



Update Hui - Maori Fisheries Act Amendments

Presentation for iwi
11 August 2022

Discussion points

- 1. Background to MFA Amendments**
- 2. Resolutions approved by iwi**
- 3. Te Ohu Kai Moana Proposals**
- 4. Time line and next steps**

1. Background – 2015 review

1. In 2015, a statutory review of Te Ohu was conducted as per s 114(2) of the Māori Fisheries Act 2004.
2. The reviewer's main concerns were:
 - a) Iwi wanted a much closer relationship with their entities (particularly Aotearoa Fisheries Limited)
 - b) Iwi wanted more direct control over Te Ohu and subsidiaries, and assets;
 - c) Iwi should be able to trade their fisheries assets within and amongst iwi
3. Reviewer recommended significant changes to structural arrangements, including:
 - a) Removal of Te Kawai Taumata as electoral college and appointor of Te Ohu directors
 - b) Wind up / significantly restructure Te Ohu
 - c) Direct control of AFL by iwi including appointment of directors of subsidiaries
 - d) Simplify process for trading AFL shares and settlement quota amongst Māori

1. Background – further developments

1. Te Ohu established Iwi Working Group to analyse recommendations and implementation
2. Consultation with iwi occurred, and vote held at an SGM in June 2015
3. Binding resolutions passed to:
 1. Remove electoral college
 2. Retain but restructure Te Ohu in accordance with a funding model to be approved in 2016
 3. Retain Te Ohu's role in appointing directors of Te Wai Maori and Te Putea Whakatupu, but to increase director positions
 4. Transfer of Te Ohu's voting shares in AFL to iwi to give direct control of AFL to iwi
 5. Retain the restrictions on the sale of settlement assets but simply trading of assets within Māori pool
4. Non-binding resolutions passed to integrate the Te Ohu entities, undertake a further review and progress an RFR over assets of AFL and Sealord

1. Background – Consultation and SGM

1. Iwi engagement from June 2015 to March 2016, regional hui, survey and workshops
2. Hui-ā-Tau on 31 March 2016 – iwi voted for an independent review of the funding model
3. Review carried out by a second independent iwi working group and voted on at an SGM on 30 August 2016
4. 18 amendments (comprising of 14 based on resolutions passed by iwi)
5. First Report to Minister of MPI on 30 September 2016
6. Second Report to the Minister on 28 August 2017

Resolutions that require legislative change

1	Te Ohu Kaimoana governance appointment framework restructured
2	Iwi to hold all Aotearoa Fisheries Limited income and voting shares
3	Equal distribution of Te Ohu Kaimoana's funds deemed surplus (other than surplus levy funding) to iwi.
4	The ability to implement a compulsory levy model for Te Ohu Kaimoana that can be triggered in future if required.
5	Aotearoa Fisheries Limited and Sealord assets subject to first right of refusal. Alternative proposal suggested – further discussion on slide 14
6	The current Aotearoa Fisheries Limited legislative dividend requirement changed to allow shareholders to set it annually.
7	Major transactions for Aotearoa Fisheries Limited to require a 75 percent iwi majority voting threshold.
8	Increase Te Pūtea Whakatupu Trustee Limited directors limit from three to five, with a majority quorum.
9	Increase Te Wai Māori Trustee Limited director limit from three to five, with a majority quorum.
10	Simpler trading processes developed for iwi wishing to sell quota assets within the Māori pool.
11	A further review of governance entities.
12	Enable Te Ohu Kaimoana to allocate distributions to any entity that has charitable status and is nominated by the Mandated Iwi Organisation.
13	Te Ohu Kaimoana redeemable preference shares in Aotearoa Fisheries Limited be converted into ordinary shares and require these to be distributed to iwi.

Additional proposals from Te Ohu Kaimoana

15	Clarify electoral provisions in Mandated Iwi Organisations constitutions.
16	Simplify recognition process of Post Settlement Governance Entities as new Mandated Iwi Organisations.
17	Remove current restrictions on directors of Asset Holding Companies.
18	Clarify the definition of Freshwater Fisheries in the Maori Fisheries Act.

Resolutions

Resolution 1

Te Ohu Kaimoana governance [appointment] framework is restructured.

Binding resolution. Te Kāwai Taumata will be disestablished, and MIOs appoint directors to Te Ohu Kaimoana, one vote per iwi.

Implementation

Iwi will determine the new process for appointment of directors to Te Ohu Kaimoana.

The amendments do not prescribe this process.

Resolutions

Resolution 2

Iwi to hold all AFL income and voting shares.

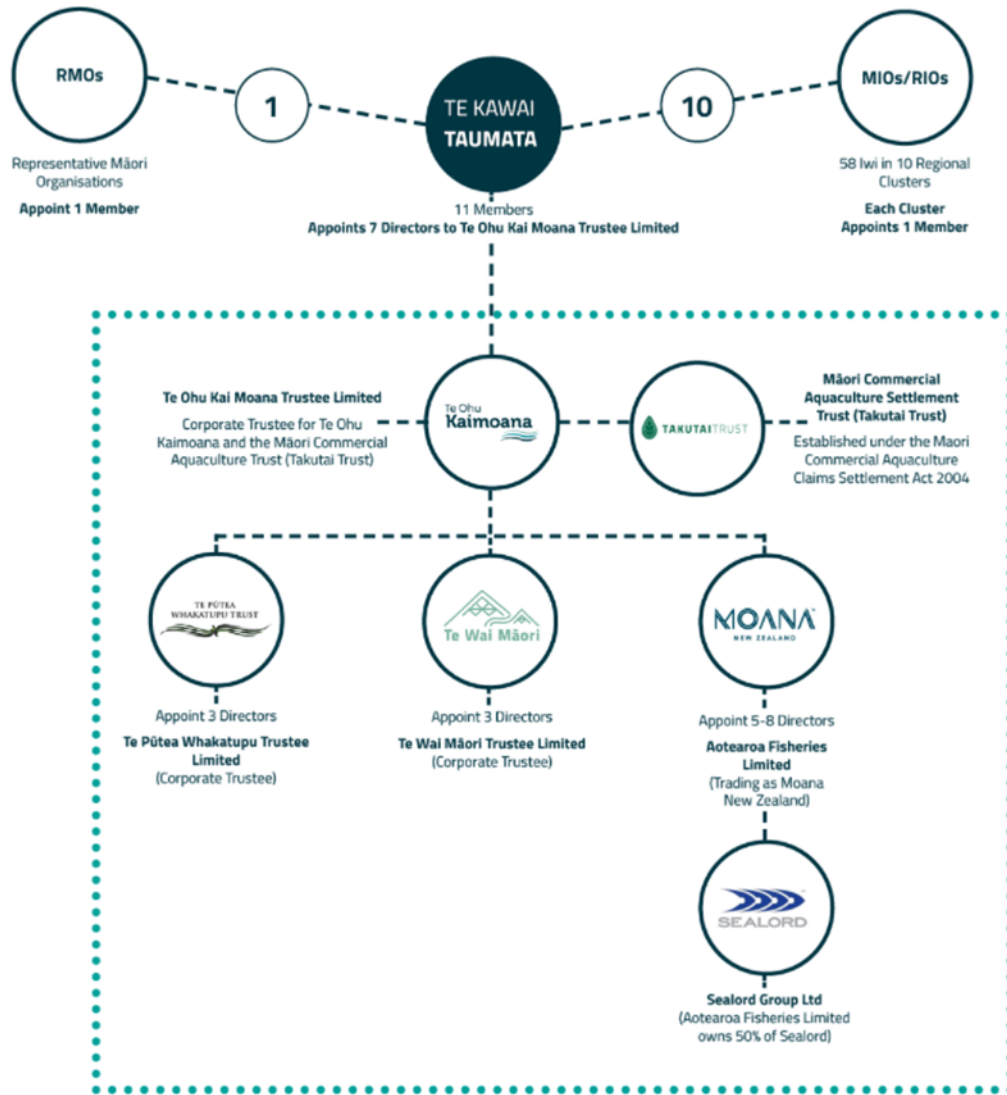
Binding resolution. Income shares held by Te Ohu Kaimoana will be transferred to iwi, in accordance with Column 3, Schedule 3 of the Act. Voting shares will be cancelled. Iwi will appoint the directors to AFL (Moana NZ), with voting proportional to shareholding.

Implementation

Income shares held by Te Ohu Kaimoana are converted to ordinary shares and transferred to iwi.

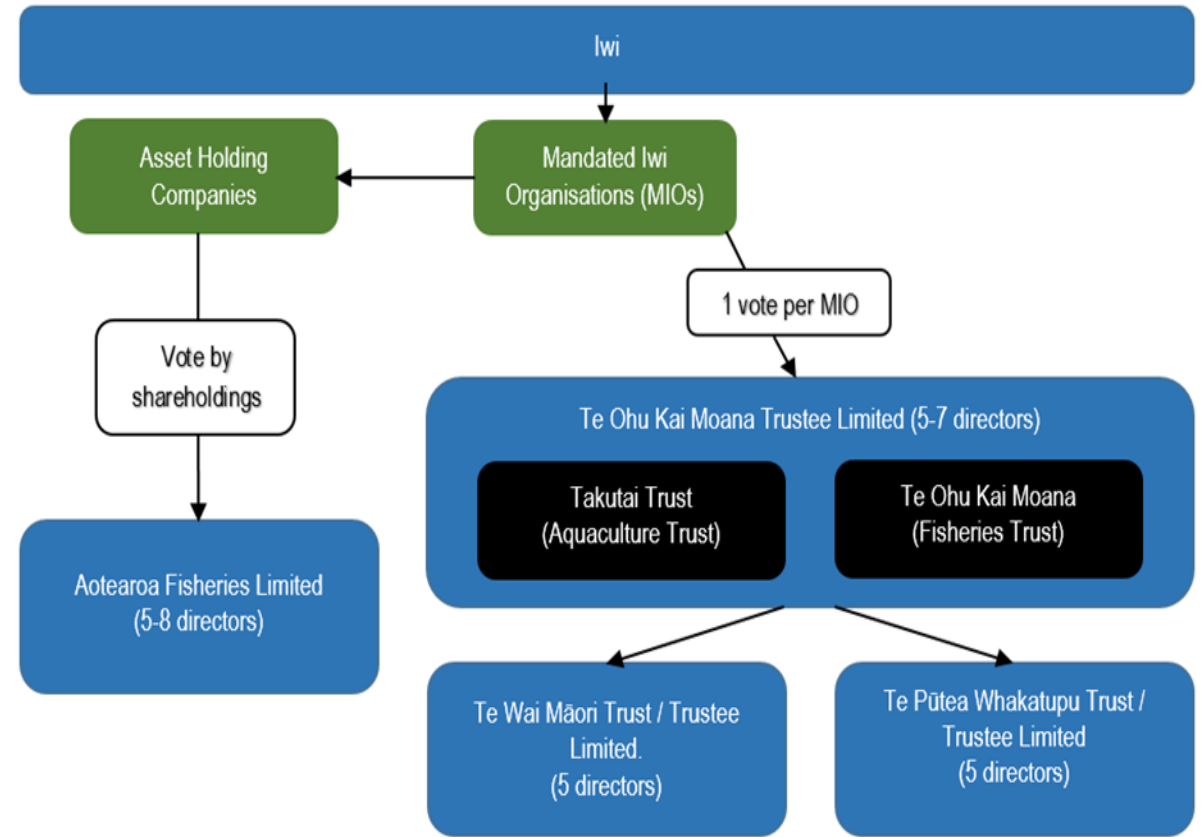
Te Ohu Kaimoana voting shares are cancelled. Iwi will determine the new process for appointment of directors to Aotearoa Fisheries Ltd (Moana NZ). The amendments do not prescribe this process.

Current Structure:



TE OHU KAI MOANA GROUP LIMITED

Structure under MFA Amendments:



Resolutions

Resolution 3

Equal distribution of Te Ohu Kaimoana's funds deemed surplus (other than surplus levy funding) to iwi.

Non-binding resolution. The Act currently provides that distribution of funds from Te Ohu Kaimoana be allocated in accordance with Column 3, Schedule 3 of the Act. Iwi resolved that future distributions will be allocated equally.

Implementation

There are two main scenarios where funds would be deemed surplus (and consequently available for distribution):

- If Te Ohu Kaimoana is wound up.
- If Te Ohu Kaimoana Trustee Limited determines that it holds funds in excess of those it considers necessary or desirable to meet its current and future requirements.

Resolutions

Resolution 4

The ability to implement a compulsory levy for Te Ohu Kaimoana can be triggered in the future if necessary.

Binding resolution. Iwi are able to implement a levy to support Te Ohu Kaimoana to deliver on a strategic plan.

This would only be implemented with iwi direction and approval.

Implementation

Implementation of a levy requires both direction and agreement by iwi.

Resolutions

Resolution 6

The current AFL legislative dividend requirement is [changed] to allow shareholders to set it annually.

Binding resolution. The Act currently requires the annual dividend of AFL to be 40% of NPAT (Net Profit After Tax). This requirement will be changed.

Implementation

Intention the dividend of 40% of NPAT will remain the default unless shareholders direct otherwise.

Resolutions

Resolution 7

Major transactions for AFL require at least a 75% iwi majority voting threshold.

Binding resolution. The Act currently requires approval from Te Ohu Kaimoana for major transactions and changes in the nature of AFL business activities.

Implementation

Te Ohu Kaimoana approval will no longer be required, this will be approved by shareholders.

Major transactions and changes in the nature of AFL business activities will require the approval of at least 75% of shares.

Resolutions

Resolution 8 Increase Te Pūtea Whakatupu Trustee Limited director limit from three to five.

Resolution 9 Increase Te Wai Māori Trust Trustee Limited director limit from three to five.

Binding resolution. Increasing the number of directors from three to five with a majority quorum will provide the Trust and directors with more certainty to conduct their business.

Resolutions

Resolution 10

Ability to develop trade processes for iwi wishing to sell quota assets within the Māori pool.

Binding resolution.

Implementation

Current provisions for asset sales will be removed and replaced with a “willing buyer, willing seller” model. This means iwi can sell their settlement assets to a willing buyer within the Māori pool (AHC, AFL, Te Ohu) without notifying all iwi and running a bidding process as currently required.

Resolutions

Resolution 11

Further review of governance entities.

Binding resolution.

Implementation

Provides for a future review requirement to take place not sooner than seven years but no later than 10 years from the time the current proposed changes take effect. The scope of the further review is the same (review of governance arrangements and restrictions on disposal of settlement assets).

Resolutions

Resolution 12

Enable Te Ohu Kaimoana to allocate distributions to any entity that has charitable status and is nominated by the Mandated Iwi Organisation.

Binding resolution.

Implementation

Allow Te Ohu Kaimoana to distribute funds directly to charitable entities within the Mandated Iwi Organisations or Post Settlement Governance Entities structures without being liable for tax.

Resolutions

Resolution 13

Te Ohu Kaimoana redeemable preference shares in Aotearoa Fisheries Limited be converted into ordinary shares and require these to be distributed to iwi.

Binding resolution.

Implementation

Convert Te Ohu Kaimoana's redeemable preference shares in AFL to ordinary shares, to be distributed back to iwi in accordance with the percentage specified for each iwi in column 3 of Schedule 3 of the Act.

Commencement date important and yet to be confirmed.

Resolution 5: Aotearoa Fisheries Limited and Sealord assets subject to first right of refusal.

Resolution 5 would bind AFL and Sealord Group Limited to a right of first refusal to iwi. This would allow iwi to be offered the opportunity to buy, at a price set by the vendor, any of the companies' assets prior to them being offered to other parties.

AFL and Nippon Suisan Kaisha Limited (a Japanese company) each own fifty percent of the shares in Kura Limited. Kura Limited in turn owns one hundred percent of the shares in Sealord Group Limited. While AFL is a company that has specific requirements under the Maori Fisheries Act (over and above requirements in the Companies Act 1993), Kura Limited and Sealord Group Limited are not subject to the Act requirements. This shareholding arrangement means an RFR process would be difficult to implement.

Instead, this has been replaced with a proposal that requires:

Aotearoa Fisheries Limited to provide in its constitution a policy for the disposal of Aotearoa Fisheries Limited and Sealord Group Ltd assets that is non-binding on Sealord Group.

Proposed changes in the Bill

- Requirement that AFL must have, and notify to shareholders, a policy that must provide for procedures for AFL and Sealord to discuss and make best endeavours to agree on any preferential disposal of assets to iwi and terms for the same assets required to be offered for sale at market value.

Te Ohu Kaimoana Proposals

Proposal 15

Clarify electoral provisions in Mandated Iwi Organisations constitutions.

Implementation

Te Ohu Kaimoana seek to change 'Kaupapa 1 and 2' to clarify that all adult members of an iwi have the opportunity to elect all directors, trustees and [governance] office holders of the Mandated Iwi Organisation of the iwi.

Te Ohu Kaimoana Proposals

Proposal 16

Simplify recognition process of Post Settlement Governance Entities as new Mandated Iwi Organisations.

Implementation

Remove current restraints to enable the transfer of shares in an existing Asset Holding Companies to a new Mandated Iwi Organisation (i.e., a new PSGE) and remove a 15-month time limit which is often not met due to delays in negotiations and/or process.

Te Ohu Kaimoana Proposals

Proposal 17

Removal of current restrictions on directors of Asset Holding Companies

Implementation

Te Ohu Kaimoana propose the current restrictions on Mandated Iwi Organisation directors from being appointed as directors of respective Asset Holding Companies be removed.

Te Ohu Kaimoana Proposals

Proposal 18

Clarify the definition of Freshwater Fisheries in the Maori Fisheries Act.

Freshwater fisheries is currently defined in the Act: 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.

Implementation

This proposal seeks to clarify the definition of Freshwater Fisheries, which was amended in select committee processes during the passage of the Act in 2004, with no explanation as to why certain matters were excluded.

Proposed New Definition

Freshwater fisheries means any fishery in freshwater in New Zealand, excluding any sports fishery or unwanted aquatic life.

Timeline for the Māori Fisheries Act Amendment Bill

Week of 8 August	MPI exposure draft released to MIOs and RIOs
11 August	Te Ohu Kaimoana MFA 101 workshop with iwi Novotel Hotel Auckland
17 August	Te Ohu Kaimoana MFA teleconference MFA 101 with iwi
September	MPI consultation with iwi, with support from Te Ohu Kaimoana (further details to be released with exposure draft)
Late November	MFA Amendment Bill to Cabinet and introduction of Bill to Parliament
Early 2023	Select Committee Process