s plan..... | 79 |
| Further decisions on Te Ohu’s funding..... | 79 |
| Independent review of Te Ohu’s funding models | 80 |
| Final decisions on Te Ohu’s funding | 81 |
| Distribution of surplus funds | 82 |
| Litigation in respect of Te Pūtea Whakatupu | 82 |
| Additional changes promoted by AFL..... | 84 |

| | |
|---|---------|
| APPENDIX 2: Implementation plan for the Māori Fisheries Review | 85 |
| How the changes will be implemented | 86 |
| Introduction | 86 |
| Implementation paths | 86 |
| The Māori Fisheries Act 2004 | 86 |
| Trust Deeds and Constitutions..... | 86 |
| Codes of Governance | 86 |
| Implementation approach | 86 |
| Implementation plan for Te Ohu Kaimoana | 89 |
| Distribution of surplus funds | 90 |
| Key elements of a compulsory levy | 90 |
| Implementation plan for Te Pūtea Whakatupu | 94 |
| Implementation plan for Te Wai Māori | 94 |
| Implementation plan for Aotearoa Fisheries Ltd..... | 95 |
| Redeemable preference shares (RPS)..... | 97 |
| Minimum dividend requirement | 97 |
| Change of name | 97 |
| Implementation plan - simplification of the process for trading settlement assets | 99 |
| Trading AFL shares | 99 |
| Trading settlement quota | 101 |
| Timeframe for ACE sales | 101 |
| Exchanges..... | 101 |
| Review of structural arrangements and Te Ohu’s funding..... | 103 |
| Technical matters..... | 104 |
| MIO constitutions – electoral provisions | 104 |
| Approval of Post Settlement Governance entities as MIOs under the MFA | 104 |
| Restrictions on directors of AHCs | 104 |
| Definition of Freshwater Fisheries | 105 |
| APPENDIX 3: Feedback from iwi on the draft amendments to the Maori Fisheries Act..... | 107 |
| APPENDIX 4: Draft amendments to the Maori Fisheries Act 2004..... | 121 |

Part A: Introduction and background

Purpose

1. The purpose of this paper is to provide iwi and the Crown with the Māori Fisheries Act amendments Te Ohu has drafted to implement the resolutions passed by iwi following the Māori Fisheries Review, and the explanation for those changes.

Introduction

2. On 30 September 2016, we forwarded our report to the Minister for Primary Industries on the outcomes of the Māori Fisheries Review. Aside from matters relating to Te Pūtea Whakatupu, the report advised the Minister of the changes required to implement decisions iwi have made following the review, including legislative amendments.
3. In March 2017, iwi passed additional resolutions relating to Te Pūtea Whakatupu. Some of the resolutions require implementation through amendments to the Māori Fisheries Act 2004 (MFA).
4. We attach a draft amended MFA to be used as a guide for officials and Parliamentary Counsel to ensure the decisions made by iwi are reflected appropriately in the final legislation.
5. In the remainder of this part of the paper, we outline the principles and implementation approach we have taken. In Part B, we provide a guide to the legislative changes, based on the implementation plan included in our first report to the Minister. Where relevant each section identifies:
 - a. the key resolutions affecting each entity or key issue
 - b. matters that need to be implemented through a legislative amendment
 - c. the draft amendments.
6. Some consequential amendments, for instance to ensure the current tax status of the entities is retained, are reflected in different parts of the MFA and we explain them in one part of our outline (see page 60). Other minor 'clean-up' amendments to the Act are being included at the same time and these are identified in the paper.
7. The detailed background to the amendments we provided to the Minister, including all resolutions iwi have agreed to, is included as **Appendix 1**.
8. We provided a draft of this document to iwi for comment, along with a copy of the draft amendments before finalising it and forwarding to the Minister for Primary Industries. In July 2017 we received responses from 6 individual iwi and one iwi collective. A summary of their feedback and our responses is attached at **Appendix 3**.
9. A draft, fully amended version of the MFA is included as **Appendix 4**.

Guiding principles

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

Table 1: principles developed by the first Iwi Working Group

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

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

Implementation plan and related amendments

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

The Māori Fisheries Act 2004

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

Trust Deeds and Constitutions

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

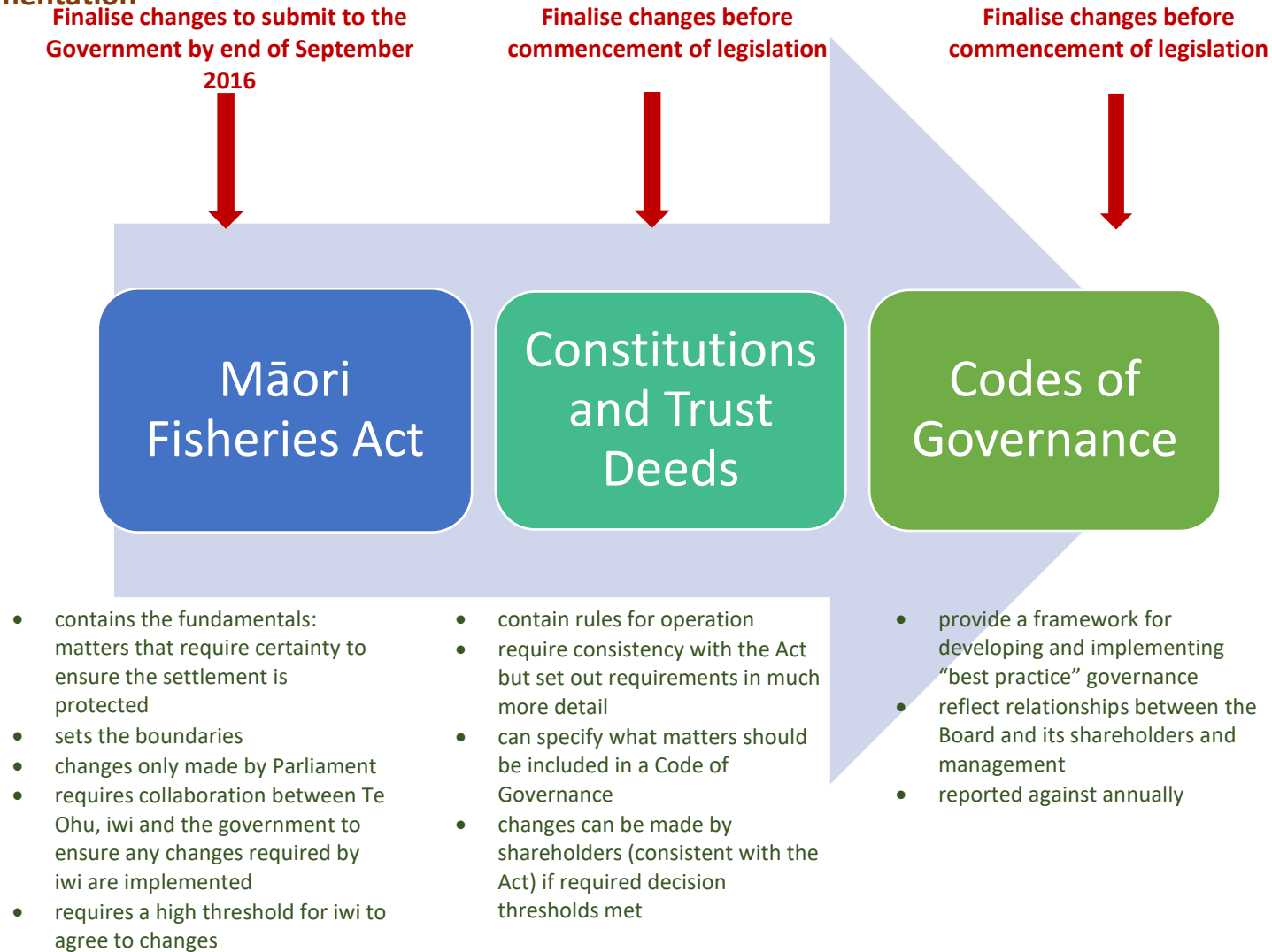
Codes of Governance

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

Implementation approach

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

Figure 1: Implementation



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

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

Basis for amendments

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

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

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

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

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

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

Te Ohu Kai Moana

Resolutions

JUNE 2015

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

AUGUST 2016

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

Basis for amendments

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

- b. **Section (35 (1) (f))** is deleted to remove Te Ohu’s function as the voting shareholder of AFL
 - c. Te Ohu’s future focus is already provided for through its purpose (**section 32**) and those duties and functions that will remain (**sections 34 and 35**)
 - d. Director appointments and approval of Te Ohu’s strategic plan by MIOs is provided for (**sections 36 (1) (b) (ii) and 44 (2) (b)**).
29. As we said, consequential changes in governance processes are also needed, consistent with the recommendations of the first IWG and further engagement by Te Ohu. As a consequence the following matters must be provided for in the constitution:
- a. 5 – 7 directors for Te Ohu appointed by MIOs at an AGM (**s44 (2) (b)**)
 - b. MIOs will vote on the basis of 1 iwi:1vote (as above)
 - c. Iwi will approve three year strategic plans (as above)
 - d. A process for appointing directors (**s 44 (2) (ba)**)
 - e. Three year terms for directors, with the ability to be re-appointed (**section 44 (2) (da)**).
 - f. A process for removing directors
 - g. Approval by MIOs of the total pool of directors’ fees at an AGM.
30. Some non-binding resolutions passed by iwi will also require changes to the MFA to:
- a. Enable any surplus funds to be distributed to iwi on an equal basis (see below)
 - b. Enable distributions to be made by Te Ohu, as directed by each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure
 - c. Include a compulsory levy regime which charges iwi in proportion to population and which can be triggered by a vote of iwi at any time (requiring approval of 75% or more of the MIOs representing at least 50% of the population).
31. Any legislative changes should not compromise the charitable status of Te Ohu Kaimoana and other fisheries settlement entities.
32. Provision for a review of Te Ohu’s funding is included in the regime for reviewing the overall structural arrangements, however that does not prevent Te Ohu from carrying out a funding review at other times. Note the review provisions are dealt with later in this document.
33. Those iwi who made submissions in July 2017 raised a number of issues around the governance arrangements for Te Ohu. Several iwi disagree with the proposal to remove the cap on the number of terms a director may serve. However as iwi will directly appoint directors, they will have the option to remove any director they consider need to be replaced, and we do not propose to change the draft amendment.

Distribution of surplus funds

34. Iwi will approve Te Ohu’s strategic plans every three years. Within each planning cycle Te Ohu will need to monitor the funds available to Te Ohu to determine whether:
- a. it has sufficient funds to cover its work programme for at least the next three years, or
 - b. some of its accumulated funds are surplus to requirements and able to be distributed.

35. Te Ohu will need to develop policies to determine the point at which it can be satisfied it has surplus funds that can be distributed. The resolution passed at the SGM in August 2016 supported such distributions being made to iwi on an equal basis. However as we noted in our first report to the Minister, this resolution generated the most contention amongst iwi.
36. We note that distribution of surpluses on an equal basis conflicts with the allocation model, including the basis for distributing Te Ohu's assets if it is wound-up, creating fiduciary problems for Te Ohu's directors. For instance, those who would benefit from the wind-up of Te Ohu could argue that the distribution of any surpluses to "interim" beneficiaries would prejudice their interests.
37. Some iwi have made the point that distribution of surpluses on an equal basis is inconsistent with the basis for payment of levies, which they consider unfair. This argument assumes the distribution of surpluses will mean Te Ohu will need to use a levy to fund its operations. However if funds are surplus to Te Ohu's requirements, a levy will not be necessary.
38. The August SGM was run in accordance with the provisions of Te Ohu's constitution. Under the constitution, an SGM enables resolutions to be put from the floor providing 20% of iwi agree. Once put to the vote, proposals are agreed as ordinary resolutions, requiring a simple majority. This resolution passed with a majority of 5: 28 for and 23 against.
39. In view of the closeness of the vote and several issues raised by iwi, we have incorporated two options for distributing surpluses: one based on an equal share; the other based on population.
40. Greater detail on issues raised in the submissions can be found in **Appendix 3**.
41. Distributions will also be able to be made, as directed by each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure.
42. A new section on surplus funds has been incorporated in the MFA (**section 59C**). This is necessary to avoid confusion between the distribution of surplus funds, and Te Ohu's existing ability under s 35 (1) (g) (i) of the MFA to "apply the funds of the Trust by way of payments to mandated iwi organisations" to achieve Te Ohu's purpose. These latter may or may not necessarily include all iwi at any one time.

Key elements of a compulsory levy

43. Iwi have agreed that a levy model should be included in the MFA that can be triggered at any time in the future should they decide this is the best on-going funding option.
44. As iwi will need to consider what services a levy will be paying for, any levy option needs to be considered as part of Te Ohu's broader strategic planning cycle where decisions are made by iwi about Te Ohu's strategic objectives. That being the case, a structured process is needed to ensure Te Ohu can analyse the implications of a levy and present a proposal to iwi for consideration. These matters are provided for in **section 55 – 59B**.
45. The draft provisions state that if a levy proposal is unsuccessful, iwi cannot request a further levy for 2 years. One iwi who made a submission considers a 2 year "stand-down" period is too

long. One concern raised was how Te Ohu would function during the two year stand-down period. In addition “iwi should not be overly restricted in the types and frequency of requests that can be made of Te Ohu”.

46. There is a provision in the draft amendments to enable Te Ohu directors to initiate the levy process if a likely need for funding is indicated in a strategic plan approved by iwi. This means directors would not face a stand-down period providing this condition is met. On the other hand we assume that given the time and potential cost of running a levy proposal process, running the process more than once within a two year period would place disproportionate cost on Te Ohu.

Te Ohu Kaimoana: Outline of amendments

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

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

| | | | |
|--|-----------------------------|--|---|
| | Section 38 (4) (b) (ii) | <ul style="list-style-type: none"> deletes references to fees “expressed in bands of \$10,000”. | Will now require specific fees rather than bands |
| | Section 38 (4) (c) and (d) | <ul style="list-style-type: none"> amended to include a requirement to include in the annual report that disclosures required of directors for any contract for service to Te Ohu Kai Moana, and any other disclosures required by any other Act | Reflects best practice |
| Consultation and other reporting obligations | S 39 (1) (b) | <ul style="list-style-type: none"> includes recognised iwi organisations amongst those who should be provided with information listed deletes reference to TKT | Clean-up Consequential amendment |
| Obligation to establish and maintain iwi register | S 40 (3) (g) | <ul style="list-style-type: none"> remove reference to the requirement to list the transfer or exchange of settlement quota | Sales and exchanges will be registered through FishServe |
| Review of revenue requirements | S 41 | <ul style="list-style-type: none"> sections 41 – 43 are spent | As these provisions are spent consideration could be given as to whether they remain in the MFA. |
| | S 42 | <ul style="list-style-type: none"> see above | as above |
| | | | |
| Allocation and transfer of surplus loan funds | S43 | <ul style="list-style-type: none"> see above | as above |
| Constitution of Te Ohu Kai Moana Trustee Ltd | S 44 (2) (b); s 44 (2) (ba) | <ul style="list-style-type: none"> Amended to provide for at least 5 directors and not more than 7 Amended to require that each director must be appointed in accordance with procedures specified in the constitution of Te Ohu Kai Moana Trustee Ltd | Reflects Resolution 3, June 2015 and the IWG recommendations that supported the resolution: number of directors; direct appointments by MIOs. |
| | S 44 2 (c) | <ul style="list-style-type: none"> Amend to provide that a vacancy need only be filled by directors if the number of directors has dropped below the minimum, but enable directors to fill a vacancy until the next AGM if they choose | |
| | S 44 (2) (d) | <ul style="list-style-type: none"> Deleted to remove reference to Te Kāwai Taumata | Consistent with above |

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

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

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

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

| | | | |
|---|-------------------|---|---|
| | | <ul style="list-style-type: none"> ○ The Crown, AFL or other party is not obliged to comply with the above request, but if it does so the debt owed by one or more of them is discharged to the extent of the amount paid to Te Ohu | |
| Subsequent funding levy proposals | S 59A (1) | <ul style="list-style-type: none"> ● Not earlier than 2 years before the expiry of a levy, Te Ohu must, if it wishes the levy to continue in its current or any amended form, prepare and distribute to MIOs/RIOs a further proposal | |
| | S 59A (2) | <ul style="list-style-type: none"> ● Te Ohu may include the above information in a strategic plan. | |
| Surplus levy funding | New s 59B | <ul style="list-style-type: none"> ● Provides that if Te Ohu holds levy funding in excess of what it needs it must be paid back to those who paid it on a pro-rata basis | Ensures surplus levy funding is paid back on the basis upon which it was raised, as opposed to the way surplus capital should be distributed |
| Allocation and transfer of other surplus funds | New 59C (1) – (3) | <ul style="list-style-type: none"> ● OPTION 1: Provides that if Te Ohu Kaimoana determines it has surplus funds it must allocate and transfer the surplus funds to MIOs on an equal basis. ● OPTION 2: Provides that if Te Ohu Kaimoana determines it has surplus funds it must allocate and transfer the surplus funds to MIOs based on their notional population ● Distributions may only be paid to MIOs with charitable status or an entity with charitable status nominated by a MIO to benefit the iwi and its members ss (2) ● If there is a MIO that does not have charitable status and no nomination is made – Te Ohu must retain the allocated funds until it can comply with ss (2) | <p>Option 1 reflects the resolution passed at the SGM in August 2016. Option 2 reflects current allocation model</p> <p>These provisions are intended to ensure charitable tax status is not compromised.</p> |

Aotearoa Fisheries Ltd

Resolutions

JUNE 2015

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

RESOLUTION FROM AUGUST 2016

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

Basis for amendments

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

- b. A vote of at least 75% of shares for major transactions and significant changes in business focus (note – the requirement for a major transaction to be approved by special resolution is covered by the Companies Act.
50. These matters are covered by the Companies Act. The changes to the governance arrangements for AFL reflect a shift from a single voting shareholder (Te Ohu) to multiple shareholders (AHCs). For the most part, these changes mean the governance of the company will more closely align with that of a “standard” company and the decisions that are currently taken by Te Ohu will be made by AHCs as shareholders. These will include decisions on major transactions. In addition, the MFA currently provides that changes to the constitution that affect the rights and interest of income shareholders require the approval of the holders of 75% of income shares. Future decisions will be made by AHCs based on their shareholding.
51. A major transaction is a transaction which involves acquiring or disposing of assets or acquiring rights or incurring liabilities or obligations with a value of more than 50% of the company’s assets before the transaction¹. Iwi have resolved that special resolutions for major transactions for AFL should require at least a 75% majority voting threshold. This aligns with the definition of special resolutions under the Companies Act, along with the definition of major transaction. The Companies Act also enables the constitution of a company to require a higher threshold².
52. We received a submission from one iwi concerned about protection of minority interests (**see Appendix 3**). In their view, there need to be greater safeguards for the interests of the smallest 44 iwi who hold less than 25% of the shares. One option put forward is an “Iwi Share” – conditions defining its exercise could be defined in legislation. The share could be exercised by an “Eminent Persons Group” whose role would be to ensure decisions are taken in the best interests of iwi and AFL.
53. Te Ohu’s current responsibilities reflect the role being suggested: Te Ohu holds the voting shares in AFL on behalf of all iwi. On June 2015, iwi agreed to Resolution 2 above that “iwi hold all AFL voting and income shares”. Fifty five of 57 iwi were present at the meeting and all voted in favour of this resolution.
54. We acknowledge there may be circumstances in which iwi wish to establish a higher threshold where a decision has major implications for all iwi –bearing in mind that currently 75% of iwi hold less than 25% of the shares in AFL. Te Ohu will continue to work with AFL and iwi to identify the kinds of decisions that might require a threshold that is higher than the minimum, or transactions less significant than major transactions and reflect them in the company constitution before the amended legislation commences.
55. Iwi who made submissions raised a number of other issues around the governance arrangements for AFL. Several iwi disagree with the proposal to remove the cap on the number of terms a director may serve. However as iwi will directly appoint directors, they will have the option to remove any director they consider needs to be replaced, and we do not

¹ S129, Companies Act.

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

propose to change the draft amendment. One iwi also considers it necessary for the MFA to require the appointment of independent directors. In their view an independent director would not be an employee of Te Ohu, AFL or any subsidiary, a director of Te Ohu or a trustee, director or manager of any MIO, AHC or related entity.

56. The proposal for independent directors was raised during the consultation process on details of the new governance arrangements during 2015/16. Essentially this proposal is intended to avoid conflicts of interest. We consider a requirement to appoint independent directors is difficult given the small pool of people with knowledge and experience in this area and the nature of iwi commercial enterprise, where those with the relevant knowledge are already in the business. Instead AFL will be required to develop a policy to manage conflicts of interest.

Right of First Refusal

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

Minimum dividend requirement

60. Iwi agreed to a non-binding resolution to remove the requirement on AFL to pay a minimum dividend of 40% Net Profit After Tax (NPAT). This will require an amendment to the MFA. Iwi have agreed with AFL's proposal that the current dividend policy will continue in effect until the MFA is amended and will only be changed after that time if shareholders approve a different policy. A practical approach to accommodate this resolution is to provide in the legislation for shareholders to resolve in respect of any year that the requirement to pay 40% NPAT does not apply (**see section 76 (5)**).
61. Several iwi who submitted on the draft amendments expressed concern about the prospect that no dividend would be paid as many iwi rely on the dividend for their cashflow. We have drafted an amendment to make the payment of the dividend the default situation which can only be departed from if iwi support an alternative by ordinary resolution. Those iwi who have the most to lose from a lower dividend – or no dividend - will have the greatest weight in decision-making.
62. Some consider such a decision should only be made year by year and not apply to multiple years. However it will always be possible at any general meeting for shareholders to review a decision that applies to multiple years.

63. The financial year ends at the end of September, dividends for that year are normally declared in November/December but the Hui a Tau is held the following March. If resolution is put to the Hui a Tau, it would need to apply to the financial year ending the following September. Alternatively, AFL would need to call a Special General Meeting closely following the end of a financial year if it wished to alter the default 40% dividend for that year.

Change of name

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

Other matters

65. All references to iwi in the part of the MFA that deals with AFL are to MIOs. We have drafted an amendment to make clear that references to MIOs in this part of the Act are to be treated as references to AHCs.

66. We have also:

- a. clarified that AHCs are required to act in accordance with the directions of the relevant MIO - as is provided for by Kaupapa 11 of Schedule 7 of the MFA (**see section 60B**). One iwi considers this to be paternalistic. However AHCs are agents of MIOs who can exercise as much or as little discretion over the direction they gives to their AHCs
- b. added a provision to clarify, consistent with best practice, that any director or alternate director of AFL who undertakes any contract for services for any member of the AFL Group must obtain the prior approval of all other directors and make full disclosure in the annual report (**see section 62 (1) (j)**). AFL will be required to use its best endeavours to ensure Sealord incorporates a similar provision in their constitution in respect of Sealord directors.

Trading AFL shares

67. The new simpler process for trading AFL shares is set out in **sections 68 – 74**. It includes the following:

- a. AHCs may sell their AFL shares to any AHC or AFL on a willing-buyer, willing-seller basis. The current provisions requiring approval of Te Ohu Kaimoana are removed.
- b. The decision by the AHC must be in accordance with an authorisation from its MIO
- c. A decision to sell will not be time-limited unless the MIO chooses
- d. Te Ohu will not be permitted to buy AFL shares
- e. AHCs must notify AFL of the sale by providing a properly completed transfer of shares document
- f. AFL must maintain a register of shareholders and share transfers and can require evidence the transactions are authorised
- g. AFL will be required to maintain a register of shareholdings, update it every month and make it publicly available
- h. Te Ohu is to maintain a public register of MIOs and AHCs to provide an independent and up-to-date source of information on parties who can trade AFL shares.

68. Enabling AFL to buy back its own shares and either hold them to re-sell, or cancel them is currently acceptable practice for limited companies **(see section 69 (2))**.
69. Protections should be retained and updated to cover any agreements a MIO/AHC has with a third party that could result in the sale of income shares to ensure they can only be sold to AHCs or AFL **(see section 72 (1))**.
70. In our report to the Minister, we commented that the prohibition on gifting should also be retained. As trading will be on a willing buyer, willing seller basis, it makes no sense to prohibit gifting as long as it takes place within the settlement pool.
71. In July one iwi made a submission that AFL shareholders should all be notified when a shareholder wishes to sell and be given the opportunity to bid. In their view, this is necessary to ensure there is a robust market as once shares start trading a market price will be set. They are concerned there could be significant write-offs from some balance sheets as valuations are adjusted to reflect the market.
72. Iwi have agreed that settlement assets should be able to be sold on a willing seller, willing buyer basis, based on simpler trading processes than those currently set out in the MFA. While iwi may choose to notify all iwi of their intention to sell their shares, we don't consider they should be required to do so.

Aotearoa Fisheries Ltd: legislative changes required

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

| | | | |
|----------------------------|---------------------|--|--|
| | S 61 (3) | <ul style="list-style-type: none"> Amends the approvals AFL must obtain to carry out other activities referred to in s 61 (2) (b) from an approval by Te Ohu Kai Moana Trustee Ltd to an approval by special resolution of its shareholders | Consequential adjustment to the removal of control of AFL from Te Ohu Kai Moana to iwi |
| Constitution of AFL | S 62 (1) (a) | <ul style="list-style-type: none"> Removes the requirement that AFL's constitution contains a provision preventing it from passing a special resolution to approve any transaction that would be likely to have the effect of breaching s 35 (1) (c) | No longer relevant given removal of control of AFL from Te Ohu Kai Moana to iwi |
| | S 62 (1) (ba) | <ul style="list-style-type: none"> Included to require that the pool of fees payable to directors must be approved by ordinary resolution of the company | Consistent with IWG (I) recommendation that iwi approve the pool of directors' fees |
| | S 62 (1) (e) | <ul style="list-style-type: none"> Deletes provision enabling income shareholders to pass non-binding resolutions relating to management of the company | No longer necessary given transfer of control of company to iwi. S 109 of the Companies Act will apply |
| | S 62 (1) (d) | <ul style="list-style-type: none"> Replaces income shares with "ordinary" shares | |
| | S 62(1) (h) (i) | <ul style="list-style-type: none"> Amended to require AFL to establish a process for verifying that transfers of ordinary shares in accordance with s 69 and its constitution | |
| | S 62 (1) (h) (ii) | <ul style="list-style-type: none"> Amended and simplified to require AFL to maintain a share register as required by the Companies Act and maintain it on its website as a continuous record of all changes in shareholding updated within one month of the company being notified of any change. | Amended to be consistent with a normal company and ensure changes are notified in a timely way. |
| | S 62 (1) (h) (iii) | <ul style="list-style-type: none"> Deletes requirement to record transfers only if they comply with sections 69 – 72 (relating to the current process for selling AFL income shares) | Resolution 12, June 2015. No longer required given simpler process for trading settlement assets |
| | Former s 62 (1) (i) | <ul style="list-style-type: none"> Deleted to remove requirement that if AFL is put into liquidation, distributions be made to income shareholders in proportion to their shareholdings at that time | Resolution 2, June 2015; no longer necessary |
| | New s 62 (1) (i) | <ul style="list-style-type: none"> Includes a requirement that AFL must have, and notify to shareholders a policy for disposal of assets by itself or any of its subcompanies that gives priority to MIOs or AHCs to acquire them and specifying circumstances where the policy does not apply | Consistent with resolution 19, June 2015 that AFL and Sealord be subject to a binding RFR to allow iwi to buy the assets |

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

| | | | |
|--|---------------------|---|---|
| Income shares | S 67 | <ul style="list-style-type: none"> Deleted | Income shares will become ordinary shares |
| Transfer of shares held by Te Ohu Kai Moana Trustee Ltd | New s 64 (1) | <ul style="list-style-type: none"> Requires all income shares held by Te Ohu Kai Moana Trustee Ltd that become ordinary shares under s 60A must be allocated to all iwi on a pro-rata basis and transferred by Te Ohu to MIOs no later than {date} (noting that the two RIOs will receive their shares once they become MIOs) | Resolution 2, June 2015 – enables control of AFL to pass to iwi |
| | S 64 (2) | <ul style="list-style-type: none"> requires “all dividends and associated tax credits received by Te Ohu Kai Moana Trustee Ltd in respect of the shares referred to in subsection (1) [AFTER ENACTMENT DATE] must be allocated to all iwi on a pro rata basis and transferred MIOs at the same time as the relevant ordinary shares are transferred to them” (noting RIOs will receive theirs when they become MIOs) | As above |
| | S 64 (3) | <ul style="list-style-type: none"> Included to clarify this section does not apply to any ordinary shares dividends or associated tax credits held by Te Ohu on trust under s 153 until the relevant iwi becomes entitled to receive them under that section | |
| Additional ordinary shares | S 68 | <ul style="list-style-type: none"> Amended to reflect change of income to ordinary shares and ensure additional shares are offered in proportion to what shareholders hold at the date of issue including those held in trust by Te Ohu Kai Moana Trustee Ltd pending transfer under s 130 | |
| Disposal of ordinary shares by MIOs | S 69 | <ul style="list-style-type: none"> Amended to: <ul style="list-style-type: none"> clarifies MIOs may only sell their shares to another MIO in accordance with the process established in the constitution of AFL Amends other requirements as to whom MIOs may sell their shares to remove Te Ohu Kai Moana Trustee Ltd, and enable AFL to acquire its shares Allows AFL to verify that sales are between MIOs | Resolution 12, June 2015 re simplification of process for trading settlement assets |

| | | | |
|--|----------|---|---|
| Process for disposal of income shares by MIOs | S 70 | <ul style="list-style-type: none"> Deleted to remove requirements on MIOs to notify a proposal to sell shares at a general meeting and gain approval | As above |
| Disposal of income shares by Te Ohu Kai Moana Trustee Ltd | S 71 | <ul style="list-style-type: none"> Deletes provision for Te Ohu Kai Moana Trustee Ltd to sell specified income shares | Consistent with above; Te Ohu will not hold income shares (or ordinary shares) in AFL in future (unless held on trust for allocation to iwi) |
| Other constraints on disposal of ordinary shares | S 72 | <ul style="list-style-type: none"> Amended to simplify the process for a third party to a specified transaction to require the sale of shares to other MIOs A specified transaction is a transaction with a third party or a series of transactions that could result in the sale of its ordinary shares or the iwi being disentitled to the income from the ordinary shares or the right to vote or other rights in respect of the ordinary shares for a period of more than 5 years A third party is defined as a party that is not entitled to hold ordinary shares | |
| Remedy for breach of s 69 - 70 | S 73 | <ul style="list-style-type: none"> Amended for consistency with simpler sales provisions and removal of Te Ohu from governance | |
| Exceptions to restrictions on disposal of income shares | S 74 | <ul style="list-style-type: none"> Amended for consistency with simplified process | |
| Transfer of assets | | | |
| Transfer of assets to AFL | S 75 (5) | <ul style="list-style-type: none"> Deleted as the sections referred to are also deleted Note remainder of section remains to show the history | Consequential amendment |
| | S 75 (8) | <ul style="list-style-type: none"> Amended to provide that for the purpose of the Inland Revenue Acts, the value of the assets transferred under subsections (2) and (3) is included in the available subscribed capital of AFL or its sub-companies and “attributed to their ordinary shares” | Intended to ensure that the available subscribed capital is retained once voting shares are cancelled and income shares become ordinary shares. |

| | | | |
|---|----------|---|-----------------------------------|
| Payment of dividends | S 76 (5) | <ul style="list-style-type: none"> • Included to provide an exception to the minimum dividend formula providing shareholders have so resolved. | AFL/Moana resolution, August 2016 |
| Circumstances when payments not required | S 77 | <ul style="list-style-type: none"> • Amended to remove redundant provisions | |

Te Pūtea Whakatupu

Resolutions

JUNE 2015 AND MARCH 2017

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

JUNE 2015

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

Basis for amendments

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

Te Pūtea Whakatupu: legislative changes

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

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

Te Wai Māori

Resolutions

JUNE 2015

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

TECHNICAL AMENDMENT

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

Basis for amendments

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

Definition of freshwater fisheries

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

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

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

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

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

Te Wai Māori: legislative changes

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

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

Future reviews

Resolutions

JUNE 2015

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

AUGUST 2016

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

Basis for amendments

Audit and review provisions

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

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

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

Review provisions legislative changes

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

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

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

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

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

Simpler trading processes for settlement quota

Resolutions

JUNE 2015

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

Basis for amendments

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

Timeframe for ACE sales

90. The extension of the maximum time for sales of ACE is to be extended from 5 to 15 years, consistent with the resolution agreed to by iwi (**see section 167 (1) (b)**).
91. In July one iwi made a submission that 15 years is too long and risky for iwi. We note that in June 2015, 55 iwi voted to extend the restricted time-period for ACE sales from 5 to 15 years and 1 iwi voted against. If any iwi is concerned that 15 years is too long, they will not be compelled to enter into agreements for 15 years. They will be free to choose the time period that is acceptable to them within the 15 year period.

Exchanges

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

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

94. The current process for MIOs or AFL to exchanging settlement quota for normal quota held by a non-settlement entity will remain because:
 - a. iwi have not resolved to remove it
 - b. the process retains an option for iwi
 - c. measures will remain to ensure that if iwi wish to exchange settlement quota for normal quota outside the settlement pool, the overall value of the “settlement pool” is not diminished.

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

Simpler processes for trading settlement quota

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

| Subpart 2 – Restrictions on, and procedures for disposal of settlement quota | | | |
|---|------------------------------|---|--|
| Restrictions on disposal of settlement quota | S 161 (1) (a) (ii) and (iii) | <ul style="list-style-type: none"> Amended to enable sales of settlement quota to an entity within the AFL group (note this removes ability for Te Ohu to purchase) Amended to clarify a sale may take place by way of approved exchange for non-settlement quota as contemplated by s 173. | |
| | S 161 (1) (b) | <ul style="list-style-type: none"> Deleted to remove prohibition of gifting settlement quota | |
| | S 161 (2) | <ul style="list-style-type: none"> Deleted to remove prohibition on sales earlier than 2 years after the date of first transfer to a MIO by Te Ohu Kai Moana Trustee Ltd | |
| | New S 161 (2) | <ul style="list-style-type: none"> Amended to replace Te Ohu Kai Moana Group to AFL Group | |
| | S 161 (3) | <ul style="list-style-type: none"> Amended to provide for the situation in which Te Ohu has approved a new MIO | Clean-up: consistent with technical amendments in s18 enabling the transfer of shares in an AHC to a new MIO |
| | S 161 (4) | <ul style="list-style-type: none"> Deleted to remove reference to the existing rules covering sales of settlement quota | |
| Effect of prohibited sale of settlement quota | S 162 (1) | <ul style="list-style-type: none"> Amended to clarify that a MIO may only sell its settlement quota if expressly permitted by its constitutional document and the transaction complies with the requirements of the document | |
| | Remainder of s 162 | <ul style="list-style-type: none"> Deleted to remove need to gain approval from iwi members, and to remove timeframes for validity of approval | |
| Option to purchase | | | |
| Offer of option to purchase | S 163 | <ul style="list-style-type: none"> Deleted to remove requirement to offer settlement quota to all MIOs and Te Ohu Kai Moana Group | |
| Procedure for selling bundle of assets | S 164 | <ul style="list-style-type: none"> deleted | |
| Procedure to determine right to purchase | S 165 | <ul style="list-style-type: none"> deleted | |

| | | | |
|--|---------------|--|--|
| Basis on which sale must proceed | S 166 | <ul style="list-style-type: none"> deleted | |
| Other constraints on disposal | S 167 (1) (b) | <ul style="list-style-type: none"> amended to provide that a transaction that could result in an iwi being disentitled for a period of more than “15” (rather than 5) year to the income from the ACE arising from that quota, or the control or use of the ACE arising from that quota | Implements resolution 13, June 2015 to enable ACE sales contracts for up to 15 years. |
| | S 167 (3) | <ul style="list-style-type: none"> provides that a third party who exercises a right to sell etc has to comply with processes as if they were a MIO | Ensures such sales remain within the settlement pool. (should AFL be subject to 167?) |
| Application of this subpart to AFL Group (amended title) | S 168 | <ul style="list-style-type: none"> amends title to replace Te Ohu Kai Moana Group with AFL Group | |
| | S 168 (1) | <ul style="list-style-type: none"> provides if an entity within the AFL Group acquires settlement quota, s 162 and 167 apply to it as if it were a MIO | Ensures consistent treatment of settlement quota within the pool |
| | S 168 (2) | <ul style="list-style-type: none"> deleted to make consistent with simplified sales process | |
| When sale of settlement quota must be allowed | S 169 | <ul style="list-style-type: none"> deleted to remove Te Ohu Kai Moana Trustees role in sales process. | |
| <i>Subpart 3 – exceptions to the application of subpart 2</i> | | | |
| | | <ul style="list-style-type: none"> deleted | |
| Quota sold to wholly owned entities | | <ul style="list-style-type: none"> deleted | |
| Settlement quota sold to wholly owned entities | S 171 | <ul style="list-style-type: none"> deleted as unnecessary with simplified process | |
| Small parcels of settlement quota | | | |
| Rationalisation of small parcels of settlement quota | S 172 | <ul style="list-style-type: none"> deleted as unnecessary with simplified process | |

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

Other matters including retaining the current tax status of entities

Resolutions

MARCH 2016

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

Basis for amendments

Redeemable preference shares (RPS)

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

Retaining current tax status

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

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

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

Amendments to Schedules of the Māori Fisheries Act

Basis for amendments

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

Technical amendments

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

MIO constitutions – electoral provisions

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

Restrictions on directors of AHCs

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

SCHEDULES

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

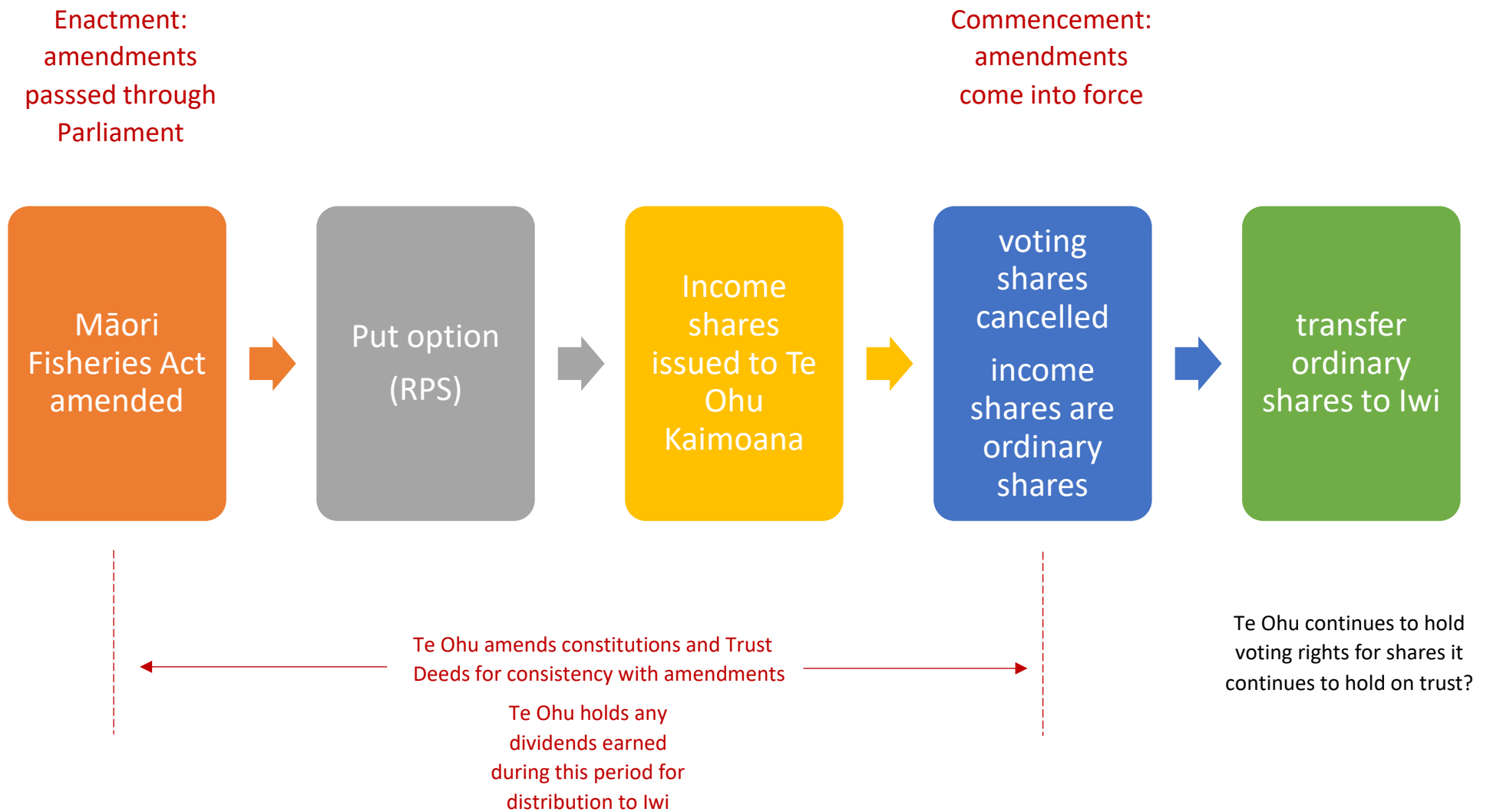
| | | | |
|--------------------------------------|---------------------------|---|---|
| | Clause (2) | <ul style="list-style-type: none"> Amended to provide that kaupapas 1, 2 and 3 do not apply to the extent that another Act makes other provision for the specific MIO | Assume this relates to legislation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

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

Timing of implementation once the MFA amendments are passed

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

Figure 2: Timeline for implementation of the legislative amendments



Appendices

APPENDIX 1: Background to the draft amendments

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

Changes sought by iwi

Introduction

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

The 2015 Review

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

69. In May 2014, a Committee of Representatives was appointed under the MFA³ to set the terms of reference for the Māori Fisheries Review and appoint the reviewer⁴. The review was carried out in the latter part of 2014 and early 2015. The Committee of Representatives received and distributed the reviewer's report on 6 March 2015.

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

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

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

| Entity | Reviewer's recommendations |
|-----------------|--|
| Te Ohu Kaimoana | <p><i>Recommendation 1:</i></p> <ol style="list-style-type: none">a. wind up Te Ohu Kaimoana⁵ (and transfer its assets to iwi), orb. significantly restructure Te Ohu Kaimoana, without AFL shares, as the pan-tribal entity to undertake advocacy and policy development and advice for iwi.⁶ |

³ s117

⁴ s118

⁵ Interpreted as the trustee (Te Ohu Kai Moana Trustee Ltd) and the trust (Te Ohu Kai Moana).

⁶ Castle, T (2015) *Taia Kia Matariki: Make sure the net is closely woven. Independent Review of Māori Commercial Fisheries Structures under the Māori Fisheries Act 2004*, paras 5, 10, 14 (summary)

| | |
|--------------------------------------|--|
| <p>Aotearoa Fisheries Ltd</p> | <p><i>Recommendation 2:</i> Allocate the voting and income shares held by TOKMTL and as a consequence, enable iwi (through their AHCs) to appoint AFL’s directors.⁷</p> <p><i>Recommendation 3:</i> Consider establishing a Shareholders’ Council.⁸</p> <p><i>Recommendation 4:</i> Special resolutions for major transactions for AFL should require at least a two thirds majority voting threshold.⁹</p> <p><i>Recommendation 5:</i> That AFL and iwi find ways to ensure that AFL does not compete with iwi in the business and activity of commercial fishing.¹⁰</p> <p><i>Recommendation 6:</i> There should be rationalisation between Sealord and AFL operations to avoid them competing with each other.¹¹</p> <p><i>Recommendation 7:</i> That iwi and AFL address the lack of fisheries sector operational experience on the AFL Board.¹²</p> |
| <p>Te Pūtea Whakatupu</p> | <p><i>Recommendation 8:</i></p> <ul style="list-style-type: none"> a. TPW should continue b. a statutory corporate trustee should be appointed to manage the Trust, called Te Pūtea Whakatupu Trustee Ltd (TPWTL) c. the trustee company should not be owned by TOKMTL but by at least FOMA, NZMC, Māori Women’s Welfare League and NUMA (allowing for others of the schedule 5 entities) and a representative body for iwi d. the schedule 5 organisations who wish to participate should each have one share in TPWTL with no distribution rights and that those shares be held by the boards of those organisations; e. iwi should design a representative body to hold between three and five shares in TPWTL also without distribution rights f. these organisations by a majority vote should appoint five directors of TPWTL who must each have knowledge of and are able to represent the interests of Māori who reside in urban areas of NZ and otherwise have skills, knowledge and experience directly relevant to urban Māori g. a quorum of directors to transact business should be three.¹³ |
| <p>Te Wai Māori</p> | <p><i>Recommendation 9:</i> Iwi should appoint three directors with a quorum of two.¹⁴</p> |

⁷ Ibid., paras 36, 37, 38 (summary); para 70 (main report)

⁸ Ibid., paras 227, 235 (main report)

⁹ Ibid., para 286 (main report)

¹⁰ Ibid., para 34, 35, 41 (summary)

¹¹ Ibid., para 251 (main report)

¹² Ibid., para 48 (summary); para 207 (main report)

¹³ Ibid., para 66 (summary)

¹⁴ Ibid., para 73 (summary)

| | |
|---|---|
| Restrictions on asset sales | <p><i>Recommendation 10:</i></p> <ol style="list-style-type: none"> a. Retain restrictions on asset sales outside the Māori pool b. Develop easier trading processes for iwi wishing to sell their fisheries settlement assets (in part or in whole) to willing buyers within the Māori pool. |
| The Chatham Islands: the continuing special case | <p><i>Recommendation 11:</i> That AFL should take special steps to cooperate more fully with the Chathams' iwi.¹⁵</p> <p><i>Recommendation 12:</i> That AFL establish and fund a dedicated AFL/Chathams' iwi taskforce to cooperatively address options for solutions to the competition between AFL and Chathams' iwi and all other Māori fisheries issues arising on the Chathams.¹⁶</p> <p><i>Recommendation 13:</i> That AFL engage with Chathams' iwi and the island communities on health and safety issues associated with AFL fishing factories and facilities.¹⁷</p> <p><i>Recommendation 14:</i> In the longer term, that a permanent Chathams' iwi/AFL Fisheries Roopu be established to actively engage in the development of iwi (collective and individual) interests in fisheries, fishing and fisheries-related activities on the Chathams in a manner which can yield to AFL and the people of the Chathams continuing and meaningful benefit.¹⁸</p> |
| Iwi Working Group | <p><i>Recommendation 15:</i> That an Iwi Working Group, funded by Te Ohu Kaimoana, urgently work through all the findings, recommendations and design work.¹⁹</p> |

Establishment of the Iwi Working Group

72. Given the short timeframe between release of the reviewer's recommendations and the requirement to hold an SGM, Te Ohu Kaimoana appointed an Iwi Working Group (IWG) as a sub-committee of the Te Ohu Kaimoana Board, supported by key Te Ohu staff²⁰. Its purpose was:

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

¹⁵ Para 310 (main report)

¹⁶ Ibid., para 307, 310, 311, 312 (main report)

¹⁷ Ibid., para 307 (main report)

¹⁸ Ibid., para 313 (main report)

¹⁹ Ibid., para 82, 83 (summary); para 257 - 259 (main report)

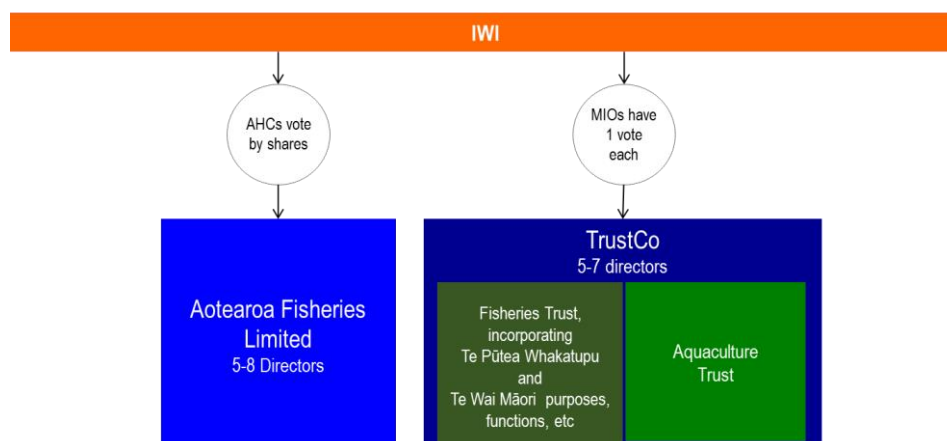
²⁰ S 127 of the MFA requires a general meeting of Te Ohu Kaimoana to be held within 60 working days. The reviewer recommended the establishment of an iwi working group to undertake the detailed work required.

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

A "Straw Tangata"

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

Figure 5: Straw Tangata



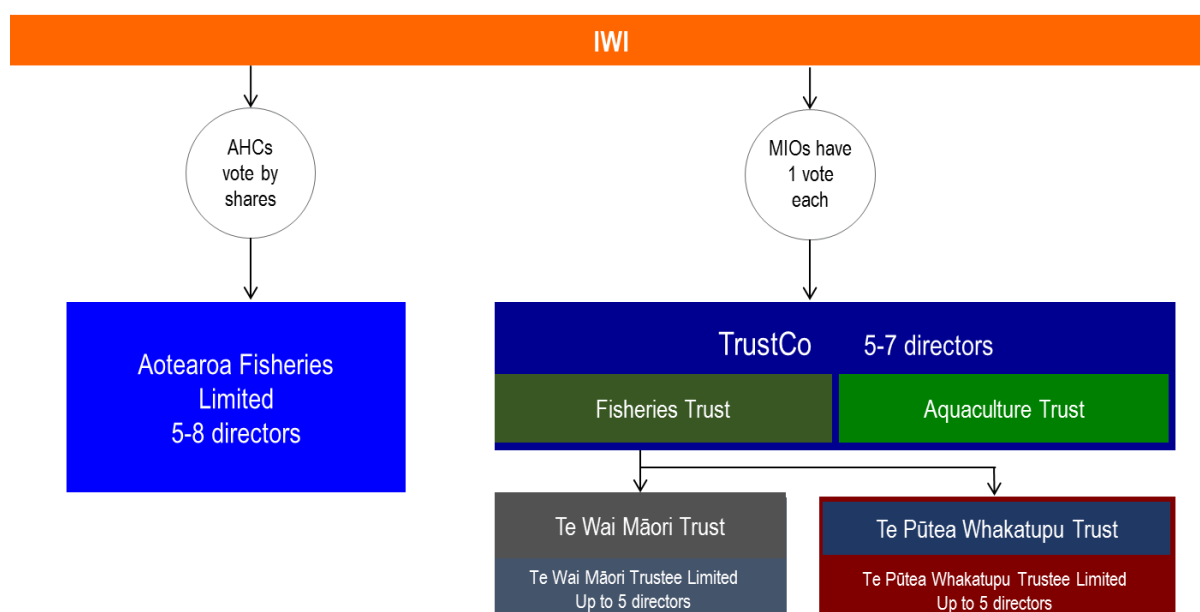
79. Under the straw tangata model, iwi (through their AHCs) would vote for the directors of AFL. Iwi (through their MIOs) would vote for the directors of a pan-iwi body – “TrustCo²¹”. This body would be the trustee of two trusts:
- a. the Fisheries Trust (incorporating the purposes of the existing Te Ohu Kai Moana Trust, Te Pūtea Whakatupu Trust and Te Wai Māori Trust – which would be rolled into one trust)
 - b. the Aquaculture Trust, which allocates and transfers aquaculture settlement assets to iwi who are eligible to participate in regional aquaculture settlements with the Crown.
80. The IWG considered the prospect of one Fisheries Trust and one Aquaculture Trust, governed by TrustCo to be the best possible means of aligning the interests of beneficiaries in the three existing trusts, at the same time creating efficiency through economies of scale. This is consistent with the principles they developed.
81. The IWG noted that the straw tangata model may not be directly possible within the process of the review and the MFA as it currently stands. However, iwi could agree to a non-binding resolution to take the proposal to the Minister for Primary Industries for consideration.

²¹ The IWG used this as a proxy name throughout its document to indicate a different organisation to the current Te Ohu Kaimoana. However, cognisant of the name being gifted by Dame Mira Szazy and its importance in the long haul for the Fisheries Settlement, along with the organisation’s reputation, the IWG proposed that the name be retained. That required wider endorsement from iwi, so the IWG continued to use the appellation “TrustCo” throughout to indicate the new organisation post review.

The IWG’s proposal

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

Figure 6: IWG proposed governance framework



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

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

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

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

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

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

IWG proposals supported by iwi

90. The SGM was held on 4 June 2015. Iwi voted on 17 review resolutions (including 2 amendments), of which 12 were passed.²² If amendments to the MFA are required to implement the resolutions, Te Ohu Kaimoana is required to request the Minister for Primary Industries to promote the necessary amendments. The binding resolutions are set out below:

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

²² The SGM was held in accordance with s 127 (1) of the MFA. Iwi voted on the review resolutions in accordance with s 127 (2) and (3). Support for a resolution arising from the review requires the agreement of 75% of MIOs representing over 50% of the notional iwi population.

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

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

92. Four additional resolutions were passed by iwi. First, in light of the review having only just been completed, iwi agreed that the next 4-yearly audit of Māori Fisheries Settlement entities, due in 2016, should not be conducted²³. The following additional non-binding resolutions were also passed.

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

²³ S 106 of the MFA enables 75% of MIOs/RIOs to agree not to conduct and audit of Te Ohu Kai Moana Trustee Ltd and its subsidiaries, and 75% of income shareholders to agree not to conduct and audit of AFL.

Implementing Te Ohu's plan

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

Consultation documents and meeting notes can be provided if required.

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

Further decisions on Te Ohu's funding

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

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

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

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

Independent review of Te Ohu's funding models

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

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

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

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

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

- a. Te Ohu should retain the "Available Funds"²⁴
- b. Te Ohu should distribute some of the Available Funds and retain the balance.

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

²⁴ The reviewers' term for the accumulated funds held by Te Ohu

sufficient to cover funding for TOKM [sic] for a period of time ... in advance of a future review...”.²⁵

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

Final decisions on Te Ohu’s funding

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

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

²⁵ See Appendix 9: Chapman Tripp-KordaMentha *Review of TOKM costs and funding models: Report to the iwi Working Group*, 29 July 2016, p9

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

Distribution of surplus funds

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

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

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

Litigation in respect of Te Pūtea Whakatupu

114. The National Urban Māori Authority (NUMA) and Te Whanau o Waipareira Trust brought proceedings against Te Ohu Kaimoana on two matters relating to Te Pūtea Whakatupu. The first was to clarify the criteria for Te Pūtea Whakatupu's directors. Te Ohu's view had been that this requirement applied to the directors collectively, rather than individually. The Court found that each director must "have knowledge of, and be able to represent the interests of Māori who reside in urban areas of New Zealand"²⁶.

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

²⁶ National Māori Authority & Or v Te Ohu Kai Moana Trustee Ltd & Ors [2016] NZHC 1600 [15 July 2016]

there should have been specific consultation with urban Māori interests during the IWG process and that the decisions made by iwi regarding Te Pūtea Whakatupu at the June SGM were pre-determined. They also argued that it was not open for iwi to reject the recommendation from the reviewer²⁷ and replace it with a different resolution, which they said was contrary to the purpose of the Act.

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

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

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

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

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

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

²⁷ The reviewer's recommendation was to transfer control of Te Pūtea Whakatupu to the urban Māori authorities and Representative Māori Organisations along with a "yet to be determined iwi grouping, which followed on from the reviewer's primary recommendation to wind up or restructure Te Ohu.

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

Additional changes promoted by AFL

122. During 2016 AFL commissioned an independent review of its capital structure. Key findings are that the company is constrained by its statutory framework in the raising of capital, deployment of shareholder capital, and now that the critical infrastructure renewal is complete the company should work to reduce current debt levels.

123. In that context, the fact that the MFA is being reviewed provides an opportunity for iwi to consider whether the legislated requirement for AFL to pay a minimum dividend of 40% NPAT should be revised, taking into account that iwi, through their Asset Holding Companies (AHCs), have the mana and knowledge to make those decisions directly, consistent with rangatiratanga.

124. At the 30 August SGM, iwi supported the following resolutions put forward by AFL.

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

APPENDIX 2: Implementation plan for the Māori Fisheries Review

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

How the changes will be implemented

Introduction

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

Implementation paths

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

The Māori Fisheries Act 2004

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

Trust Deeds and Constitutions

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

Codes of Governance

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

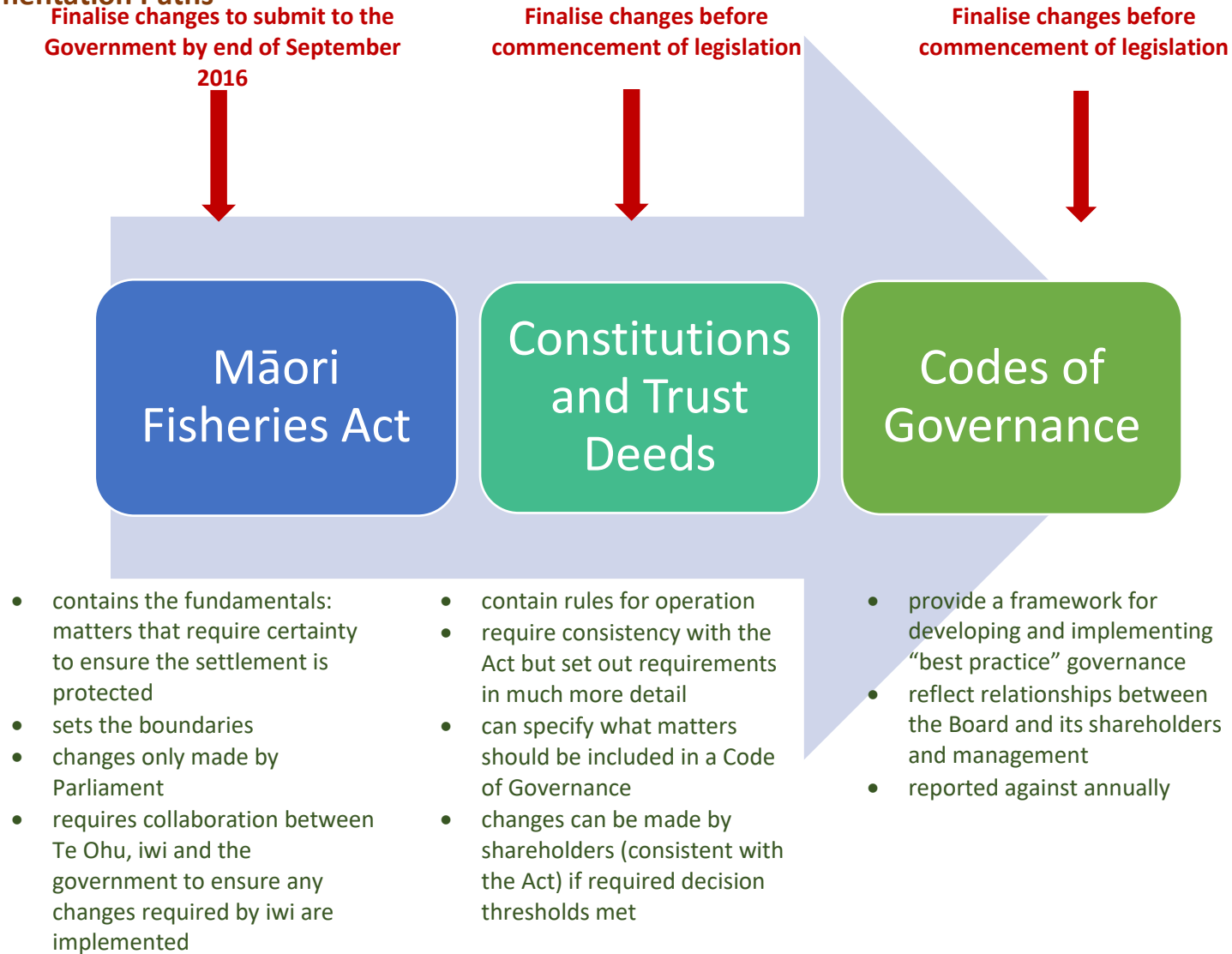
115. The relationship between the Act, the deeds and constitutions and codes of governance is summarised in Figure 5.

Implementation approach

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

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

Figure 5: Implementation Paths



Implementation plan for Te Ohu Kaimoana

118. The following changes need to be made to implement the binding resolutions passed by iwi:
 - d. Governance of AFL needs to be removed from Te Ohu's duties and functions and its voting and income shares transferred to iwi
 - e. Te Ohu's primary focus will be to protect and enhance the settlements
 - f. Iwi, through MIOs, need to directly control the appointment and removal of Te Ohu's directors, approve Te Ohu's strategic plans and pool of directors' fees.

119. Consequential changes in governance processes are also needed, consistent with the recommendations of the first IWG and further engagement by Te Ohu, to support the following:
 - a. 5 – 7 directors for Te Ohu appointed on the basis of merit by MIOs at an AGM
 - b. MIOs will vote on the basis of 1 iwi:1vote
 - c. Iwi will approve three year strategic plans
 - d. A process for appointing directors
 - e. Three year terms for directors, with the ability to be re-appointed
 - f. A process for removing directors
 - g. Approval by MIOs of the total pool of directors' fees at an AGM.
 - h. Adoption of the first IWG's principles for Te Ohu's operations.

120. The structure of the new governance arrangements, based on the direct appointment of directors by MIOs, should be implemented through the MFA. Te Ohu's constitution and trust deed will be amended for consistency with the MFA, and set out in more detail how its requirements (for example the process for appointing directors) will be met. Te Ohu will also develop a Code of Governance incorporating its operating principles, how it will engage with iwi, Terms of Reference for Board committees and specific skills required for the board.

121. Non-binding resolutions passed by iwi also require changes to the MFA to:
 - a. Enable any surplus funds to be distributed to iwi on an equal basis
 - b. Enable distributions to be made by Te Ohu, as directed by each MIO, to any charitable entity and/or for any charitable purpose within each MIO group structure
 - c. Include a compulsory levy regime which charges iwi in proportion to population and which can be triggered by a vote of iwi at any time (requiring approval of 75% or more of the MIOs representing at least 50% of the population).

122. Any legislative changes should not compromise the charitable status of Te Ohu Kaimoana and other fisheries settlement entities.

123. Provision for a review of Te Ohu's funding should be included in the regime for reviewing the overall structural arrangements. This is covered later in this report.

124. Other non-binding resolutions can be implemented without the need for legislative amendment. Te Ohu has already commenced its review of operational structure and activities and will work with iwi to identify their priorities for the organisation, the costs of delivery and what if any surplus might be available for distribution. In the longer term, any surpluses identified as available for distribution will be determined through Te Ohu's strategic planning process.

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

Distribution of surplus funds

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

Key elements of a compulsory levy

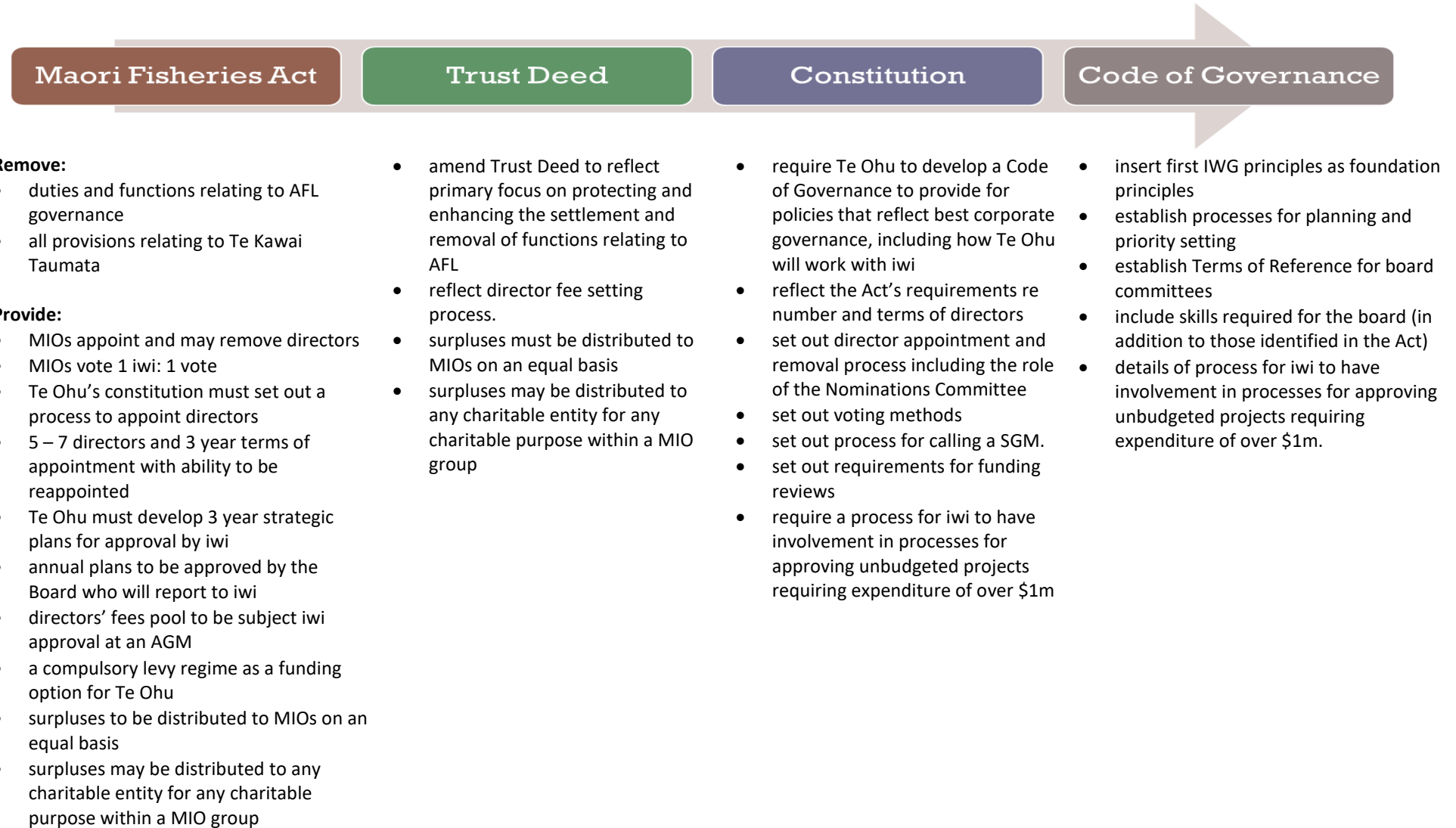
129. Iwi have agreed that a levy model should be included in the MFA that can be triggered at any time in the future should they decide this is the best on-going funding option.
130. As iwi will need to consider what services a levy will be paying for, any levy option needs to be considered as part of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

Table 2: Outline of the levy process

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

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

Table 3: Implementation plan - Te Ohu Kaimoana



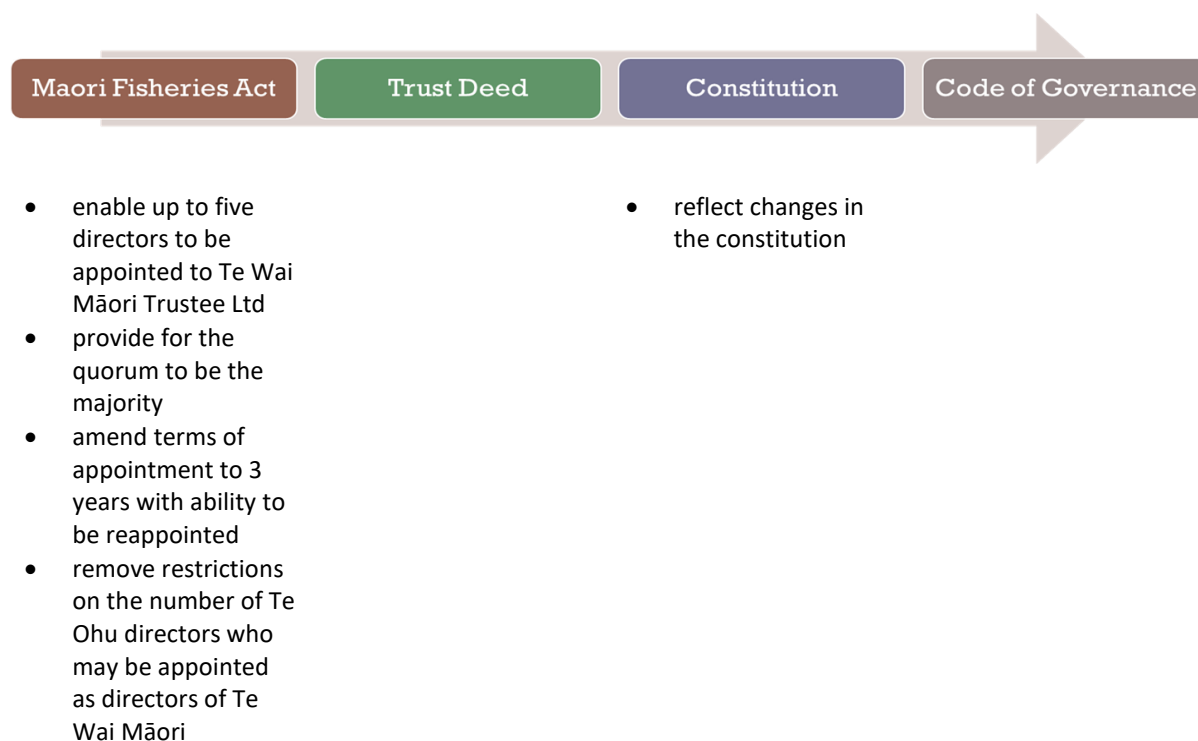
Implementation plan for Te Pūtea Whakatupu

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

Implementation plan for Te Wai Māori

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

Table 4: Implementation plan – Te Wai Māori



Implementation plan for Aotearoa Fisheries Ltd

136. The following changes need to be made to implement the binding resolutions passed by iwi:
- c. All shares in AFL will become ordinary shares and have the same rights and benefits. The voting and income shares held by Te Ohu will be converted to ordinary shares, and transferred to iwi through AHCs
 - d. AFL should continue to develop and implement policies on collaboration with iwi (including Chathams iwi) and Sealord
 - e. Consequential changes in governance processes will need to be made, consistent with the recommendations of the first IWG and further engagement with iwi to support the following:
 - i. AFL is to have 5 – 8 directors appointed by AHCs at an AGM, based on merit
 - ii. AHCs will vote based on shareholding
 - iii. A process for appointing directors
 - iv. A three-year term for directors with the ability to be reappointed
 - v. A process for removing directors
 - vi. Approval by AHCs of the total pool of directors' fees at an AGM.
 - vii. Changes to the constitution that affect the rights and interests of shareholders require the approval of 75% by shareholding
 - viii. Vote of at least 75% of shares for major transactions and significant changes in business focus.
137. The structure of the new arrangements based on the direct appointment of directors by AHCs should be implemented through the MFA, with further detail (such as the director appointment process) provided for in the company's constitution.
138. The changes to the governance arrangements for AFL reflect a shift from a single voting shareholder (Te Ohu) to multiple shareholders (AHCs). For the most part, these changes mean the governance of the company will more closely align with that of a "standard" company and the decisions that are currently taken by Te Ohu will be made by AHCs as shareholders. These will include decisions on major and material transactions. In addition, the MFA currently provides that changes to the constitution that affect the rights and interest of income shareholders require the approval of the holders of 75% of income shares. Future decisions will be made by AHCs on the basis of their shareholding.
139. A major transaction is a transaction which involves acquiring or disposing of assets or acquiring rights or incurring liabilities or obligations with a value of more than 50% of the company's assets before the transaction²⁸. Iwi have resolved that special resolutions for major transactions for AFL should require at least a 75% majority voting threshold. This aligns with the definition of special resolutions under the Companies Act. The Companies Act also enables the constitution of a company to require a higher threshold²⁹.
140. There may be circumstances in which iwi wish to establish a higher threshold where a decision has major implications for all iwi –bearing in mind that currently 75% of iwi hold less

²⁸ S129, Companies Act.

²⁹ *special resolution* means a resolution approved by a majority of 75% or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question (s2, Companies Act 1993).

than 25% of the shares in AFL. Te Ohu will continue to work with AFL and iwi to identify the kinds of decisions that might require a threshold that is higher than the minimum, and reflect them in the company constitution before the amended legislation commences.

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

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

142. Related party means:

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

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

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

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

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

Right of First Refusal

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

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

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

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

Redeemable preference shares (RPS)

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

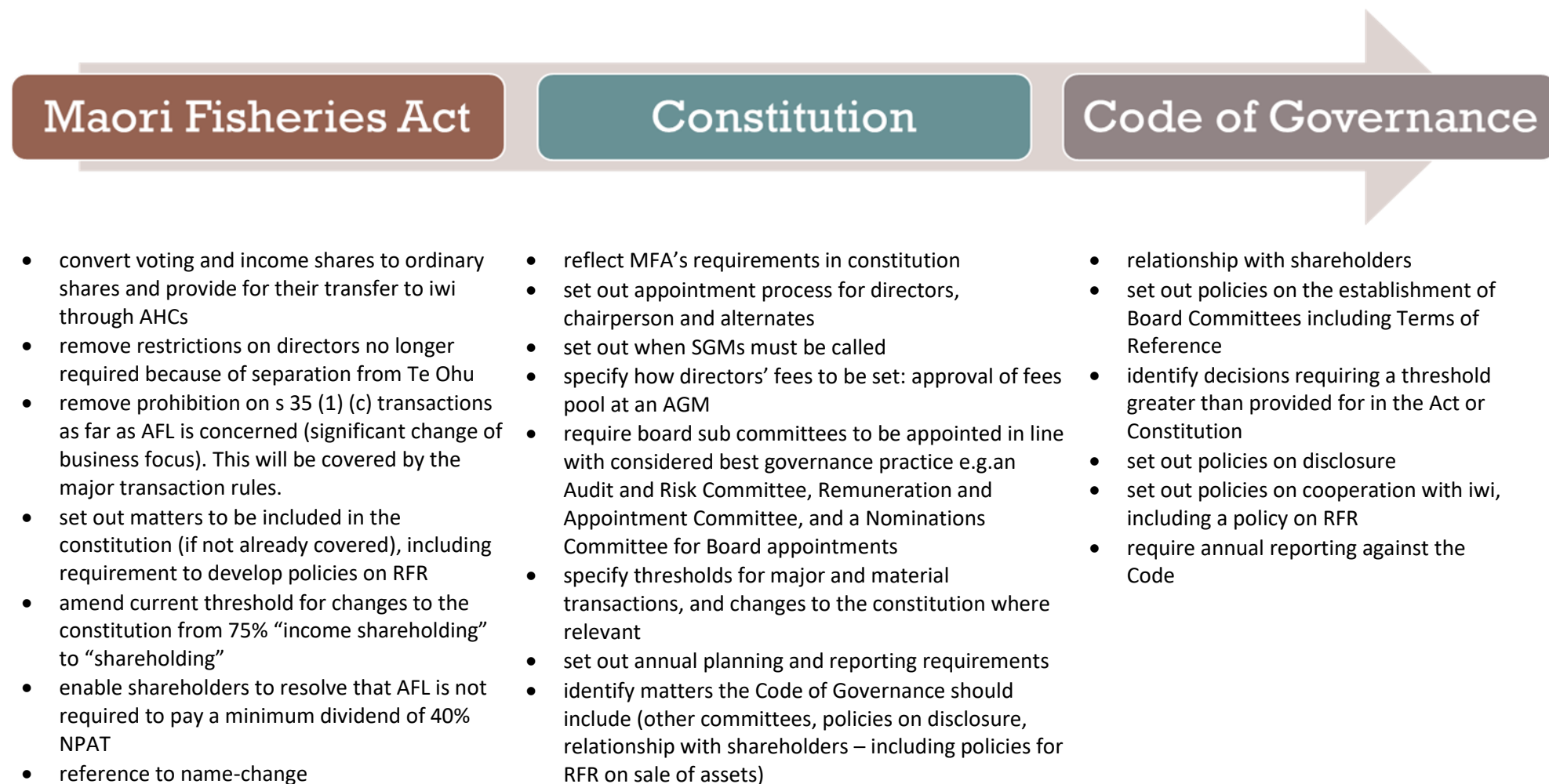
Minimum dividend requirement

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

Change of name

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

Table 5: Implementation of changes – AFL



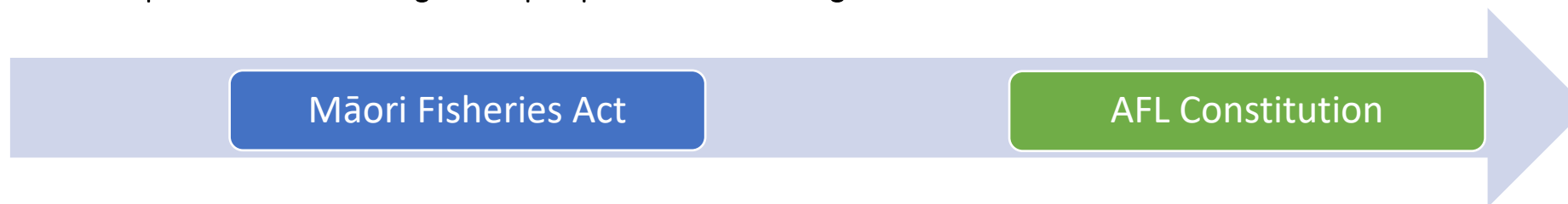
Implementation plan - simplification of the process for trading settlement assets

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

Trading AFL shares

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

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



Māori Fisheries Act

AFL Constitution

Remove:

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

Provide:

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

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

Trading settlement quota

160. A simplified process for trading settlement quota is set out below:
- e. A MIO, through its AHC, may sell settlement quota to any other MIO's AHC, Te Ohu Group or AFL on a willing-buyer, willing-seller basis
 - f. The decision to sell must be subject to a resolution of the MIO's board (by implication this means an AHC must obtain the approval of its MIO before a sale can proceed)
 - g. FishServe must be satisfied the transaction is between AHCs, Te Ohu Group or AFL and that the sale has been subject to a special resolution of the MIO (note in practice this will require the MIO to provide FishServe with all appropriate documentation to support the transfer)
 - h. Te Ohu will be required to maintain a public register of all MIOs and AHCs.
161. Existing protections and remedies for breaches will need to be updated to reflect this process. For example, protections exist to ensure that if a Te Ohu Group entity or a MIO sells or relinquishes control over a subsidiary or sub-company of an AHC that holds settlement quota, the quota must be treated as the property of Te Ohu or the MIO as appropriate. Remedies also exist for breaches of the sales requirements.

Timeframe for ACE sales

162. The extension of the maximum time for sales of ACE is to be extended from 5 to 15 years, consistent with the resolution agreed to by iwi. An amendment to the MFA will be required.
163. Table 7 sets out the implementation path for these changes.

Exchanges

164. The MFA provides a regime to enable iwi to exchange settlement quota for other quota of the same market value including:
- a. settlement quota for other settlement quota
 - b. settlement quota for normal quota.
165. Exchanges of settlement quota for settlement quota can now be covered by the simplified sales process. That means such exchanges can be carried out as long as they meet the requirements for a sale of settlement quota, outlined earlier.
166. The current process for exchanging settlement quota for normal quota will remain because:
- a. iwi have not resolved to remove it
 - b. the process retains an option for iwi
 - c. measures will remain to ensure that if iwi wish to exchange settlement quota for normal quota, the overall value of the "settlement pool" is not diminished.
167. As a consequence, Te Ohu's role in respect of exchanges outside the pool will remain to ensure they involve quota (or a mix of quota) of the same market value.

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



Remove:

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

Require

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

Provide

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

Review of structural arrangements and Te Ohu's funding

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

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

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

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

Technical matters

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

MIO constitutions – electoral provisions

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

Approval of Post Settlement Governance entities as MIOs under the MFA

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

Restrictions on directors of AHCs

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

Definition of Freshwater Fisheries

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

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

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

181. The purpose of Te Wai Māori is to:

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

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

APPENDIX 3: Feedback from iwi on the draft amendments to the Maori Fisheries Act

.

APPENDIX 3: Feedback from iwi on draft amendments to the Maori Fisheries Act

Those iwi organisations who provided comments were:

- Te Runanga a Iwi o Ngapuhi/Ngapuhi AHC Limited
- Ngati Kahungunu Iwi Incorporated
- Te Whakakitenga o Waikato Incorporated
- Te Runanga o Ngati Porou
- Maniapoto Fisheries Trust
- Ngati Tuwharetoa Fisheries
- Iwi Collective Partnership

Brief feedback was also provided by Moana New Zealand and Sealord.

Issues raised are summarised below.

| Issue | Section | Position | Rationale |
|--|---------|---|---|
| Te Ohu Kaimoana | | | |
| Distribution of surplus funds on an equal basis | S 59C | Oppose distribution of surplus funds on an equal basis. | <p>Contrary to the allocation model</p> <ul style="list-style-type: none"> • Contrary to the allocation model (allocation of cash/cash generating assets based on population) • The current allocation model was a compromise endorsed by iwi following lengthy litigation. It represented a balance between coastline and population. • To ensure fairness and consistency, the allocation of surplus funds should be done in the same manner as the allocation of ordinary shares, dividends and funding levies |

The process was not appropriate

- The SGM decision was procedurally irregular, unfair and infringes on property rights
- The resolution was non-binding and passed by slim majority
- The resolution was from the floor - no information on the resolution was distributed prior – this is inappropriate for a fundamental change
- Accept it was appropriate for Te Ohu, in its interim report, to advise the Minister of the non-binding resolution passed in relation to the distribution of surplus funds, but it is entirely inappropriate for Te Ohu to promote an amendment to the MFA in relation to that matter when the proposal is entirely inconsistent with the allocation model in the Act (which Te Ohu is duty bound to uphold and implement).
- The review anticipated possible amendments to the Act but did not cover surplus funds
- The resolution was non-binding and received less support
- This change should only be promoted if there is unanimity amongst iwi
- Te Ohu should remove s 59C from the proposed draft amendment. At the most it should:
 - simply note in any report that the non-binding resolution was passed but did not receive support from all iwi
 - Note the proposal is inconsistent with the allocation model.

Undesirable outcomes will be the result

- Creates inequitable treatment between Maori
- A number of groups stand to lose property rights without agreement
- If Te Ohu pursues this, it will be detrimental not only to the majority of Maori who voted against the resolution, but also to ongoing iwi relations and trust.

Other

- Given the long period since the August SGM and agreement on the model of “Retain some; Distribute some” – Te Ohu to advise iwi immediately a reasonable date by which the quantum of funds it intends distributing will be notified.

| | | | |
|--|-------------------|--|---|
| <p>Relationship between distribution of surplus funds and payment of levies</p> | <p>S 55 – 59B</p> | <p>Levy from iwi by population is inconsistent with distribution of surplus funds. The basis for distribution and levying should be consistent</p> | <ul style="list-style-type: none"> • Note the proposed levy is intended to be a substitute for the use of surplus funds • The allocation of surplus funds to iwi on an equal basis together with paying the levy on a population basis is unfair and inconsistent • If distribution of surplus is based on an equal basis, it is inconceivable for the levy to continue in proportion to population • Any iwi with a population over 1,75% is disadvantaged • If distribution of funds is not amended to population, the basis for levy payments should be an equal share. |
| | | <p>Basis for distribution of surpluses and payment of levies should be the same, whether based on equal shares or population</p> | <ul style="list-style-type: none"> • Notes inconsistent relationship between surplus funds distribution and basis for payment of levy • There is no justification for the policy difference other than it is what iwi agreed on the day • ICP expresses no view as to which of the allocation policies is correct except to note the relevant default position in the Act • It is not our intention to drive a particular policy view • Our only request is for consistency whether that be on an equal basis or by population, not both • As both resolutions are non-binding, Te Ohu has a discretion to support oppose or amend the practical application of the resolutions • Te Ohu should allow more time for iwi to discuss the policy inconsistencies • The ICP is holding a shareholder hui on 2 August and could benefit from an opportunity to consider the issue at the hui. It will give AHCs the opportunity to revisit matters with their MIOs where the voting rights sit • Iwi who are part of the ICP will make their own submissions. |
| <p>COMMENTS</p> | | <p>The key issues raised by iwi relate to the allocation model, the relationship between the basis for distributing surpluses and the model for distribution of assets following wind-up of Te Ohu and the process for the passing of the resolution. Our responses are summarised below:</p> <ul style="list-style-type: none"> • “Inconsistency with the allocation model”: distribution of surpluses based on equal shares is contrary to the allocation model currently set out in the MFA. The allocation model – which was not subject to the statutory review – provides that the distribution of surplus funds - and Te Ohu’s assets should it be wound up – should be on the basis of population. Having a different model for distributing surpluses from the model for allocating assets on wind-up could | |

| | | | |
|---|---|---|---|
| | <p>create fiduciary problems for directors by creating a tension between those who benefit from surpluses and those who would expect all Te Ohu’s assets to be allocated to them based on population on wind-up.</p> <ul style="list-style-type: none"> • “Inconsistency between distribution of surpluses and basis for payment of a levy is unfair”: this argument assumes that the distribution of surpluses and the need for a levy are connected. If funds are truly surplus to Te Ohu’s purpose then a levy should not be required following distribution of surpluses. • “The process supporting the passing of the resolution was inappropriate”: the rules for resolutions to be put forward at the SGM were followed. Under our constitution, the SGM enabled resolutions to be put from the floor providing 20% of iwi agree. This was the case. Once put to the vote, proposals are agreed as ordinary resolutions, requiring a simple majority. This resolution passed with a majority of 5: 28 for, and 23 against. | | |
| PROPOSED ACTION | <p>We propose to clarify there are two options for distributing surpluses: one based on population (the status quo) and one based on equal shares, and to demonstrate how the legislation would reflect each. We note the distribution of surpluses based on an equal share conflicts with the allocation model, but that in line with the provisions of our special general meetings, the alternative proposal met the required threshold. We consider it appropriate to put it forward as an option.</p> | | |
| Levy process | | <p>Disagree with the 2 year stand down process if a levy proposal fails</p> | <ul style="list-style-type: none"> • Note concern that if a resolution for a levy is not adopted Te Ohu must not be asked to consider a levy again within two years after the failure of the resolution • This raises concerns about how Te Ohu would function during the two year stand down period. • Iwi “shareholders” should not be overly restricted in the types and frequency of requests that can be made of Te Ohu. • A two stand down period may be too long and a shorter timeframe should be considered (e.g. 12 months) |
| COMMENT | | | |
| Surplus loan funds | <p>S 41 – 43 (to be deleted)</p> | <p>Disagree with deleting these sections</p> | <ul style="list-style-type: none"> • Agree the sections are no longer necessary, however we prefer they provide evidence that surplus assets held by Te Ohu have always been held on trust for MIOs in proportion to population |
| Surplus funds from 5 year review | <p>S 138 (5) (could be deleted)</p> | | <ul style="list-style-type: none"> • Agree this is historical and could be deleted however we prefer they provide evidence that surplus assets held by Te Ohu have always been held on trust for MIOs in proportion to population |
| COMMENT | <p>These sections are spent but we can note they are of historical interest.</p> | | |
| PROPOSED ACTION | <p>Highlight the relevant sections as spent but of historical interest</p> | | |

| | | | |
|--|--|--|--|
| Tenure of Te Ohu board appointments – object to open ended tenure | S 44 | Disagree with removal of the maximum number of terms Te Ohu directors may serve. | <ul style="list-style-type: none"> • Turnover of the board is important for succession planning, performance, a balance between institutional knowledge and fresh thinking and sharing knowledge amongst different iwi groups • Provision should be amended to ensure: <ul style="list-style-type: none"> ○ a director cannot exceed 3 successive terms ○ Te Ohu adopts a diversity policy and reports against it ○ Te Ohu adopts a policy of regular performance review |
| | | | <ul style="list-style-type: none"> • In theory directors can hold office for life • A director who has held office for 3 consecutive full terms should not be eligible to be reappointed within 3 years after ceasing to hold office • These comments should also apply to Te Wai Maori and Te Putea Whakatupu |
| | | | <ul style="list-style-type: none"> • The MFA should set out that constitutions must include a requirement that after three successive terms directors must stand down for one term before being eligible for reappointment |
| COMMENT | MIOs will appoint directors every three years. Consistent with rangatiratanga, they will be able to choose whether directors serve more than 3 year terms. There is no groundswell from iwi in responses to the draft amendments to warrant a change in direction. | | |
| PROPOSED ACTION | Remove the cap on the number of terms directors may serve, as proposed in the draft amendments | | |
| Independent directors for AFL | No provision presently | AFL should have independent directors | <ul style="list-style-type: none"> • NZX Listing Rules provide that a listed company must have a majority of independent directors • An independent director should not be: <ul style="list-style-type: none"> ○ an employee of Te Ohu or AFL or any subsidiary ○ a director of Te Ohu ○ a trustee, director of manager of any MIO, AHC or related entity. • Independent directors will challenge non-independent directors and AFL executives and increase the effectiveness of the Board • Independent directors particularly important given directors have no limitation on the number of terms, the value of ACE some non “related party” iwi provide and the potential not to meet the 40% dividend threshold. |

| | | | |
|---|---|---|---|
| COMMENT | The proposal for independent directors was raised during the consultation process on details of the new governance arrangements during 2015/16. Essentially this proposal is intended to avoid conflicts of interest. We consider a requirement to appoint independent directors is difficult given the small pool of people with knowledge and experience in this area and the nature of iwi commercial enterprise, where those with the relevant knowledge are already in the business. Instead AFL will be required to develop a policy to manage conflicts of interest. | | |
| PROPOSED ACTION | Make no change to current drafting. | | |
| Term of appointment for AFL directors | | Disagree with removal of the maximum number of terms AFL directors may serve. | <ul style="list-style-type: none"> • Legislation does not address term of office and limit on number of terms • Instead it says directors should be appointed in accordance with the company's constitution • It is understood the intention is for directors to have 3 year terms with no cap • In theory directors could hold office for life • Alternatively, directors who have held office for 3 consecutive full terms should not be eligible for reappointment within 3 years after ceasing to hold office. |
| COMMENT | MIOs will appoint directors every three years. Consistent with rangatiratanga, they will have the ability to choose whether directors serve more than 3 year terms. There is no groundswell from iwi in responses to the draft amendments to warrant a change in direction. | | |
| PROPOSED ACTION | Remove the cap on the number of terms directors may serve, as we have proposed in the draft amendments | | |
| Directors fees | New s 62 (1) (ba) | Iwi should receive detailed information about proposed fees | <ul style="list-style-type: none"> • The constitution must now include a provision that the pool of fees payable to directors must be approved by ordinary resolution. • Note that this will not provide any detail to the approximate amount of funding more will it provide an opportunity for iwi to provide input into the amount • A detailed analysis of proposed fees must be provided to iwi at the time the notice of the AFL AGM is given to AHCs |
| COMMENTS | Directors have every incentive to provide information to shareholders on the basis for proposed fees, as shareholders could turn down a proposal that is not supported by adequate information. | | |
| PROPOSED ACTION | Review the constitution as its relates to fees. | | |
| Ability to resolve not to meet the requirement to pay annual dividends | New s 76 (5) | Disagree with elements of the decision-making process | <ul style="list-style-type: none"> • The threshold for a resolution to agree not to pay a dividend should be a special resolution as a number of iwi rely on the dividend to ensure sufficient cashflow |

| | | | |
|---|--|---|---|
| | | | <ul style="list-style-type: none"> • A new resolution should also be passed year (for example shareholders should not be able to resolve that the requirement to pay a minimum dividend is waved for the next 3 years). |
| | | Disagree with ability not to pay 40% dividend | <ul style="list-style-type: none"> • 40% minimum dividend should be retained • The ability of shareholders to resolve that AFL is not required to pay the minimum dividend should be removed • The provision allows a few major iwi who do not generally depend on annual dividends to resolve not to pay dividends for whatever reason. • AFL directors can then reduce or not pay any dividend to the detriment of smaller shareholders • AFL was established to facilitate centralised retention and management of the commercial entities for the benefit of iwi. It was envisaged there would be benefits continually from AFL through dividends. • AFL's current financial ratios do not have any cause for concern • It is the responsibility of the Board to ensure management do not make commitments ignoring iwi needs • It is worth noting that the recommendation to change the status quo originated from an internal AFL review and did not come from the Independent reviewer or go through a robust iwi review process |
| COMMENT | | | <ul style="list-style-type: none"> • 40% is the default – an ordinary resolution will be required to change it • Those who have the most to lose from a lesser dividend will have the greatest weight in decision-making • AFL directors have discretion to disregard no-cash profits and losses etc now. |
| PROPOSED ACTION | | | <ul style="list-style-type: none"> • Retain the ability for iwi to vote for an alternative to the 40% default, as proposed |
| Requirement to act in accordance with MIO directions | S 16 (2) (a), S 60B, new subsection (aa) of Kaupapa 11 (Schedule7) | Request more information about these requirements | <ul style="list-style-type: none"> • This is paternalistic • As a matter of general principle, where shareholders do not agree with management their remedy is to remove the directors or alter the constitution • Management or operational decisions are normally reserved for directors • Ngapuhi would like to understand the rationale for this. |

| | | | |
|---|---|--|--|
| COMMENTS | <ul style="list-style-type: none"> • New s 16 (2) (a) clarifies that an AHC must gain the approval of its MIO before selling settlement quota. This is consistent with the simpler sales provisions agreed by iwi • New s 60B clarifies that an AHC must act in accordance with the directions of its MIO in relation to sales of ordinary shares. This is consistent with the simpler sales process agreed by iwi | | |
| PROPOSED ACTIONS | <ul style="list-style-type: none"> • Retain the provisions as proposed in the draft amendments | | |
| AFL shareholding and minority shareholding | | Protection for minority shareholders is needed | <ul style="list-style-type: none"> • Six iwi could control the Board of AFL and make all decisions except those requiring 75% • This group could easily reach the required 75% acting with others • The rights of the 44 smallest iwi holding less than 25% of the shares would be undermined • Possible safeguards have not been suggested or addressed • It is likely the Parliamentary process will identify this as a major issue • A mechanism is needed, such as a “iwi share” of AFL which can be held by a suitably defined Eminent Persons’ Group • The group and the role of the iwi share – and conditions requiring its exercise could be defined in the legislation • The need for its continuation could be considered during the next review • The role of the Eminent Persons’ Group is to ensure the decisions are taken in the best interests of AFL and iwi – particularly the smaller shareholders. It would ensure endurance of the settlement. • AFL’s shareholding structure was designed to ensure the management and control of AFL remained impartial and neutral. It appears that Te Ohu as sole voting shareholder was unable to deliver on these ideals |
| COMMENTS | <ul style="list-style-type: none"> • Te Ohu’s role in the current governance structure was to ensure the collective interests of all iwi (including smaller iwi) are protected. In addition, Te Ohu’s 20% of income shares would have meant it could vote on proposed changes to the constitution with the interests of all iwi in mind. Iwi have decided to remove Te Ohu’s role in governance along with its 20% income shares. • Additional protections could be included in AFL’s constitution if considered necessary. | | |
| PROPOSED ACTIONS | <ul style="list-style-type: none"> • Retain provisions as currently drafted | | |

| | | | |
|---|---|---|--|
| Trading AFL shares | New s62 (1) (h) (iii) | Process for trading AFL shares should be amended | <ul style="list-style-type: none"> • The amendment requires AFL to notify all shareholders within one month of being informed of any transaction that has the effect of increasing or decreasing the shareholding by 5% or more of the total ordinary shares since last annual return • Currently AFL shares are valued between \$300 to \$1700 per share. There is currently no market and no way for valuations to be verified • Once shares start trading a market price will be set. There could be significant write-offs from some balance sheets as valuations are adjusted to reflect the market – so a robust market is needed • All share trades should be notified (with only 57 shareholders this should not be onerous) • Shareholders should also be notified when a shareholder is wishing to sell and all shareholders given the opportunity to bid. • Altho this “tender” process will be required to be managed by AFL or a third party it will have the advantage of ensuring that a fair price is considered in what is a “highly illiquid” stock. |
| COMMENTS | <ul style="list-style-type: none"> • Iwi resolved that the process for trading settlement assets should be carried out on a “willing buyer – willing seller” basis, subject to MIO approval • There are other ways of overcoming the problems identified (i.e. effect of sales on balance sheets) • Agree share sales should be notified by AFL within one month | | |
| PROPOSED ACTIONS | <ul style="list-style-type: none"> • Retain current sales process • Provide for notification of all share sales within one month (within the constitution). | | |
| Definition of “related party” – AFL constitution | Relevant to AFL constitution | Threshold to determine who is a related party should be removed | <ul style="list-style-type: none"> • Currently a material transaction (a transaction involving 5% or more of shareholder funds) with a related party requires approval by ordinary resolution • Definition of related party too limiting. The 5% threshold should be removed and all material transactions with any shareholder should be approved by a simple majority of the shareholders or amended to require specific certification from independent directors • Until shares are traded only 7 iwi will hold more than 5% • All shareholders are related |

| | | | |
|---|-------------------------|-----------------------------|---|
| | | | <ul style="list-style-type: none"> Shareholders beyond the targeted 7 have more potential to be unfairly advantaged through favourable commercial arrangements and divert profits available for distribution Under the current proposal AFL could enter into material transactions with the other 50 shareholders and those transactions would not need any prior approval or notice The requirement to provide notification in the annual report (arguably 18 months later) is inadequate. |
| COMMENTS | | | <ul style="list-style-type: none"> There is some merit in the suggestions made. Shareholders would want to know about any transaction of value greater than 5% shareholder funds, regardless of whether any MIO or AHC had a share greater or less than 5%. |
| PROPOSED ACTIONS | | | <ul style="list-style-type: none"> Consider amending the definition of related party in AFL's constitution to specify that any MIO or AHC is a related party for the purposes of a material transaction |
| Discretionary payments for charitable purposes | Existing 35 (1) (g) (i) | Request further information | <ul style="list-style-type: none"> It is not clear what the rationale is for this discretionary power – Ngapuhi requests an explanation |
| COMMENTS | | | <ul style="list-style-type: none"> The submission misunderstands what this is for. This is a discretionary power which means that so long as the payment is linked to furthering the charitable purposes of Te Ohu Kai Moana Trust, any amount could be paid to any iwi (and these may or may not necessarily include all iwi at any one time). Examples include funding support to iwi to assist with the allocation process. |
| PROPOSED ACTIONS | | | <ul style="list-style-type: none"> Comment and clarify in our second report to the Minister and/or feedback to iwi. |
| Right of First Refusal | | Question scope of RFR | <ul style="list-style-type: none"> The amendments only refer to AFL and its constitution. However the non-binding resolution also referred to Sealord iwi have previously expressed a desire that the RFR also applies to Sealord Sealord is a 50:50 JV so it would not be appropriate to fetter its ability to dispose of assets without the agreement of both shareholders Sealord's largest asset (quota) is already subject to the terms of the Pupuri Taonga use of Quota Deed which contains pre-emptive rights |
| COMMENTS | | | <ul style="list-style-type: none"> AFL will need to consider how a policy on RFR may relate to its interests in Sealord |
| PROPOSED ACTIONS | | | <ul style="list-style-type: none"> No change |

| | | | |
|---|----------------------|--|--|
| <p>Use of term “subcompanies”</p> | | <p>Question use of the term “subcompanies”</p> | <ul style="list-style-type: none"> • Based on definitions in the Act, Kura Ltd, Sealord Group and all of Sealord’s subsidiaries are AFL subcompanies and fall within the definition of “AFL Group”. • The term “company” is not defined and therefore the application to overseas subsidiaries is not entirely clear. • There are some cases under the existing Act where this is arguably not appropriate for a JV. E.g. <ul style="list-style-type: none"> ○ Restrictions in s 61 (3). However given the shareholders in this case would be Kura Ltd this is unlikely to be an issue in practice ○ Section 76 (3) which deals with the provisions to be dealt with in subcompany constitutions in relation to dividends ○ The new provisions relating to AFL directors providing services to a member of the AFL Group would apply to Sealord as drafted. This would mean all AFL directors would need to approve an AFL director directly or indirectly providing services to Sealord (etc) • Does this clause relate to AFL and its subcompanies or just AFL and its subsidiaries? If such a provision is to extend to Sealord it would be more appropriate for the necessary approval to be obtained from the Sealord directors rather than from the AFL directors. |
| <p>COMMENTS</p> | | | <ul style="list-style-type: none"> • The separation of the AFL group of companies from the Te Ohu Kai Moana Group and the creation of the “AFL Group” does not change the relevance of “subcompany” as defined in the MFA. This was inserted in the MFA to reflect the fact that Sealord involves a 50:50 partnership and that it is not a subsidiary (over which AFL would have overall control). • We acknowledge that AFL cannot compel Sealord but it would be desirable for AFL to use its “best endeavours” to ensure that Sealord has a similar provision around directors contracting to the company (similar to other areas in which AFL is required to use its best endeavours to ensure particular measures are in Sealord’s constitution). |
| <p>PROPOSED ACTIONS</p> | | | <ul style="list-style-type: none"> • Amend draft s 62 (1) (j) to require AFL to use its best endeavours to ensure Sealord’s constitution requires any director or alternate director of Sealord who undertakes directly or indirectly any contract for services for the Sealord Group to obtain the prior approval of all the other directors, make a full disclosure to all other directors and include a disclosure in the annual report. |
| <p>Settlement quota</p> | | | |
| <p>Extension of maximum period for ACE sales</p> | <p>S 167 (1) (b)</p> | <p>Disagree with extension of maximum term for</p> | <ul style="list-style-type: none"> • Fifteen years’ duration apply to ACE sales and purchase agreements is too long and risky for iwi. • Such a period can include two or more economic cycles and many companies do not survive periods of 15 years |

| | | | |
|-------------------------|--|-----------------------|--|
| | | ACE sales to 15 years | <ul style="list-style-type: none"> The maximum threshold should be 7 years. |
| COMMENTS | <ul style="list-style-type: none"> This was a binding resolution that achieved the required support 15 years is not compulsory. Iwi are free to choose the time-period that is acceptable to them. | | |
| PROPOSED ACTIONS | <ul style="list-style-type: none"> No change | | |

APPENDIX 4: Draft amendments to the Maori Fisheries Act 2004

DRAFT

Reprint
as at 1 April 2014



[SEE NOTE TO CLAUSE 2 CONCERNING
COMMENCEMENT DATES]

Maori Fisheries Act 2004

Public Act 2004 No 78

Date of assent 25 September 2004

Commencement see section 2

Contents

| | Page |
|---|------|
| Preamble | |
| <u>Further Preamble</u> | |
| 1 Title | 13 |
| 2 Commencement | 13 |
| Part 1 | |
| Purposes of Act, key concepts, and key iwi organisations | |
| 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 |

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.

DRAFT OF 16 AUGUST 2017 PREPARED BY TE OHU KAI MOANA TRUSTEE LIMITED: REFER
SECTION 127(3)(b) MAORI FISHERIES ACT 2004

| | | |
|-----|--|----|
| | <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 |
| | Part 2 | |
| | Establishment and review of new entities | |
| 30 | Outline of this Part | 39 |

DRAFT

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

| | | |
|---|---|----|
| Subpart 1—Te Ohu Kai Moana and Te Ohu Kai Moana Trustee Limited | | |
| <i>Establishment of trust and trustee</i> | | |
| 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 |
| <i>Duties and functions of trustee</i> | | |
| 34 | Duties of Te Ohu Kai Moana Trustee Limited | 40 |
| 35 | Functions of Te Ohu Kai Moana Trustee Limited | 41 |
| <i>Trust deed</i> | | |
| 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 |
| <i>Te Ohu Kai Moana Trustee Limited</i> | | |
| 44 | Constitution of Te Ohu Kai Moana Trustee Limited | 48 |
| <i>Appointment of directors</i> | | |
| 45 | <u>First directors of Te Ohu Kai Moana Trustee Limited</u> | 50 |
| 46 | <u>Subsequent appointments</u> | 50 |
| 47 | <u>Term of office of directors</u> | 50 |
| 48 | <u>Eligibility for office of director</u> | 51 |
| 49 | <u>Removal of directors</u> | 51 |
| 45 | <u>Directors of Te Ohu Kai Moana</u> | |
| 50 | Effect of vacancy in membership of Te Ohu Kai Moana Trustee Limited | 51 |
| <i>Iwi register</i> | | |
| 51 | Documentation relating to iwi register | 51 |
| 52 | Access to iwi register | 52 |
| 53 | Policy on iwi register | 52 |
| <i>Rule-making procedures</i> | | |
| 54 | Procedures for making or amending rules | 52 |
| <i>Subpart 2—Te Kawai Taumata</i> | | |
| 55 | <u>Establishment of Te Kawai Taumata</u> | 53 |
| 56 | <u>Sole function of Te Kawai Taumata</u> | 53 |
| 57 | <u>Membership of Te Kawai Taumata</u> | 54 |
| 58 | <u>Alternate members of Te Kawai Taumata</u> | 54 |
| 59 | <u>Eligibility for membership of Te Kawai Taumata</u> | 54 |

DRAFT

Funding of Te Ohu Kai Moana Trustee Limited

| | | |
|------------|--|--|
| <u>55</u> | <u>Applications of this Subpart</u> | |
| <u>56</u> | <u>Purpose of funding levy proposal</u> | |
| <u>57</u> | <u>Funding levy proposal</u> | |
| <u>58</u> | <u>Notice of consideration and adoption of funding levy proposal</u> | |
| <u>59</u> | <u>Collection of levy</u> | |
| <u>59A</u> | <u>Subsequent funding levy proposals</u> | |
| <u>59B</u> | <u>Surplus levy funding</u> | |
| <u>59C</u> | <u>Distribution of other surplus funds</u> | |

Subpart 3—Aotearoa Fisheries Limited

Establishment

| | | |
|------------|---|----|
| 60 | Establishment of Aotearoa Fisheries Limited | 55 |
| <u>60A</u> | <u>Shares in Aotearoa Fisheries Limited</u> | |
| <u>60B</u> | <u>Relationship of mandated iwi organisations and asset holding companies in relation to Aotearoa Fisheries Limited</u> | |

Duty of Aotearoa Fisheries Limited

| | | |
|----|------------------------------------|----|
| 61 | Duty of Aotearoa Fisheries Limited | 56 |
|----|------------------------------------|----|

Constitution of Aotearoa Fisheries Limited

| | | |
|----|-------------------------------|----|
| 62 | Requirements for constitution | 56 |
|----|-------------------------------|----|

Directors

| | | |
|-----------|---|-----------|
| 63 | Directors of Aotearoa Fisheries Limited | 57 |
| <u>64</u> | <u>Transfer of shares held by Te Ohu Kai Moana Trustees Limited</u> | |
| <u>64</u> | <u>Restrictions on appointment of directors</u> | <u>57</u> |
| <u>65</u> | <u>Directors of subcompanies</u> | <u>58</u> |

Voting shares

| | | |
|-----------|----------------------|-----------|
| <u>66</u> | <u>Voting shares</u> | <u>59</u> |
|-----------|----------------------|-----------|

Income shares

| | | |
|-----------|---|-----------|
| 67 | Income shares | 59 |
| 68 | Additional income share ordinary shares | 59 |
| 69 | Disposal of income share ordinary shares by mandated iwi | 60 |
| <u>70</u> | <u>Process for disposal of income shares by mandated iwi organisations</u> | <u>60</u> |
| <u>71</u> | <u>Disposal of income shares by Te Ohu Kai Moana Trustee Limited</u> | <u>61</u> |
| 72 | Other constraints on disposal of income share ordinary shares | 61 |
| 73 | Remedy for breach of sections 69 to or 72 | 62 |
| 74 | Exceptions to restrictions on disposal of income ordinary shares | 63 |

Transfer of assets

| | | |
|----|--|----|
| 75 | Transfer of assets to Aotearoa Fisheries Limited | 63 |
| 76 | Payment of dividends by Aotearoa Fisheries Limited | 64 |

DRAFT

| | | |
|-----|--|----|
| 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 | 66 |
| 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 | 74 |
| | <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 | 73 |
| 95 | Functions of Te Wai Maori Trustee Limited | 73 |
| | <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 | 75 |
| 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 | 78 |
| | Subpart 6— Audits and reviews <u>Reviews</u> | |

DRAFT

| | | |
|------|---|----|
| 104 | Interpretation | 79 |
| | <i>Audit of entities</i> | |
| 105 | Audits | 79 |
| 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 Whakaturu 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 <u>Independent reviews</u> | 83 |
| 115 | <u>Initiation of reviews</u> | |
| 116 | <u>Subsequent reviews</u> | |
| 117 | <u>Joint reviews</u> | |
| 118 | <u>Costs of reviews</u> | |
| 115 | <u>Funding of reviews</u> | 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 | 85 |
| | <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 |
| 127A | <u>Other reviews not precluded</u> | |
| | <i>Requirement to provide information</i> | |
| 128 | Information requested by auditor or reviewer | 90 |
| | Part 3 | |
| | Allocation and transfer of settlement assets | |
| 129 | Outline of this Part | 90 |

DRAFT

Subpart 1—Allocation and transfer of settlement assets

Duty

| | | |
|-----|--|----|
| 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) | 92 |
| | <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 |

Settlement asset money

| | | |
|------|--|----|
| 137 | Transfer of money | 94 |
| 138 | Allocation of surplus funds | 95 |
| 138A | Allocation and transfer of New Zealand units | 96 |

Income shares

| | | |
|----------------|--|---------------|
| 139 | Allocation of income shares | 96 |
|----------------|--|---------------|

Subpart 2—Bases for allocation of settlement quota

Inshore quota

| | | |
|-----|-----------------------------|----|
| 140 | Allocation of inshore quota | 97 |
|-----|-----------------------------|----|

Deepwater quota

| | | |
|-----|-------------------------------|----|
| 141 | Allocation of deepwater quota | 97 |
|-----|-------------------------------|----|

Chatham zone

| | | |
|-----|----------------------------|----|
| 142 | Chatham Island allocations | 97 |
|-----|----------------------------|----|

Harbour quota

| | | |
|-----|-------------------------------------|----|
| 143 | Allocation of quota within harbours | 99 |
|-----|-------------------------------------|----|

Allocations in specified Fishery Management Areas

| | | |
|-----|---|-----|
| 144 | Allocation of settlement quota in quota management areas same as Fishery Management Area 4 | 99 |
| 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 |

Highly migratory species

| | | |
|-----|---|-----|
| 147 | Allocation of settlement quota for highly migratory species | 100 |
|-----|---|-----|

Adjustments to number of quota shares available for distribution

| | | |
|------|---|-----|
| 147A | Recalculation of allocations of deepwater stock | 100 |
| 147B | Allocation of reduced number of quota shares | 101 |

Freshwater quota

DRAFT

| | | |
|------|--|-----|
| 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 | 102 |
| | Subpart 3—Transfer of settlement assets | |
| 151 | Transfer of allocated settlement quota | 103 |
| 152 | Offer of annual catch entitlement | 103 |

| | | |
|----------------|--|----------------|
| | 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 |
| | Part 4 | |
| | Settlement quota interests, sales and exchanges of settlement quota, related restrictions, and option to purchase | |
| 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 Constitutional document must authorise 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 <u>Te Ohu Kai Moana AFL Group</u> | 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 |
| | Part 5 | |
| | Dispute resolution | |
| 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 | 119 |
| 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 | 121 |
| 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 |
| | Part 6 | |
| | Transitional and miscellaneous provisions, repeal, and amendments | |
| 188 | Outline of this Part | 122 |
| 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 | 123 |
| 192 | Certain exemptions saved | 123 |
| 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) | 124 |
| 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 | 125 |
| 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 | 127 |
| 204 | Registers | 128 |
| Subpart 2—Employees and agents | | |
| 205 | Interpretation | 128 |
| 206 | Liability of employees and agents | 128 |
| 207 | Transfer of existing employees | 129 |
| 208 | Terms and conditions of employment of transferred employees | 129 |
| 209 | Continuity of employment | 129 |
| 210 | No compensation for technical redundancy | 129 |
| Subpart 3—Miscellaneous provisions | | |
| 211 | Application of Inland Revenue Acts and other enactments | 130 |
| <u>211A</u> | <u>Aotearoa Fisheries Limited issue of income shares to Te Ohu Kai Moana Trustee Limited</u> | |
| 212 | Protection of names | 130 |
| Subpart 4—Repeal and consequential amendments | | |
| <u>212A</u> | <u>Te Kawai Taumata dissolved</u> | |
| 213 | Enactment repealed | 131 |
| 214 | Amendments to other enactments | 131 |
| | Schedule 1 | 132 |
| | Quota shares | |
| | Schedule 2 | 146 |
| | Harbours and harbour quota | |
| | Schedule 3 | 151 |
| | Iwi (listed by groups of iwi) and notional iwi populations | |
| | Schedule 4 | 155 |
| | Organisations that are recognised iwi organisations (as at the commencement of this Act) | |
| | Schedule 5 | 157 |
| | Representative Maori organisations | |
| | Schedule 6 | 158 |
| | Methodology for determination of coastline entitlements | |
| | Schedule 7 | 168 |
| | Kaupapa applying to constitutional documents of mandated iwi organisations | |

| | |
|---------------------------------|-----|
| Schedule 8 | 175 |
| Te Kawai Taumata | |
| Schedule 9 | 182 |
| Consequential amendments | |

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 Seal-ord 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.

Further Preamble

- (16) [The first review of entities established under this Act was required by section 114\(2\) to be completed no later than the end of the 11th year after the commencement of this Act.](#)
- (17) [As contemplated by section 126\(1\), each affected entity \(except Te Pūtea Whakatapu Trustee Limited\) prepared a plan specifying actions it intended to take to address the findings and recommendations of the reviewer.](#)
- (18) [Te Ohu Kai Moana Trustee Limited convened a general meeting as required by section 127\(1\).](#)
- (19) [At that general meeting, and at subsequent general meetings, various resolutions were passed, as contemplated by section 127.](#)
- (20) [Amendments to this Act were required to give effect to some resolutions which had the level of support required by section 127\(3\).](#)
- (21) [As required by section 127\(3\)\(b\), Te Ohu Kai Moana requested the Minister to promote those amendments, and certain other amendments that were considered desirable.](#)
- (22) [After considering the request, the Minister recommended certain amendments, and these are contained in the Maori Fisheries Amendment Act 2017 which, by virtue of section 23 of the Interpretation Act 1999, is part of this Act.](#)

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

Commented [SG1]: The amendment Bill would come into force about 3 months or perhaps 6 months after assent. Ideally specify a date. New section 64 re: distribution of Te Ohu's shares to AHCs will have a discretionary period for implementation after that.

There is one important exception. Section 211A must come into force on enactment or within a short period after that.

That enables the RPS transaction to be unwound, and income shares to be issued to Te Ohu before all income shares become ordinary shares. Once they are ordinary shares the shares from the RPS unwind and the 20% of AFL shares currently held by TOKMTL get distributed to MIOs (see new s64).

It is necessary to have a reasonable gap between enactment and commencement so that section 11 of the Interpretation Act can be used to amend constitutions and trust deeds of entities named in this Act in anticipation of commencement.

DRAFT

- (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.

Commented [SG2]: TKT is abolished because Te Ohu directors are to be elected by MIOs and RIOs.

5 Interpretation

In this Act, unless the context otherwise requires,—

adult member means a person 18 years of age or over

AFL Group means Aotearoa Fisheries Limited and its subcompanies

Commented [SG3]: AFL leaves the Te Ohu Group because AFL shares will all be held by MIOS/AHCs.

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

Commented [SG4]: AFL trades as "Moana" but has not yet formally changed its name.

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

charitable status in relation to a mandated iwi organisation means a mandated iwi organisation that is (or is not) a charitable entity as defined in section 4(1) of the Charities Act 2005

Commented [SG5]: See for example section 36(1)(g).

Chatham zone has the meaning set out in section 142

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

DRAFT

~~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

entity with charitable status means a charitable entity as defined in section 4(1) of the Charities Act 2005

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

Commented [SG6]: A direct term "charitable entity" would be preferable in theory but would necessitate amendments to several sections and to subsidiary documents such as trust deeds and constitutions. That seems excessive, given it is used in rare cases such as termination situations.

DRAFT

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) all recognised iwi organisations and their members.~~
 - ~~(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

DRAFT

- (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

notional iwi population means, in relation to any iwi or mandated iwi organisation, the population of the relevant iwi as shown in column 2 of Schedule 3 and percentage, in relation to that population means the percentage shown in column 3 of that Schedule

ordinary share means a share in Aotearoa Fisheries Limited that becomes an ordinary share under section 60A(2) or is subsequently issued as an ordinary share in accordance with the constitution of Aotearoa Fisheries Limited

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—

Commented [SG7]: There is some confusion in the way the population ratios are described in the Act now. This should simplify it.

Commented [SG8]: Needed now that income share and voting share concepts disappear. Technically, the description in the Act could just be “share”, but in most places we have used “ordinary share” to reduce confusion.

DRAFT

- (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

sale and sell, in relation to settlement quota or ordinary shares in Aotearoa Fisheries Limited includes disposal by gift, exchange or any other means

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; and

DRAFT

~~(e)~~(d) any shares in Aotearoa Fisheries Limited referred to in **sections 60A or 68** or issued under the authority of **section 211A** or the constitution of Aotearoa Fisheries Limited.

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 of 75% of the total mandated iwi organisations and recognised iwi organisations entitled to vote and voting on the matter.~~

~~**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

DRAFT

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

DRAFT

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:

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

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 including represent its iwi by attending, speaking and voting at meetings as contemplated by 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 or another mandated iwi organisation if control of the asset holding company has been changed under section 18E; 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-ordinary 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 must not sell or enter into any transaction affecting any settlement quota other than in accordance with a specific or general direction from the mandated iwi organisation owning the asset holding company as contemplated by sections 162 and 167 and kaupapa 11 of Schedule 7.
 - (b) in its function of receiving and holding settlement quota and income-ordinary 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-sharesordinary shares transferred to it by the asset-holding company under subsection (3)(b); and

Commented [SG9]: There is an option in 18E to transfer AHC shares rather than transfer underlying assets. See also 18B(5)(b)(ii).

Commented [SG10]: It is for each MIO to decide the extent of control it exercises over its AHC in relation to SQ transactions. The position is similar to an agency. The MIO can give its AHC as much, or as little, discretion as it wishes. See also s60B(2).

DRAFT

- (c) provide dividends solely to the mandated iwi organisation owning the asset-holding company that established the subsidiary; and
- (d) comply with subsection (2) as if it were an asset holding company; 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.

DRAFT

- (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~~ordinary shares means the ~~income shares~~ordinary 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~~ordinary 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

DRAFT OF 16 AUGUST 2017 PREPARED BY TE OHU KAI MOANA TRUSTEE LIMITED: REFER SECTION 127(3)(b) MAORI FISHERIES ACT 2004

DRAFT

- (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 share~~ordinary 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 or all the shares in the asset holding company may be transferred to 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 sub-clause (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; or authorised the transfer of all the shares in the asset holding company or companies to the new organisation; and
 - (ii) has authorised the transfer of the specified ~~income share~~ordinary shares to 1 or more asset-holding companies of the new organisation; or authorised the transfer of all the shares in the asset holding company or companies to 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, or all the shares in its asset holding company or companies are transferred 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 share~~ordinary shares have been transferred, give written notice of the transfer to Aotearoa Fisheries Limited.
- (6) For the purposes of the Inland Revenue Acts, the new organisation must be treated as having held the specified settlement assets at all times since those assets were acquired by the existing organisation.

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.

Commented [SG11]: This ensures continuity for tax purposes. Important not only for the new organisation, but potentially also for AFL in an extreme situation. Applies to tax purposes only.

DRAFT

- (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~~ordinary 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,—

DRAFT

Reprinted as at
Part 1 s 20

Maori Fisheries Act 2004

1 April 2014

- (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)(fg)(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 in-

formation, 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—

$$\frac{a}{b} \times c$$

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)(~~g~~)(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~~
~~treated as if it were between wholly owned asset holding companies of the joint mandated iwi organisation.~~
- (3) ~~For the purposes of the Inland Revenue Acts, the withdrawing group must be treated as having held the assets referred to in section 20(3)(b) at all times since those assets were acquired by the joint mandated iwi organisation.~~

Commented [SG12]: Rely on new s154(2)(c).

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).~~
- (33) For the purposes of sections ~~55(1)(a), 57(1)(f), 58(3) and (4), 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.~~
- (4) ~~The mandated iwi organisation of a withdrawing group and the joint mandated iwi organisation must jointly notify Te Ohu Kai Moana Trustee Limited of their names and respective notional iwi populations and thereafter columns 2, 3, and 4 of Schedule 3 must be read accordingly in respect of them.~~

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 be-

DRAFT

comes, 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

DRAFT

(d) to represent the iwi in consultation, negotiation, and proceedings relating to a matter listed in this subsection.

(e) to attend, speak and vote at any general meeting of Te Ohu Kai Moana Trustee Limited.

~~(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~~ordinary shares, or to receive dividends relating to ~~income shares~~ordinary 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 Whakatapu 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)~~ (2) A representative Maori organisation is entitled to attend and speak, but not vote, at any general meeting of Te Ohu Kai Moana Trustee Limited.

~~(2)~~ (2) A representative Maori organisation is entitled to participate in the procedures—

Commented [SG13]: This section and section 27(3) do not quite cover all the rights of a RIO, especially in view of the changes; so RIO references are added in places in the Act and in the deeds and constitution for TOKMTL.

~~(a) to appoint or remove a member or alternate member of Te Kawai Taumata, as provided for in Schedule 8; and~~

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Part 2 s 32

~~(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~~
- ~~(e)(b)~~ Aotearoa Fisheries Limited; and
- ~~(d)(c)~~ Te Putea Whakatupu Trust and Te Putea Whakatupu Trustee Limited; and
- ~~(e)(d)~~ 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)~~(m) 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)~~(n) 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)~~(o) 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)~~(p) 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, must be submitted for approval by mandated iwi organisations and recognised iwi organisations at least once every 3 years at a general meeting of Te Ohu Kai Moana Trustee Limited and must indicate whether there would be a likely need for a funding levy under Subpart 2; and

Commented [SG14]: Approval is by ordinary resolution. The strategic plan is an ongoing document, always "live" but must be approved every 3 years, at least.

- (c) require Te Ohu Kai Moana Trustee Limited to circulate drafts of the ~~plans~~annual plan referred to in paragraph (b)(i) for comment, prior to ~~their~~its adoption by Te Ohu Kai Moana Trustee Limited, to—
- (i) mandated iwi organisations; and
 - (ii) representative Maori organisations; and
- (d) require that the constitution of Te Ohu Kai Moana Trustee Limited provides that at any general meeting of the company only mandated iwi organisations and recognised iwi organisations may vote, and each iwi organisation has one vote; and
- (~~e~~) provide for the manner in which the trust deed may be varied and any restrictions on its variation; and
- (~~f~~) 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(~~e~~) ~~to~~and (g), to—
- (i) the directors and alternate directors of Te Ohu Kai Moana Trustee Limited; and
 - (ii) the directors and alternate directors of Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited; ~~and~~
 - (iii) ~~the members and alternate members of Te Kawai Taumata; and the members of a committee of representatives; and~~
- (~~g~~) 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 to an entity with charitable status nominated by the mandated iwi organisation to benefit the relevant iwi and its members; 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.

Commented [SG15]: See s59C and comment there.

DRAFT

(1A) If the strategic plan is not approved under subsection (1)(b)(ii), the current strategic plan remains in force until a new strategic plan is approved at a general meeting of Te Ohu Kai Moana Trustee Limited.

- (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 share~~ordinary 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~~
- (d) when relevant, the budget for a review to be conducted under **Subpart 6**; and
- ~~(f) the scale pool of fees (expressed in bands of \$10,000) that applies for—~~
 - (i) the directors and alternate directors of Te Ohu Kai Moana Trustee Limited, to be paid by Te Ohu Kai Moana Trustee Limited; and
 - (ii) the directors and alternate directors of Te Putea Whakatupu Trustee Limited, to be paid by Te Putea Whakatupu Trustee Limited; and

DRAFT

- (iii) the directors and alternate directors of Te Wai Maori Trustee Limited, to be paid by Te Wai Maori Trustee Limited; and
- (~~ef~~) 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 and alternate directors, ~~members, and alternate members, as the case may be,~~ referred to in paragraph (e).

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, recognised 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~~ordinary 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

DRAFT

- (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)~~37(1)(e); 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 and alternate directors of Te Ohu Kai Moana Trustee Limited, Te Putea Whakatupu Trustee Limited, and Te Wai Maori Trustee Limited; and
 - ~~(iii) the remuneration and reimbursing allowances or actual and reasonable expenses paid, collectively, to —~~
 - ~~the members and alternate members of Te Kawai Taumata;~~
 - ~~and~~
 - ~~the members of a committee of representatives.~~
 - (c) the disclosure required by section 44(2)(h); and
 - (d) all other disclosures required by the Companies Act 1993 or any other Act.

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, recognised iwi organisations, and 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).

DRAFT

- (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

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.

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.

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

DRAFT

(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—
consult with mandated iwi organisations and representative Maori organisations; and
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.

Commented [SG16]: Sections 41 to 43 are spent, but remain to show the history.

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 6⁵, and not more than 7, directors as determined by the mandated iwi organisations and recognised iwi organisations at a general meeting; and

DRAFT

- (ba) that each director must be appointed in accordance with procedures specified in the constitution of Te Ohu Kai Moana Trustee Limited.
- (b) ~~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~~
- (c) ~~(e) — that each of the directors of Te Ohu Kai Moana Trustee Limited must be a Maori; and~~
- (da) that each director holds office for a term of 3 years and is eligible for reappointment;
- (fe) ~~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 that Te Ohu Kai Moana Trustee Limited must have and notify to mandated iwi organisations and recognised iwi organisations a policy identifying the skills, experience, and attributes considered desirable for directors, individually and collectively.~~
- (gf) a procedure for the appointment of an alternate for a director to attend and vote at meetings on behalf of that director; and
- (fa) that the directors may fill any vacancy in their number by appointing a qualified person to hold office until the next general meeting required to be held under section 39(1)(a) or as provided in the constitution; and must do so if the vacancy means the number of directors is less than 5.
- (hg) a method by which the board of Te Ohu Kai Moana Trustee Limited must address conflicts of interest for its directors; and
- (ih) that, in addition to complying with section 140 of the Companies Act 1993, no any director or alternate director of Te Ohu Kai Moana Trustee Limited may who undertakes directly or indirectly any contract for services for any member of Te Ohu Kai Moana Group must obtain the prior approval of all the other directors, must make full disclosure to all the other directors of all payments (including expenses) and that the disclosure is also made in the annual report; 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~~
- (kj) 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
- (k) a procedure for the amending of the constitution of Te Ohu Kai Moana Trustee Limited by special resolution; and

Commented [SG17]: See para (fa).

Commented [SG18]: Note that special resolution here is 75% of those voting, not the 75%/50% "super" resolution.

DRAFT

- ~~(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 each mandated iwi organisation, recognised iwi organisation, or representative Maori organisation; and—
 - ~~(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 recognised 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)~~(3) 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)~~(4) 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—

DRAFT

(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.~~

DRAFT

45 Directors of Te Ohu Kai Moana

- (1) Each director appointed by Te Kawai Taumata and in office immediately before the commencement of the **Maori Fisheries Amendment Act 2017** remains in office until his or her term expires or he or she is sooner removed from office in accordance with the constitution of Te Ohu Kai Moana Trustee Limited.

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 so long as the number of directors does not fall below 5; but if that occurs the remaining directors retain the power to fill vacancies under section 44(2)(fa).

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—
- iwi constitutional documents; and
 - documents submitted in making a coastline claim under section 11; and
 - records of the process by which coastline entitlements are determined by Te Ohu Kai Moana Trustee Limited; and
 - 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 mandated iwi organisation or recognised iwi organisation;
 - 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—
- rules on access to—
 - information on the register:
 - documents that are relevant to, and included with, information on the register:
 - criteria that apply to—
 - protect the confidentiality of information in the iwi register:

DRAFT

- (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 for non-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.~~

DRAFT

- (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,—~~

DRAFT

- (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.~~

Commented [SG19]: Dissolution of Te Kawai Taumata will come at the end of the amending Bill.

Subpart 2

Funding of Te Ohu Kai Moana Trustee Limited

55 Applications of this Subpart

- (1) This Subpart applies only if—
 - (a) Te Ohu Kai Moana Trustee Limited is requested by a resolution approved by a simple majority of the total mandated iwi organisations and recognised iwi organisations entitled to vote and voting to initiate the levy funding process; or
 - (b) the directors of Te Ohu Kai Moana Trustee Limited are satisfied that a funding levy is likely to be needed to enable it to perform its functions and duties efficiently and effectively in any of the years in which the funding levy would be payable.
- (2) The directors of Te Ohu Kai Moana Trustee Limited may only form a view under **subsection (1)(b)** if a likely need for a funding levy is indicated in a strategic plan that is approved under **section 36(1)(b)(ii)**.
- (3) If this subpart applies, Te Ohu Kai Moana Trustee Limited must prepare a proposal to impose a levy on mandated iwi organisations and recognised iwi organisations, and send it to each organisation.

56 Purpose of funding levy proposal

DRAFT

The purpose of a funding levy proposal is to provide Te Ohu Kai Moana Trustee Limited with sufficient funding, having regard to its likely other funding sources and likely reserves (if any), to enable it to perform its functions and duties, or such of them as are specified in the proposal, efficiently and effectively in the years for which the levy would be payable.

57 Funding levy proposal

- (1) A funding levy proposal prepared by Te Ohu Kai Moana Trustee Limited must specify—
 - (a) the anticipated cost of performing the functions and duties of Te Ohu Kai Moana Trustee Limited in each of the years to which the funding levy would apply; and
 - (b) the maximum funding levy that would be imposed in respect of each of those years; and
 - (c) the assumptions supporting the maximum funding levies including other funding sources, use of reserves, carry forward of previous funding levies, and inflation; and
 - (d) the circumstances in which less than the maximum funding levy might be imposed in respect of any year; and
 - (e) the likely impact on the delivery of the current strategic plan if the levy proposal is not implemented; and
 - (f) that the proposed funding levy would be applied to each mandated iwi organisation and recognised iwi organisation according to the percentage that the notional population of that organisation bears to the total notional iwi population and specify the likely cost to each mandated iwi organisation and recognised iwi organisation; and
 - (g) the intended due dates for funding levy payments and the interest rate or interest rate formula proposed to be applied to payments in default; and
 - (h) any proposed methods of recovery of unpaid funding levy (including default interest) in addition to those specified in **section 59**.
- (2) A funding levy must specify the years to which it applies, with a maximum of 9 years.

58 Notice of consideration and adoption of funding levy proposal

- (1) Te Ohu Kai Moana Trustee Limited must, not earlier than 20 working days after sending the funding proposal as required by **section 55(3)**, convene a general meeting to consider the proposal.
- (2) At the general meeting, the proposal may be adopted without amendment.
- (3) If, at the general meeting any amendment is proposed by any mandated iwi organisation or Te Ohu Kai Moana Trustee Limited and endorsed by a resolution approved by a majority of the total mandated iwi organisations and recognised iwi organisations entitled to vote and voting, then Te Ohu Kai Moana Trustee Limited must—
 - (a) revise the proposal accordingly; and

DRAFT

- (b) convene a further general meeting within 40 working days to consider the revised proposal and vote on its adoption.
- (4) A resolution under **subsection (2) or (3)(b)** to adopt a funding levy proposal requires the approval of not less than 75% of mandated iwi organisations and recognised iwi organisations together representing not less than 50% of the total notional iwi population.
- (5) If a resolution under this section for a funding levy proposal is not adopted, mandated iwi organisations and recognised iwi organisations must not requisition Te Ohu Kai Moana Trustee Limited under **section 55(1)** to initiate the levy funding process within the 2 years after the failure of the resolution.

59 Collection of levy

- (1) Te Ohu Kai Moana Trustee Limited may recover any funding levy (including any default interest) from the relevant mandated iwi organisation or recognised iwi organisation—
 - (a) by deducting it from any amount that Te Ohu Kai Moana Trustee Limited owes to or would otherwise be paying to the organisation; or
 - (b) as a debt due in any court of competent jurisdiction.
- (2) A funding levy may provide that where the Crown, Aotearoa Fisheries Limited, or any other party owes money to a mandated iwi organisation or recognised iwi organisation that is in default of payment of a funding levy (including any default interest) to Te Ohu Kai Moana Trustee Limited, or owes money to the asset holding company of that mandated iwi organisation,—
 - (a) Te Ohu Kai Moana Trustee Limited may request the Crown, Aotearoa Fisheries Limited, or other party to deduct all or part of the amount owed to Te Ohu Kai Moana Trustee Limited from the money payable to the organisation or asset holding company; and
 - (b) the Crown, Aotearoa Fisheries Limited, or other party is not obliged to comply with the request under **paragraph (a)**, but if it does so the receipt of the chief executive of Te Ohu Kai Moana Trustee Limited discharges the debt owed by the Crown, Aotearoa Fisheries Limited, or other party to the mandated iwi organisation, recognised iwi organisation, or asset holding company to the extent of the amount paid to Te Ohu Kai Moana Trustee Limited.

59A Subsequent funding levy proposals

- (1) Not earlier than 2 years before the expiry of a funding levy, Te Ohu Kai Moana Trustee Limited must, if it wishes the funding levy to continue in its current or any amended form, prepare and distribute to mandated iwi organisations and recognised iwi organisations a further funding levy proposal that complies with **section 57**.
- (2) Te Ohu Kai Moana Trustee Limited may include the information referred to in **subsection (1)** in a strategic plan referred to in **section 36(1)(b)(ii)**.

Commented [SG20]: This section may not be needed, as TOKMTL could start a new process under section 55 at any time.

59B Surplus levy funding

DRAFT

If Te Ohu Kai Moana Trustee Limited determines that it holds levy funding in excess of that necessary to meet the purpose for which it was collected, Te Ohu Kai Moana Trustee Limited must return the surplus funding to the mandated iwi organisations and recognised iwi organisations that paid the funding levy, on a pro rata basis.

59C Distribution of other surplus funds

- (1) If Te Ohu Kai Moana Trustee Limited determines that it holds funds (other than levy funding) in excess of those it considers necessary to meet its current and future requirements, Te Ohu Kai Moana Trustee Limited must distribute the surplus funds to mandated iwi organisations.
- (2) Distributions in respect of mandated iwi organisations under **subsection (1)** may only be paid to:
 - (a) a mandated iwi organisation that has charitable status, or to an entity with charitable status nominated by the organisation to benefit the relevant iwi and its members; 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 organisation to benefit the relevant iwi and its members.
- (3) If a mandated iwi organisation does not have charitable status exists and no nomination is made under **subsection (2)(b)**, Te Ohu Kai Moana Trustee Limited must retain the relevant surplus funds until it can comply with **subsection (2)**.
- (4) Distributions under this section must be made on an equal basis to all iwi.

OR

- (4) Distributions under this section must be made to each mandated iwi organisation in the percentage that the notional population of that organisation bears to the total notional iwi population.

Commented [SG21]: See also s36(1)(g). If Te Ohu has surplus funds and winding up is imminent, then this section and section 36(1)(g) can give very different outcomes if s59C is invoked first.

Commented [SG22]: The first option reflects the decision made at the hui. The second option aligns with what happens to any surplus on the winding up of Te Ohu; and removes the tension that would arise if a distribution were to occur shortly before wind up of Te Ohu.

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 —~~

DRAFT

- ~~(i) equal distribution rights; and~~
- ~~(ii) sole rights to vote under section 207P of the Companies Act 1993.~~

~~(32) 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.~~

~~(3) If Aotearoa Fisheries Limited changes its name, all references in this Act to the company are to be treated as references to the company under its new name.~~

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).

60A Shares in Aotearoa Fisheries Limited

- ~~(1) All the voting shares in Aotearoa Fisheries Limited are cancelled.~~
- ~~(2) All the income shares in Aotearoa Fisheries Limited (including those referred to in section 211A) are ordinary shares to which section 36 of the Companies Act 1993 applies.~~
- ~~(3) Nothing in or required by this section affects any rights of or action taken by the holder of any voting share or income share that accrued or was exercised prior to the operation of this section.~~

Commented [SG23]: This assumes the s211A issue of income shares occurs first, then they become ordinary shares later.

Commented [SG24]: Section 87 Companies Act means the share registry changes will happen. Will be the responsibility of AFL directors.

60B Relationship of mandated iwi organisations and asset holding companies in relation to Aotearoa Fisheries Limited

- ~~(1) References in sections 62 to 72 of this Act and the constitution of Aotearoa Fisheries Limited to mandated iwi organisations are to be treated as references to—
 - ~~(a) the asset holding company required by section 16(1)(c) to hold the ordinary shares; or~~
 - ~~(b) a subsidiary to which ordinary shares have been transferred as contemplated by section 16(3)(b) as the case may require.~~~~
- ~~(2) In exercising the rights and powers of a shareholder of Aotearoa Fisheries Limited under this Act, the constitution, or the Companies Act 1993 (including the sale of ordinary shares) the asset holding company or companies must act in accordance with the directions of the relevant mandated iwi organisation as contemplated by section 69 and Kaupapa 11 of Schedule 7.~~
- ~~(3) **Subsection (2)** does not require Aotearoa Fisheries Limited to verify whether an asset holding company is acting in accordance with a direction referred to in that subsection, or its constitution; but Aotearoa Fisheries Limited may require a statutory declaration or evidence of compliance if it considers that to be appropriate.~~
- ~~(4) A failure to comply with **subsection (2)** does not invalidate any action taken by the asset holding company or Aotearoa Fisheries Limited.~~

DRAFT

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~~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 seafood 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)(e) without the approval of a special resolution of its shareholders.~~

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)(e); and~~
 - ~~(b)~~(a) a procedure for the appointment of an alternate for a director to attend and vote at meetings on behalf of that director; and
 - ~~(b)~~ the criteria that must be taken into account when an alternate is appointed, and any restrictions on eligibility that apply to an appointment; and
 - ~~(ba) a requirement that the pool of fees payable to directors must be approved by ordinary resolution of the company; and~~
 - (c) a method by which the board of Aotearoa Fisheries Limited must address conflicts of interest that may arise for its directors; and
 - ~~(d) a provision enabling income shareholders to pass non-binding resolutions relating to the management of the company; and~~
 - ~~(e)~~(d) a requirement that Aotearoa Fisheries Limited report to ~~income share~~ordinary 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

Commented [SG25]: This is a right of shareholders anyway under s109 Companies Act, so not needed here now there is only one class of share.

DRAFT

- (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~~verify that transfers of income shares~~ordinary shares are in accordance with the provisions of sections 69 to 72~~section 69 and its constitution; and
 - (ii) maintain a share register as required by section 87 of the Companies Act 1993; and maintain on its website a continuous record of all changes in shareholding updated within one month of the company being notified of any change. 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~~
- (i) a requirement that Aotearoa Fisheries Limited must have and notify to shareholders a policy for disposal of specified assets or classes of assets by itself or any of its subcompanies that gives priority to mandated iwi organisations or asset holding companies to acquire them; and specifying circumstances in which that policy does not apply; 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 a provision that, in addition to complying with section 140 of the Companies Act 1993, any director or alternate director of Aotearoa Fisheries Limited who undertakes directly or indirectly any contract for services for any member of AFL Group must obtain the prior approval of all the other directors, must make full disclosure to all the other directors, and that the disclosure is also made in the annual report; and use its best endeavours to ensure a requirement that a similar provision is included in the constitutional document of every subcompany in respect of its directors and alternate directors.
- (k) a provision enabling Aotearoa Fisheries Limited—
- (i) to issue additional income shares~~ordinary shares; and~~
 - (ia) to acquire its own shares; and
 - ~~(ii) to establish subcompanies; and~~
 - (l) provisions for any other matters that are required by this Act or the Companies Act 1993.
- (2) This section does not limit any reporting obligations arising under another enactment or rule of law.

Commented [SG26]: Not needed now.

DRAFT

- (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 must be appointed in accordance with its constitution.
- (2) ~~Aotearoa Fisheries Limited must have not fewer than 5, and not more than 8, directors~~ as determined by its shareholders by ordinary resolution.

~~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 Whakatupu 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.~~

DRAFT

- (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 Whakatapu 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.~~

64 Transfer of shares held by Te Ohu Kai Moana Trustee Limited

DRAFT

- (1) All income shares held by Te Ohu Kai Moana Trustee Limited that become ordinary shares under **section 60A** must be allocated by Te Ohu Kai Moana Trustee Limited on a pro rata basis to the other holders of ordinary shares, or to Te Ohu Kai Moana Trustee Limited where section 153(1) applies, and transferred no later than **[specified date or no later than 3 months after commencement]** or a later date where **subsection (3)** applies.
- (2) All dividends and associated tax credits received by Te Ohu Kai Moana Trustee Limited in respect of the shares referred to in **subsection (1)** [AFTER ENACTMENT/COMMENCEMENT DATE?] must be similarly allocated and transferred.
- (3) This section does not apply to any ordinary shares, dividends, or associated tax credits held by Te Ohu Kai Moana Trustee Limited on trust under **section 153** until the relevant iwi becomes entitled to receive them under section 130(3).

68 Additional ~~income shares~~ordinary shares

If Aotearoa Fisheries Limited issues additional ~~income shares~~ordinary shares,—

- (a) they must be offered to ~~income~~shareholders in proportion to the ~~income share~~ordinary shares they hold at the date of issue, including ~~income shares~~ordinary shares held in trust ~~under section 67(3)(b)~~by Te Ohu Kai Moana Trustee Limited pending transfer under section 130; and
- (b) ~~in the case of any unsubscribed~~ ordinary shares, they must be offered or withdrawn in accordance with the constitution of Aotearoa Fisheries Limited.

69 Disposal of ~~income shares~~ordinary shares by mandated iwi organisations

- (1) A mandated iwi organisation may authorise or direct its asset holding company to sell its ~~income shares~~ordinary shares, but only—
 - ~~(a) to Te Ohu Kai Moana Trustee Limited; or~~
 - ~~(b)~~(a) to another mandated iwi organisation; and
 - ~~(c)~~(b) 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~~
 - ~~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.~~
- ~~(2) Despite subsection (1), ordinary shares may be acquired by Aotearoa Fisheries Limited under the Companies Act 1993 and the process (if any) 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.~~

Commented [SG27]: In this and the following sections it probably is not necessary to substitute "ordinary" for "income"; we could just strike out "income" but for the moment it is done for clarity.

Commented [SG28]: See sections 41 to 51 Companies Act. AFL can issue shares in various ways. Pro rata is not the only option. The constitution can set the rules; but a key thing to consider is that if issuing is for a price, what if MIOs do not or cannot take up the offer? While that could distort original MIO relativities, it may not matter, at least conceptually, since the ability of MIOs to trade shares with other MIOs will change relativities anyway.

DRAFT

~~(3) As soon as is reasonably practicable after a mandated iwi organisation has sold any income shares under section 69 ordinary shares, 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 this Act and its constitution.~~

~~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.~~

~~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—~~

DRAFT

- (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~~ordinary 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 specified transaction or series of transactions referred to in subsection (1) exercises a right to sell or requires the sale of ~~income shares~~ordinary shares,—~~
- (a) ~~**section 69(1)(a) and (b)** applies-apply as if the vendor were a mandated iwi organisation; and~~
 - (b) ~~the third party proposing to sell must notify the proposal to all mandated iwi organisations.—~~

~~Te Ohu Kai Moana Trustee Limited; and~~

- (3) ~~As soon as is reasonably practicable after a third party has sold ~~income shares~~ordinary 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) and its constitution.~~
- (4) ~~In this section,—~~
- (a) ~~**specified transaction** means a transaction with a third party (for example, an option, security, or guarantee) or series of transactions that could result in—~~
- (i) ~~the sale of its ordinary shares; or~~

DRAFT OF 16 AUGUST 2017 PREPARED BY TE OHU KAI MOANA TRUSTEE LIMITED: REFER SECTION 127(3)(b) MAORI FISHERIES ACT 2004

Commented [SG29]: Is this still necessary now that MIOs can freely trade with any other MIO.

DRAFT

- (ii) ~~the iwi being disentitled to the income from the ordinary shares or the right to vote or other rights in respect of the ordinary shares for a period of more than 5 years.~~
- (b) **third party** means a party that is not entitled to hold ~~settlement quota or income shares~~ordinary shares.

Commented [SG30]: In view of the change to s167(1)(b), should this also change to 15 years; even though the matters are conceptually different?

73 Remedy for breach of sections 69 ~~to or~~ 72

- (1) If a contract for the sale of ~~income-ordinary~~ 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~~sections 69 or 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~~Aotearoa Fisheries Limited; and
 - (b) on the terms and conditions that the Court thinks fit, so long as the ~~in-~~come 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~~sections 69 or 72, the Illegal Contracts Act 1970 does not apply.

74 Exceptions to restrictions on disposal of ~~income~~ordinary shares

- (1) ~~Sections 69 to 73 do~~Section 69 does not apply to transfers of ~~income~~ordinary 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-ordinary~~ shares must be—

DRAFT

- (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,

DRAFT OF 16 AUGUST 2017 PREPARED BY TE OHU KAI MOANA TRUSTEE LIMITED: REFER SECTION 127(3)(b) MAORI FISHERIES ACT 2004

Commented [SG31]: Deleted because the sections referred to are deleted. Rest of section remains to show the history.

DRAFT

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 and attributed to their ordinary shares.

76 Payment of dividends by Aotearoa Fisheries Limited

- (1) Aotearoa Fisheries Limited may pay dividends only to ~~income~~-ordinary 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~~-ordinary 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)~~ (5) 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.

~~(4)~~(5) This section does not apply in respect of any year for which the ordinary shareholders have so resolved, and in that case the directors may authorise distributions in accordance with section 52 of the Companies Act 1993.

- (5) In subsection (2),—
- consolidated group** means Aotearoa Fisheries Limited and its subcompanies
- consolidated group net profit after tax** does not include—
- asset revaluations; or
 - unrealised capital gains or losses; or
 - 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—~~
- ~~under section 137(1)(a) to Te Putea Whakatupu Trustee Limited;~~
 - ~~and~~
 - ~~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

DRAFT

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

DRAFT

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 and alternate 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

DRAFT

- (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:

DRAFT

- (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 and alternate 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 or alternate 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~~not less than 3 nor more than 5 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—

DRAFT

- (i) is appointed for a term not exceeding 4~~3~~ 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
- (da) that in addition to complying with section 140 of the Companies Act 1993, any director or alternate director of Te Putea Whakatupu Trustee Limited who undertakes directly or indirectly any contract for services for Te Putea Whakatupu Trustee Limited must obtain the prior approval of all the other directors, must make full disclosure to all the other directors of all payments (including expenses) and that the disclosure is also made in the annual report; 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~~a majority of directors 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.

DRAFT

- (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).

DRAFT

(6) Te Putea Whakatapu 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 but excludes, 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 and alternate 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 or alternate 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 not less than 3 nor more than 5 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 3 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
 - (da) that, in addition to complying with section 140 of the Companies Act 1993, any director or alternate director of Te Wai Maori Trustee Limited who undertakes directly or indirectly any contract for services for Te Wai Maori Trustee Limited must obtain the prior approval of all the other directors, must make full disclosure to all the other directors of all payments (including expenses) and that the disclosure is also made in the annual report; 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 a majority of directors for the purpose of transacting any business; and

DRAFT

- (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 Whakatapu~~ Wai Maori 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 Whakatapu 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.~~

DRAFT

~~(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 share~~ordinary shares from Te Ohu Kai Moana Trustee Limited.~~

Subpart 6—~~Audits and reviews~~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~~

DRAFT

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

Audit of entities

105 Audits

~~(1) Te Ohu Kai Moana Trustee Limited must arrange for an audit of Te Ohu Kai Moana Trustee Limited; and~~

- ~~(a) Aotearoa Fisheries Limited must arrange for an audit of Aotearoa Fisheries Limited and its subcompanies; and~~
- ~~(b) Te Putea Whakatupu Trustee Limited must arrange for an audit of Te Putea Whakatupu Trustee Limited; and~~
- ~~(c) 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.

DRAFT

~~111 Audits of Te Putea Whakatapu Trustee Limited and Te Wai Maori Trustee Limited~~

- ~~(1) In the case of Te Putea Whakatapu Trustee Limited, an audit must consider and report on the contribution that Te Putea Whakatapu 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 Whakatapu 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—~~
 - ~~(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 Whakatapu 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.~~

DRAFT

- (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~~
- ~~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 Whakatapu Trustee Limited; and~~
 - ~~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.~~

DRAFT

- ~~(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(c) 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 11 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.~~

DRAFT

- ~~(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).~~

114 Independent reviews

- ~~(1) Independent reviews must be conducted in accordance with this Subpart of those members of the Te Ohu Kai Moana Group, and of the AFL Group, to the extent that they are required under this Subpart.~~
- ~~(2) In this Subpart, **principal company** means Te Ohu Kai Moana Trustee Limited or Aotearoa Fisheries Limited, depending on which of the Groups the entity under review or potentially under review is a member.~~

115 Initiation of reviews

- ~~(1) A review under this Subpart of each of the entities referred to in **subsection (4)** must be commenced by the relevant principal company not earlier than **1 October 2025** and not later than **1 October 2028** unless no resolution referred to in **subsection (2)** is passed in respect of that entity before **1 October 2028**.~~
- ~~(2) The commencement date of each review is determined by a special resolution of the relevant principal company; and if no such resolution is passed, the review does not proceed.~~
- ~~(3) The directors of each principal company must ensure that—~~
- ~~(a) an appropriate special resolution is before every annual meeting of the principal company at which it might be passed; and~~
- ~~(b) the notice of the meeting contains the views of the directors as to whether or not the special resolution should be passed.~~
- ~~(4) The entities to which this section applies are:~~
- ~~(a) Te Ohu Kai Moana Trustee Limited;~~
- ~~(b) Te Putea Whakatupu Trustee Limited;~~
- ~~(c) Te Wai Maori Trustee Limited; and~~
- ~~(d) Aotearoa Fisheries Limited, and every other member of the AFL Group (taken together).~~

116 Subsequent reviews

~~Not earlier than 6 years after the completion of a review of an entity under **section 115** (or not earlier than **1 October 2035** if no such review is conducted) there must be a review of the entity if a special resolution to that effect is passed by the relevant principal company.~~

117 Joint reviews

~~If the principal companies each pass an appropriate special resolution, a review of all or any members of each Group must be conducted jointly with the review of all or any members of the other Group.~~

DRAFT

118 Costs of reviews

The costs of each review must be met by the relevant principal company.

119 Terms of reference

- (1) ~~The terms of reference required by section 118(1)~~The principal company must set the terms of reference for the review, which 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~~9 months after the commencement date set under paragraph (a)).
- (2) Before finalising the terms of reference for the review, ~~the committee of representatives~~the principal company must, for the purposes of consultation,—
 - (a) provide the draft terms of reference to—
 - (i) all mandated iwi organisations, recognised iwi organisations, and representative Maori organisations and the other principal company; and
 - ~~(ii) the members of Te Kawai Taumata; and~~
~~(iii)~~(ii) the every entity under review; and
 - (b) allow 20 working days for written comments to be provided to the ~~committee~~principal company.
- (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

DRAFT

- (1) Every review conducted under this subpart must be carried out by an independent person—
 - (a) appointed by ~~the committee of representatives~~the principal company, or the principal companies if there is a joint review; 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**~~115~~ 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.
 - (d) the desirability or otherwise of winding up all or any of Te Ohu Kai Moana Trustee Limited, Te Putea Whakatapu Trustee Limited, Te Wai Maori Trustee Limited and their related trusts, or Aotearoa Fisheries Limited.

(1A) Every review conducted under **section 116** must consider and report on so many of the matters specified in **subsection (1)** as are specified in the special resolution in respect of that review.

- (2) In this section,—

beneficiary of an entity means—

DRAFT OF 16 AUGUST 2017 PREPARED BY TE OHU KAI MOANA TRUSTEE LIMITED: REFER SECTION 127(3)(b) MAORI FISHERIES ACT 2004

DRAFT

- (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 the directors of Te Ohu Kai Moana Trustee Limited, Aotearoa Fisheries Limited, Te Putea Whakatupu Trustee Limited, and Te Wai Maori Trustee Limited; and
 - (i) ~~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)~~**section 115 or section 116**, 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 not recommend that the restrictions be changed; and
 - (b) ~~a subsequent review must be carried out, as provided for by section 114(3)(a),~~ **at a time determined by Te Ohu Kai Moana Trustee Limited without the need for a further special resolution, but not later than 5 years after the completion of the review under section 114(2) that made those findings.**

DRAFT

- (3) If, in conducting a review of Te Putea Whakatapu Trustee Limited or Te Wai Maori Trustee Limited under ~~section 114(2) or (3)~~ or section 115, 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 and recognised 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~~ section 115 or section 116, 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~~ the principal company; and
 - (ii) each entity under review.
- (2) As soon as practicable after receiving the review report, ~~the committee of representatives~~ the principal company must distribute the report to—
 - (a) ~~Te Ohu Kai Moana Trustee Limited~~ the other principal company; and
 - (b) all mandated iwi organisations, recognised 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~~ both principal companies; and
 - (b) all mandated iwi organisations, recognised iwi organisations, and representative Maori organisations; ~~and~~

~~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~~ the relevant principal company convened not later than 60 working days after the distribution of a review report under **section 125(2)**, ~~Te Ohu Kai Moana Trustee Limited~~ that principal company must make provision on the agenda for consideration of—
 - (a) the review report; and

DRAFT

- (b) any plan prepared under section 126(1) by the entity under review; and
 - (c) any comments from mandated iwi organisations, recognised iwi organisations, representative Maori organisations or the other principal company on the review report or on any plan; ~~and, 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)**~~If the general meeting referred to in **subsection (1)** is a meeting of Te Ohu Kai Moana Trustee Limited, the mandated iwi organisations and recognised 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 any~~ 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) is in respect of any entity in the Te Ohu Kai Moana Group,—
- (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.
- (4) If the general meeting referred to in **subsection (1)** is a general meeting of Aotearoa Fisheries Limited and a resolution supported by 75% or more of the shareholders representing 50% or more of the total notional iwi population is passed in respect of any of the matters considered, Aotearoa Fisheries Limited must implement the resolution unless it is inconsistent with this Act, or any other enactment or rule of law.
- (5) If a resolution under **subsection (2)** affects Aotearoa Fisheries Limited, whether by requiring amendments to its constitution, or changes to its operation or governance or otherwise, Aotearoa Fisheries Limited must put the matter before its next general meeting; and implement the matter if it is passed by a resolution supported by 75% or more of the shareholders representing 50% or more of the total notional iwi population; unless it is inconsistent with this Act, or any other enactment or rule of law.
- (6) If a resolution of Aotearoa Fisheries Limited referred to in **subsection (4)** or **subsection (5)** is passed but cannot be implemented because it is inconsistent with this Act, Aotearoa Fisheries Limited must notify Te Ohu

DRAFT

Kai Moana Trustee Limited, and Te Ohu Kai Moana Trustee Limited must request the Minister to promote the necessary amendments.

127A Other reviews not precluded

Nothing in this Subpart limits section 109 of the Companies Act 1993, or the ability of the directors or shareholders of any member of the Te Ohu Kai Moana Group or the AFL Group to initiate a review of the structure, operations, or governance of any entity at any time; but any such review need not be conducted in accordance with this Subpart.

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 115 or section 116,~~ 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).

DRAFT OF 16 AUGUST 2017 PREPARED BY TE OHU KAI MOANA TRUSTEE LIMITED: REFER SECTION 127(3)(b) MAORI FISHERIES ACT 2004

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 share~~ordinary 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 Whakatapu 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 Whakatupu 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

DRAFT

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.

Commented [SG32]: This whole section is spent, but has historical value.

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.~~

Commented [SG33]: Removed to reduce confusion. Since income shares disappear this apparently ongoing obligation should be removed.

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—

$$\frac{a}{b \times c}$$

where

$$a = a_c + \frac{a_s}{2}$$

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 population 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 Hauti, 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 or-

- ganisations 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 share~~ordinary shares that would otherwise be transferred to each mandated iwi organisation and may exercise all the rights of a shareholder in respect of those shares; and
- (b) any dividends that relate to those shares.
- (1A) Te Ohu Kai Moana Trustee Limited must hold in trust for each iwi all dividends and associated tax credits to which section 64(2) applies until they are transferred as contemplated by section 64(3).
- (2) Te Ohu Kai Moana Trustee Limited is entitled to withhold from any dividends held in trust under subsection (1)(b) or subsection (1A) the reasonable costs incurred in administering the ~~income share~~ordinary 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 section 18E, section 22, or section 64 or this Part to a mandated iwi organisation or to an asset-holding company (including settlement quota and ~~income share~~ordinary 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 other 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

DRAFT

Trustee Limited to the relevant asset-holding company under section 151.

- (c) by an existing organisation to a new organisation under section 18E(3).
- (d) by a joint mandated iwi organisation or an asset-holding company of that organisation to the mandated iwi organisation of a withdrawing group that has completed the process of withdrawal, or to an asset-holding company of that organisation.

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)~~(e) 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

DRAFT

- (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) to an entity permitted by section 161(1) to acquire settlement quota; or~~
 - (b) as ordered by the Court; or
 - (c) ~~through forfeiture to the Crown under the Fisheries Act 1996; or~~
 - (d) ~~in accordance with an approved exchange for non-settlement quota as contemplated by section 173.~~
- (2) ~~An application to~~Every transfer of settlement quota must be ~~submitted notified~~ to the chief executive of the Ministry of Fisheries by the ~~registered owner and Te Ohu Kai Moana Trustee Limited~~ ~~transferor and transferee~~ jointly in the prescribed form.

Commented [SG34]: (a) just says to MIOs/AHCs/AHC subs; Leave it to the parties to decide value.

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~~ declare any quota owned by the asset-holding company of that mandated iwi organisation ~~as to be~~ settlement quota.
- (2) A ~~request declaration~~ must not be made under subsection (1) ~~until unless~~ 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~~
 - ~~(e) 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—
 - (a) Te Ohu Kai Moana Trustee Limited is acting in accordance with its duty under section 157; or

DRAFT

- (b) ~~is satisfied that a mandated iwi organisation making a request under section 159(1) has complied with~~ has made a declaration under section 159(21) and (3); or
 - (c) Te Ohu Kai Moana Trustee Limited 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) or the mandated iwi organisation~~ 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 AFL Group; or
 - (iii) any other person by way of approved exchange for non-settlement quota as contemplated by section 173.
 - ~~(i) — (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~~ AFL 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 Aotearoa Fisheries Limited~~ or the mandated iwi organisation, as appropriate.

DRAFT

- ~~(3) Subsection (2) does not apply where, under section 18E(1)(b), Te Ohu Kai Moana Trustee Limited has authorised the transfer of all the shares in an asset holding company or companies to a new organisation.~~
- ~~(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 Constitutional document must authorise sale of settlement quota

- ~~(1) A mandated iwi organisation may sell settlement quota only if doing so is expressly permitted by the constitutional document of the mandated iwi organisation and the transaction complies with the requirements of the constitutional document.~~
- ~~before sale, the mandated iwi organisation selling the quota has—~~
- ~~notified the proposal to the adult members of the iwi in accordance with subclause (3) of kaupapa 4 of Schedule 7; and~~
- ~~obtained the prior approval of not less than 75% of the adult members of the iwi who vote—~~
- ~~at a general meeting of the mandated iwi organisation called for the purpose; or~~
- ~~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—~~

DRAFT

- (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 5-15 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~~ applies 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~~ AFL Group

- (1) If an entity within ~~Te Ohu Kai Moana Group~~ the AFL Group acquires settlement quota under this subpart, sections 161(1) ~~and 163 to 166 apply~~ applies 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~~, the Illegal Contracts Act 1970 does not apply.

~~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 with a party that is not a mandated iwi organisation nor an entity within the AFL Group.
- (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; those entitled to hold settlement quota.

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)(ga); 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;~~
 - ~~(a) are registered against any non-settlement quota received in the exchange;~~
~~and~~
 - ~~(b) are removed from the settlement quota provided 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.~~

Commented [SG35]: Is the policy that AFL can or cannot exchange SQ for non-SQ? If it can, what rules (if any) should apply?

- (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.~~ Te Ohu Kai Moana Trustee Limited.
- (3) In the case of a breach of section 173 or rules made under section 176, the Illegal Contracts Act 1970 does not apply.

~~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;~~

- ~~(a) 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;~~
 - ~~(b) 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;~~
 - ~~(e)(a) the means for determining fair market value for settlement quota that is exchanged, and the resolution of disputes as to that value;~~
 - ~~(b) the recovery of costs by Te Ohu Kai Moana Trustee Limited for the administrative processes required by sections 158 to 169 and 173¹⁶⁰ and 174, to be paid by, or deducted from, a mandated iwi organisation;~~
 - ~~(e) the means for determining the appropriate estimated value for the purpose of section 172(1);~~
 - ~~(f)(c) 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.

Commented [SG36]: Possibly omit (3) given the narrower scope of rules. If there are rules, they would probably apply to all exchanges.

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,—

DRAFT

- (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:

Commented [SG37]: Noted to change references if Te Ture Whenua reform passes first.

DRAFT

- (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 judicial review under ~~Part 1 of the Judicature Amendment Act 1972~~ 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 judicial review under ~~Part 1 of the Judicature Amendment Act 1972~~ 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.

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

Commented [SG38]: Much of this is spent, but may have historic significance? Generally, favour leaving spent provisions alone unless it causes confusion or they would need amendments.

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 ap-

pointed 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.
- (3) For the purposes of the Inland Revenue Acts, mandated iwi organisations and asset holding companies must be treated as having held, at all times since the formation of Aotearoa Fisheries Limited, the voting interests and market value interests that arise under section 60A(2) or that are received directly or indirectly from Te Ohu Kai Moana Trustee Limited under section 64.

211A Aotearoa Fisheries Limited issue of income shares to Te Ohu Kai Moana Trustee Limited

- (1) Aotearoa Fisheries Limited is authorized to issue income shares to Te Ohu Kai Moana Trustee Limited in satisfaction of the exercise before [DATE] [OR REFERENCE TO COMING INTO FORCE OF ALL OTHER AMENDMENTS] of a put option in respect of redeemable preference shares held by Te Ohu Kai Moana Trustee Limited.
- (2) Sections 60A and 64 apply to the income shares issued to Te Ohu Kai Moana Trustee Limited under subsection (1).

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
 - ~~(e)~~(b) Te Putea Whakatupu Trust; or
 - ~~(d)~~(c) 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

DRAFT

- (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).

212A Te Kawai Taumata dissolved

- (1) Te Kawai Taumata is dissolved and the appointment of every member and alternate member, is expired.
- (2) No member or alternate member of Te Kawai Taumata is entitled to any compensation as a result of the expiry under **subsection (1)** of his or her term of office.
- (+)(3) All assets, rights, and liabilities of Te Kawai Taumata are assets, rights and liabilities of Te Ohu Kai Moana Trustee Limited.

Commented [SG39]: Hopefully this is enough and there is very little involved. Clause 19 of Schedule 8 suggests nothing much by way of assets or liabilities is likely.

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 | Shortfall in value of quota shares |
|--------------------------------|-------------|---|--|
| | | Part 3 | (\$) |
| 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 |

DRAFT

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Schedule 1

| Quota management stock code | Description | Number of quota shares to be allocated under | | Shortfall in value of quota shares (\$) |
|--------------------------------|-------------|---|--------|--|
| | | | Part 3 | |
| 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 |

| Quota management stock code | Description | Number of quota shares to be allocated under Part 3 | Shortfall in value of quota shares (\$) |
|--------------------------------|-------------|---|--|
| 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 |

| Quota management stock code | Description | Number of quota shares to be allocated under Part 3 | Shortfall in value of quota shares (\$) |
|--|--------------------|--|--|
| 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 |

DRAFT

Schedule 1

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

| Quota management stock code | Description | Number of quota shares to be allocated under Part 3 | Shortfall in value of quota shares (\$) |
|--|--------------------|--|--|
| 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

| Quota management stock | Description | Number of quota shares to be allocated under Part 3 |
|-------------------------------|--------------------|--|
| 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 |

| Quota management stock | Description | Number of quota shares to be allocated under Part 3 |
|-------------------------------|--------------------|--|
| 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 |

DRAFT

Schedule 1

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

| Quota management stock Description | | Number of quota shares to be allocated under Part 3 |
|---|-----|--|
| 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 |

DRAFT

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Schedule 1

| Quota management stock | Description | Number of quota shares to be allocated under Part 3 |
|-------------------------------|--------------------|--|
| 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 |

DRAFT

Schedule 1

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

| Quota management stock Description | Number of quota shares to be allocated under Part 3 |
|---|--|
| 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 |

| Quota management stock | Description | Number of quota shares to be allocated under Part 3 |
|-------------------------------|--------------------|--|
| 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 |

DRAFT

Schedule 1

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

| Quota management stock | Description | Number of quota shares to be allocated under Part 3 |
|-------------------------------|--------------------|--|
| 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 |

| Quota management stock | Description | Number of quota shares to be allocated under Part 3 |
|-------------------------------|--------------------|--|
| TRU4 | IN* | 20000 000 |
| TRU5 | IN | 20000 000 |
| TRU6 | DW† | 20000 000 |
| TRU7 | IN | 20000 000 |
| TRU8 | IN | 20000 000 |
| TRU9 | IN | 20000 000 |
| WWA1 | DW | 20000 000 |
| WWA2 | DW | 20000 000 |
| WWA3 | DW | 20000 000 |
| WWA4 | DW† | 20000 000 |
| WWA5 | DW | 20000 000 |
| WWA6 | DW† | 20000 000 |
| WWA7 | DW | 20000 000 |
| WWA8 | DW | 20000 000 |
| WWA9 | DW | 20000 000 |
| YEM1 | IN | 20000 000 |
| YEM2 | IN | 20000 000 |
| YEM3 | IN | 20000 000 |
| YEM4 | IN* | 20000 000 |
| YEM5 | IN | 20000 000 |
| YEM6 | DW† | 20000 000 |
| YEM7 | IN | 20000 000 |
| YEM8 | IN | 20000 000 |
| YEM9 | IN | 20000 000 |
| Total | | 5 639999 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 |

DRAFT

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Schedule 1

| Quota management stock | Quota shares |
|-------------------------------|---------------------|
| 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' |

DRAFT

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Schedule 2

| Harbours | Entrance | Longitude | Latitude |
|---|------------------------|------------------|-----------------|
| | 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 Koa-maru) | 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' |

DRAFT

147

Part 2
Harbour quota (expressed as quota shares)

| Harbour | 1997 | 2000 | 2005 | 2010 | 2015 | 2020 | 2025 | 2030 | 2035 | 2040 | 2045 | 2050 | 2055 | 2060 | 2065 | 2070 | 2075 | 2080 | 2085 | 2090 | 2095 | 2100 | |
|-------------------|------------------|------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Whangarei | 17 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 | 20 000 |
| Mangawhai | 168 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 | 300 000 |
| Whitanga | 16 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 |
| Tairāia | 51 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 | 2 000 |
| Tauranga | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ōhiwa | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Aotea and Kāwhia | 24 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 | 50 000 |
| Raglan | 16 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 | 700 000 |
| Port Waikato | 827 000 | 1 749 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 | 9 000 |
| Manukau | 1 238 000 | 2 446 700 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 |
| Kaipara | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 | 80 000 |
| Hokitanga | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Marborough Sounds | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 1 238 000 | 2 446 700 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 | 15 000 |

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) |
|----------------------------------|-------------------------|---|---|
| A TAITOKERAU | | | |
| 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 |
| | 52 028 | 7.662 | |
| B NGAPUHI | | | |
| Ngapuhi | 107 242 | 15.791 | 21 400 |
| | 107 242 | 15.791 | |
| C TAINUI | | | |
| Waikato | 46 526 | 6.851 | 9 300 |
| Ngati Maniapoto | 30 857 | 4.543 | 6 100 |
| Iwi of Hauraki ⁽¹⁾ | 13 622 | 2.006 | 3 100 |
| Ngati Raukawa (ki Waikato) | 9 051 | 1.333 | 2 300 |
| | 100 056 | 14.733 | |
| D TE ARAWA WAKA | | | |
| Te Arawa ⁽²⁾ | 40 533 | 5.968 | 8 100 |
| Ngati Tuwharetoa | 34 226 | 5.040 | 6 800 |
| | 74 759 | 11.008 | |
| E MATAATUA | | | |
| 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 |
| | 75 944 | 11.182 | |
| F POROURANGI | | | |

DRAFT

Schedule 3

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

| 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) |
|-----------------------------|-------------------------|---|---|
| Ngati Porou | 63 613 | 9.367 | 12 700 |
| Te Whanau a Apanui | 10 113 | 1.489 | 2 500 |
| | 73 726 | 10.856 | |
| G TAKITIMU | | | |
| 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 |
| | 62 914 | 9.264 | |
| H HAUAURU | | | |
| 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 |
| | 54 646 | 8.047 | |
| I TE MOANA O RAUKAWA | | | |
| 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 |
| | 34 610 | 5.095 | |
| J WAIPOUNAMU/REKOHU | | | |
| Ngai Tahu | 41 496 | 6.110 | 8 200 |
| Ngati Mutunga (Chathams) | 1 132 | 0.167 | 500 |

| 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) |
|--------------------------------------|-------------------------|---|---|
| Mori | 601 | 0.088 | 300 |
| Total notional iwi population | 43 229 | 6.365 | |

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 Pikiāo

Ngati Rangiteaorere

Ngati Rangitihī

Ngati Rangiwewehi

Ngati Tahu/Ngati Whāoa

Tapuika

Tarawhai

Tuhourangi

DRAFT

Schedule 3

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

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

| Name of iwi and group | Organisation |
|----------------------------------|--|
| A TAITOKERAU | |
| 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 NGAPUHI | |
| Ngapuhi | Te Runanga a Iwi o Ngapuhi |
| C TAINUI | |
| 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 |
| D TE ARAWA WAKA | |
| Te Arawa (ten iwi) | Te Kotahitanga o Te Arawa Waka Fisheries Trust Board |
| Ngati Tuwharetoa | Ngati Tuwharetoa Marine Fisheries Committee |
| E MATAATUA | |
| 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 |
| F POROURANGI | |
| Ngati Porou | Te Runanga o Ngati Porou |
| Te Whanau a Apanui | Te Runanga o Te Whanau |
| G TAKITIMU | |
| Ngati Kahungunu | Ngati Kahungunu Iwi Incorporated |
| Te Aitanga a Mahaki | Te Aitanga a Mahaki Trust |

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

DRAFT

156
Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Schedule 5

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.

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.

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.

Example relating to clauses 4 and 5

Interim and supplementary claims

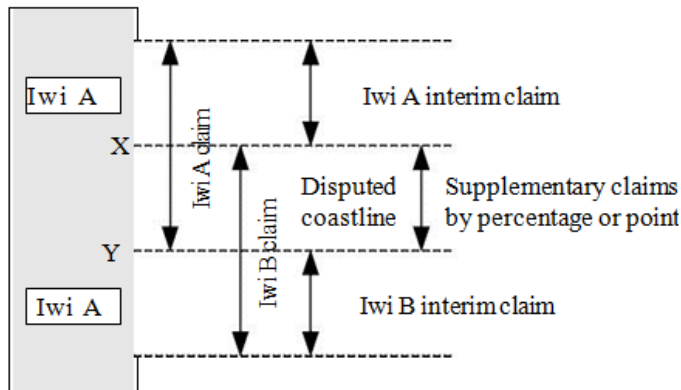
Iwi A and iwi B have overlapping claims to a section of coastline. They sign an agreement to exclude the coastline between points X and Y. They may then make interim coastline claims as provided for by clause 3(3)(b), which may allow them to qualify for allocation of settlement assets. The quota allocated 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—
- (a) must be made—
 - (i) using the method set out in clause 3; and
 - (ii) solely in respect of the coastline previously in dispute; and
 - (b) 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:
- (a) copies of signed multi-party mandated iwi organisation agreements that include the affected iwi;
 - (b) signed written statements from the mandated iwi organisations of the affected iwi.
- (3) Agreements or statements presented under subclause (2) must set out—
- (a) the stocks for which the iwi is an affected iwi for the purpose of the claims being made; and

DRAFT

- (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).

DRAFT

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 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

DRAFT

- (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.

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).

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

DRAFT

- (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

- (1) 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.
- (2) Kaupapa 1, 2, and 3 do not apply to the extent that another Act makes other provision for the specific mandated iwi organisation.

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~~participate in the election of one or more of 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 some or all of the directors, trustees, or other officeholders of the mandated iwi organisation in accordance with the constitutional documents; and
 - (ii) on amendments to the constitutional documents of the mandated iwi organisation; and
 - (iia) 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~~
 - (iii) any other matter specified in the constitutional documents as a matter on which they have voting rights.
- (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

DRAFT

- (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—

DRAFT

Schedule 7

Maori Fisheries Act 2004

Reprinted as at
1 April 2014

- (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 share~~ordinary 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
 - ~~(D)~~ with Aotearoa Fisheries Limited.
- (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~~
- (vii) any directions given or continuing under section 16(2)(a) or 60B(2) to an asset holding company or any subsidiary;
- (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
 - (iia) the policy of the mandated iwi organisation in respect of sales and acquisitions of ordinary shares in Aotearoa Fisheries Limited; and
 - ~~(iii)~~(iii) any changes in that policy in those policies from the policy policies for the previous year; and
 - ~~(iv)~~(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—

DRAFT

- (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

Reprinted as at
1 April 2014

Maori Fisheries Act 2004

Schedule 7

- (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 share~~ordinary 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

DRAFT

(aa) direct the exercise of the rights of a shareholder in Aotearoa Fisheries Limited held by any of its asset holding companies or their subsidiaries;

~~(a)~~(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~~

DRAFT

- ~~(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 Kawai 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 fish-stocks 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*

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