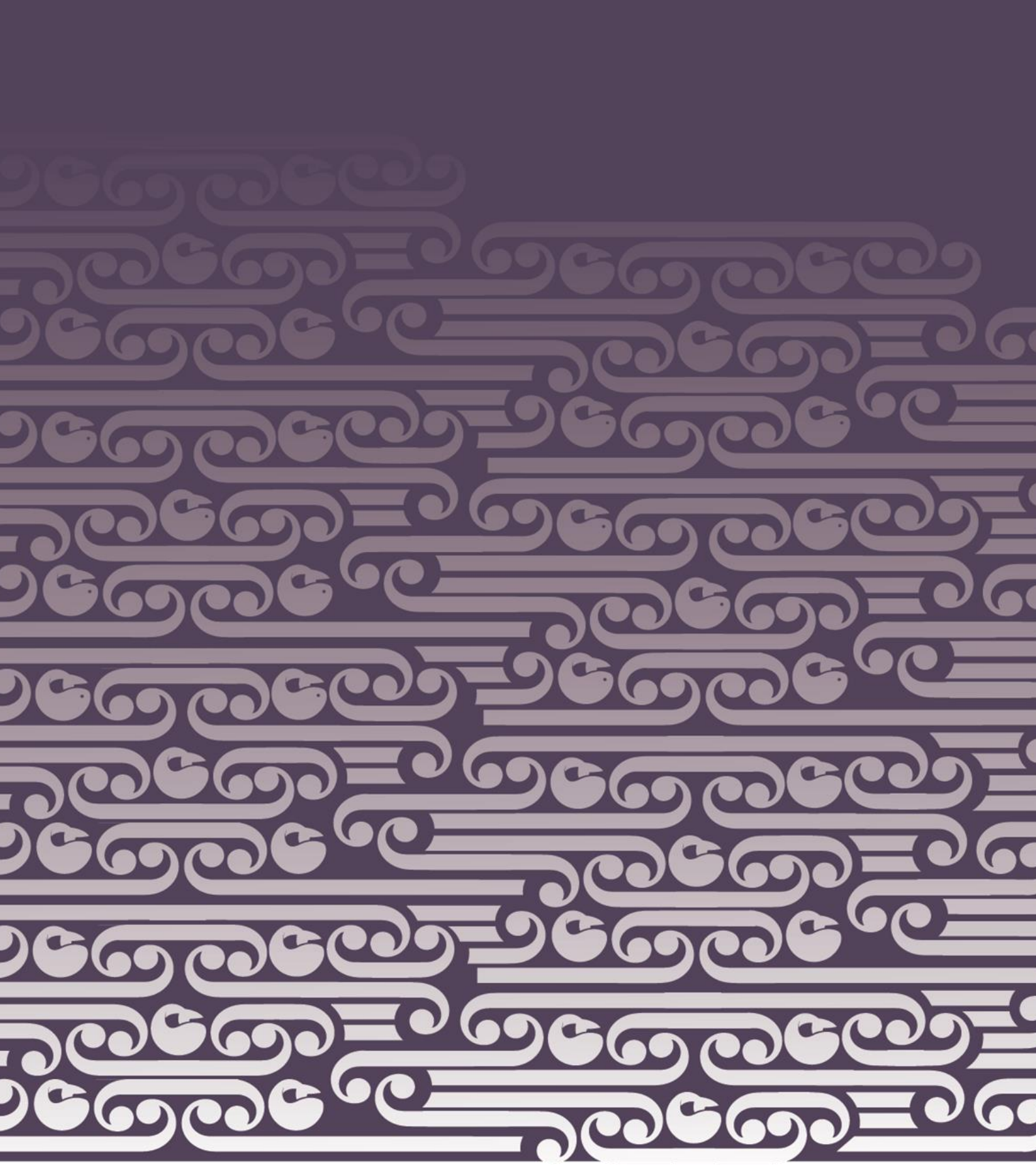


Te Ohu Kaimoana's response on the Māori Fisheries Amendment Bill

Te Ohu Kaimoana

Contents

Response on the Māori Fisheries Amendment Bill

1. This document provides the response of Te Ohu Kaimoana Trustee Limited (**Te Ohu Kaimoana**) on the Māori Fisheries Amendment Bill (the **MFA Bill**) which was introduced to Parliament on 22 December 2022.

2. Our approach is derived from the context of Te Ohu Kaimoana's role in the Māori Fisheries Settlement[1]. It is centred on Te Ao Māori, the Treaty of Waitangi, the Māori Fisheries Settlement, and the purpose of the Maori Fisheries Act 2004 (the **MFA**).

3. To support this response, we also wish to present our views kanohi ki te kanohi to the Māori Affairs Select Committee.

4. Our response on the MFA Bill is structured in the following way:

    a. first, we explain who Te Ohu Kaimoana is and our interest in the MFA Bill;

    b. secondly, we explain the historical context that led to the MFA Bill. This began with the initial statutory review in 2015, which lead to Iwi resolutions being presented to the Minister in 2016 and 2017;

    c. we then provide an assessment on whether the proposed amendments in the MFA Bill successfully implements the resolutions of Iwi, and whether we consider further amendments are required to successfully implement Iwi resolutions; and

    d. lastly, we provide comment on other proposed amendments in the MFA Bill that are not related to an Iwi resolution.

5. Te Ohu Kaimoana represents 58 Iwi organisations through the Māori Fisheries Settlement and the MFA that implements key provisions of the settlement[2].

6. We do not intend for our response to conflict with, or override, any response provided independently by Iwi, through their Mandated Iwi Organisations (**MIOs**) or Asset Holding Companies (**AHCs**), which

[1] The full framework of deeds and legislation to give effect to the agreements between the Crown and Māori in the Fisheries Settlement involves: the (no repealed) Maori Fisheries Act 1989, the 1992 Fisheries Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (which also includes the customary fisheries management regulations give effect through Part 9 of the Fisheries Act 1996), the Maori Fisheries Act 2004, and the Maori Commercial Aquaculture Claims Settlement Act 2004.

[2] Maori Fisheries Act 2004, Schedule 4.

are statutorily recognised entities with responsibility for Treaty Settlement obligations and assets on behalf of their Iwi members.

7. Te Ohu Kaimoana's responsibilities as trustee of the Māori Fisheries Settlement are separate and distinct, but complementary, to those of Iwi and hapū who hold mana whenua and mana moana and some of whom are also beneficiaries of Treaty settlements.

We are Te Ohu Kaimoana

8. Te Ohu Kaimoana was established to protect and enhance Te Tiriti and the broader Māori Fisheries Settlement. The Māori Fisheries Settlement, the MFA and the Maori Commercial Aquaculture Claims Settlement Act 2004 are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.

9. The Te Ohu Kaimoana Group structure is included below as **figure 1**. All entities under the group were established pursuant to the Māori fisheries settlement.

10. The purpose of Te Ohu Kaimoana, set out in section 32 of the MFA, 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

    b) further the agreements made in the Deed of Settlement

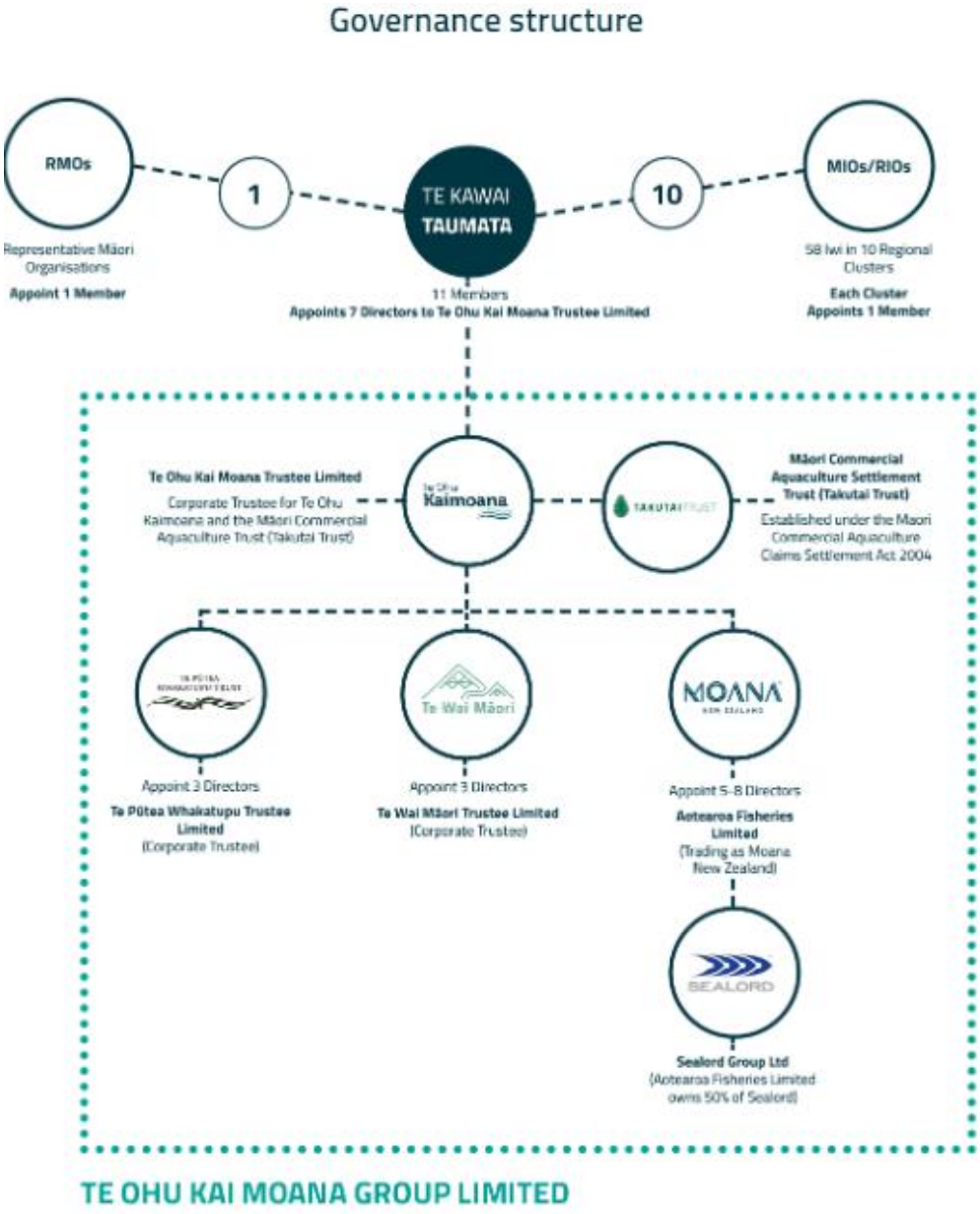
    c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi

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

11. The MFA sets out a framework for the allocation and transfer of fisheries settlement assets to Iwi (including commercial fishing quota income shares, and cash) and a governance framework for managing settlement entities for current and future generations of Māori. Four governance entities were established under the MFA to collectively manage settlement assets on behalf of all Māori. Te Ohu Kaimoana being one of those entities, the other three are Aotearoa Fisheries Limited (trading as Moana New Zealand Limited), Te Pūtea Whakatupu Trust, and Te Wai Māori Trust.

12. Centering Tangaroa and Hinemoana me ō raua uri (and their descendants), we work with both the MIOs and tangata kaitiaki/tiaki to further the interests of Iwi, hapū and whānau members.

Figure 1



Te Ohu Kaimoana's interest

13. Our interest in the MFA Bill arises from our statutory responsibility and purpose under the MFA and the Trust Deed of Te Ohu Kai Moana to advance the rights and interests of Iwi in the Māori Fisheries Settlement in order to assist the Crown to discharge its obligations under the Deed of Settlement and the Te Tiriti o Waitangi. We also have an obligation as a trustee to represent and act in the best interest of our Iwi beneficiaries.

14. While Te Ohu Kaimoana is a creature of settlement with the Crown, its genesis is the hard-fought battle for recognition of Māori fishing rights. That battle resulted in the Māori fisheries settlement which stems from the express recognition of our customary rights in Article 2 of Te Tiriti o Waitangi,

specifically the relationship to tino rangatiratanga and fisheries as a taonga for Māori.[3] Tino rangatiratanga is about Māori acting with authority and independence over their own affairs. It is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations. This view endures today and is embodied within our framework Te Hā o Tangaroa kia ora ai tāua (the breath of Tangaroa sustains us).

Te hā o Tangaroa kia ora ai tāua guides our advice

15. 'Te Hā o Tangaroa kia ora ai tāua' expresses the special relationship that iwi, hapū and whānau have with the aquatic environment, including speaking to the interdependent relationship with Tangaroa to ensure their health and well-being. This expression underpins our purpose, policy principles and leads our kōrero. This is underpinned by whakapapa[4], tiaki[5], hauhake[6] and kai[7], in a manner that speaks to striking the appropriate balance between the need to provide sustenance for people, while as kaitiaki ensuring protection of the environment. It is important that the Government understands the continuing importance of Tangaroa and recognises the tuhonotanga that Māori hold as Tangaroa's uri. In a contemporary context, the Māori Fisheries and Aquaculture Settlements are expressions of this interdependent relationship.

Historical Context of the MFA Bill

16. This section provides the historical context that led to the MFA Bill, to the extent that Te Ohu Kaimoana was involved. The historical context provides essential policy background to the proposed amendments in the MFA Bill.

17. Sections 114 – 127 of the MFA require an independent review of the Māori Fisheries Settlement entities to be carried out no later than the 11th year following the commencement of this Act. In August 2014, a reviewer was appointed by a Committee of Representatives. The reviewer completed his review and released his report in March 2015.

[3] 1992 Deed of Settlement, Preamble (a).
[4] Māori descend from Tangaroa and have a reciprocal relationship with our tupuna.
[5] Māori have an obligation to care for Tangaroa, his breath, rhythm and bounty, for the betterment of Tangaroa and for the betterment of humanity as his descendants.
[6] Māori have a right and obligation to cultivate Tangaroa, including its bounty, for the betterment of Tangaroa (as a means of managing stocks) and support Tangaroa's circle of life.
[7] Māori have a right to enjoy their whakapapa relationship with Tangaroa through the wise and sustainable use of the benefits Tangaroa provides to us.

18. In response, Te Ohu Kaimoana established an Iwi Working Group (**IWG**) as a committee of the board to analyse the implications of the recommendations, work through how they should be implemented and make recommendations to Iwi.

19. The IWG formed a preliminary view on the recommendations, consulted with Iwi throughout the country and firmed up resolutions for Iwi to vote on at a special general meeting (**SGM**) on 4 June 2015.

20. Iwi passed 15 resolutions at the June 2015 SGM. These resolutions required amendment to the MFA to be implemented. These resolutions supported the following amendments:
    a. The removal of the electoral college system and Te Kawai Taumata as the system for appointing the directors of Te Ohu Kai Moana Trustee Limited.
    b. Retain but restructure Te Ohu Kaimoana, with a funding model to be approved by Iwi at the 2016 Hui-a-Tau.
    c. The retention of Te Ohu Kaimoana's role in appointing the directors of Te Wai Māori Trustee Limited and Te Pūtea Whakatupu Trustee Limited, but with an increase in the maximum number of directors that can be appointed to each.
    d. Transfer of Te Ohu Kaimoana's voting and income shares in Aotearoa Fisheries Limited (AFL) to Iwi.
    e. Retain the restrictions on the sale of settlement assets outside the Māori pool – but with a simpler process for trading those assets within the pool.
    f. The integration of Te Ohu Kai Moana, Te Wai Māori, and Te Pūtea Whakatupu into one trust (known as the "Straw Tangata" model) to enable greater alignment of all three.
    g. A further review of settlement entities no later than 10 years from the date the new structural relationships are in place.
    h. A binding right of first refusal to allow Iwi to buy the assets of AFL and/or Sealord if the companies wanted to sell them.

21. From June 2015 to March 2016, Te Ohu Kaimoana carried out an extensive engagement process with Iwi to clarify its own future business and funding model, and how the remaining resolutions should be implemented. This included a survey of Iwi priorities, a series of regional hui, a national workshop and smaller focus groups. Proposed resolutions regarding Te Ohu Kaimoana's future funding model were circulated to Iwi in February 2016 and a further process of engagement carried out before the Hui-a-Tau on 31 March 2016.

22. The main issue considered at the March 2016 Hui-a-Tau was Te Ohu Kaimoana's future funding model. The proposed resolution regarding the funding model that resulted from consultation was presented at the Hui-a-Tau. However, it was superseded by a set of alternative resolutions that were proposed from the floor. The alternative resolutions passed by Iwi at the March Hui-a-tau resulted in a second IWG undertaking an independent review of the funding models proposed by Te Ohu Kaimoana.

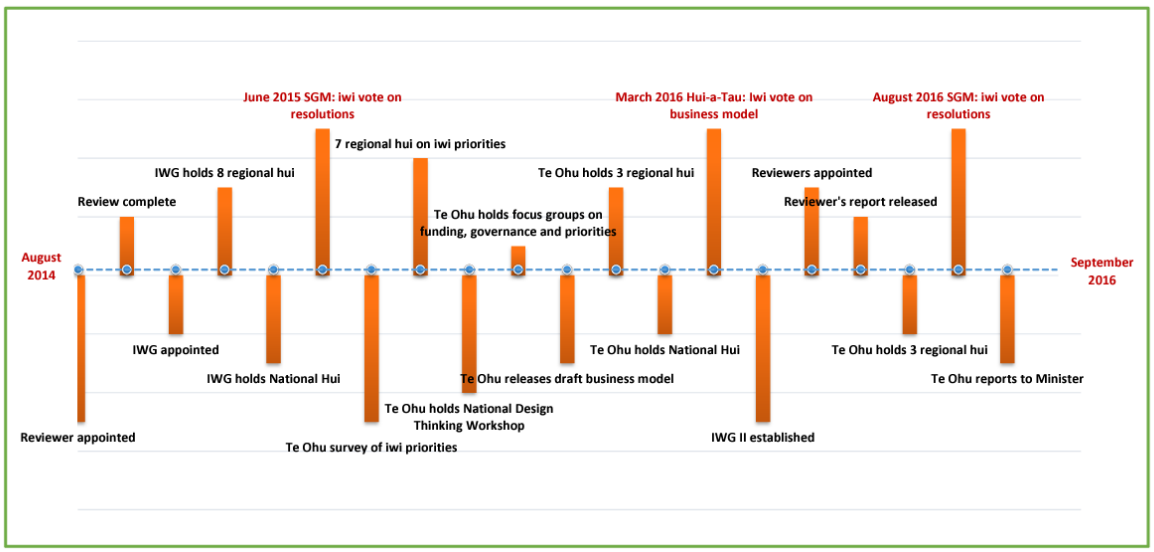
23. In May 2016 the second IWG appointed independent reviewers. The reviewers concluded the best funding model was for Te Ohu Kaimoana to retain some of its accumulated funds with the balance to be distributed to Iwi in proportion to their notional population from column 3 of schedule 3 of the MFA. They also recommended legislative changes to enable Te Ohu Kaimoana to distribute funds to Iwi for broader charitable purposes than fishing, and to non-charitable Iwi entities.

24. The second IWG consulted with Iwi on the reviewer's recommendations and firmed up resolutions for Iwi to vote on at an SGM planned for 30 August 2016. Iwi voted on the IWG resolutions at the August SGM, they supported:
    a. an immediate review by Te Ohu Kaimoana of its operational structure and activities to confirm funds available for retention and possible distribution.
    b. a preferred funding model for Te Ohu Kaimoana of "Retain some, Distribute some", subject to (a) above.
    c. establishment of processes to enable Iwi to be involved in approval of unbudgeted projects requiring expenditure of over $1m capital.
    d. distribution of any surplus funds to Iwi on an equal basis (as opposed to population, as recommended by the IWG)[8].
    e. broadening of the charitable purposes to which distributions can be made by Te Ohu Kaimoana.
    f. inclusion of a compulsory levy system in the MFA.
    g. a further review of Te Ohu Kaimoana's funding requirements within 5 – 7 years from the date of Te Ohu Kaimoana's restructure (referred to in 'l' above).

25. In September 2016 Te Ohu Kaimoana provided a report to the Minister detailing:
    a. the basis of the statutory review;
    b. the resolutions Iwi supported from the preceding 18 months that required statutory amendment to be implemented;
    c. the amendments required to the MFA to implement those resolutions;
    d. a plan for the operational implementation of the statutory amendments; and
    e. the engagement process Te Ohu Kaimoana carried out with Iwi to decide how their decisions should be implemented.

[8] This is what is referred to in Crown policy documents as "resolution 3". Below, it is referred to as the Equal Distribution Resolution.

26. A timeline of these events through to the September 2016 report is included below as **figure 2**.



27. In August 2017 Te Ohu Kaimoana provided the Minister with a second report to better assist the Crown with drafting the legislative amendments in line with Iwi resolutions. The 2017 report sought to achieve this by including a copy of the MFA with amendments in line with Iwi resolutions.

28. In the week of 8 August 2022 the Minister for Oceans and Fisheries released an exposure draft of the Māori Fisheries Amendment Bill (the Exposure Draft).

29. The Exposure Draft and the MFA Bill were drafted without any input from Te Ohu Kaimoana in the drafting instructions or into the legislative policy decision-making by the Minister. The form and style of the amendments in the MFA bill differ from that suggested by Te Ohu Kaimoana, that being a matter for Parliamentary Counsel to determine. The Cabinet papers in which the policy decisions that have been made available are heavily redacted, as is the Regulatory Impact Statement. The drafting instructions have not been shared. That has made it more difficult to analyse and understand whether and how the amendments reflect the review and Iwi resolutions that flowed from it, or to support iwi to participate in the select committee process in a fully informed way. We would welcome the opportunity to discuss with MPI and PCO the detail of the wording and the rationale for it where it is unclear.

Consideration of the Amendments to give effect to Iwi resolutions

30. In this section of our submission, we provide Te Ohu Kaimoana's position on whether the proposed amendments in the MFA Bill successfully implement the Iwi resolutions that were presented to the Crown by Te Ohu Kaimoana. While the references to specific resolutions passed by Iwi may not be

relevant to Select Committee, we have framed our response in this way to provide context to the committee for each of the amendments, and how they are (or are not) given effect in the MFA Bill.

Resolution 1: Te Ohu Kaimoana governance framework restructured[9] [10]

31. This Iwi resolution would see the Te Kawai Taumata electoral-college system for appointing Te Ohu Kaimoana Directors is removed, and in its place, Iwi will directly appoint and remove the directors of Te Ohu Kaimoana on a one vote per Iwi basis. This process is yet to be determined by Iwi. Iwi supported this resolution to shorten the distance between Iwi and key decision-making, as well as to enable all Iwi to have direct control over the appointment and removal of Te Ohu Kaimoana directors.

32. This amendment will remove the ability for any Recognised Māori Organisation ("RMO") to have a role in the composition of the Board for Te Ohu Kaimoana, which they currently have through Te Kawai Taumata. Te Ohu Kaimoana understands this amendment reflects an intention to enable iwi to have direct control over the appointment and removal process.

33. We consider the MFA Bill as drafted gives effect to this resolution.

Resolution 2: Iwi to hold all Aotearoa Fisheries Limited income and voting shares[11]

34. This Iwi resolution would see a conversion of Te Ohu Kaimoana's interests in AFL. Redeemable preference shares and income shares are converted to ordinary shares. The new ordinary shares would be distributed to AHCs of the MIOs in proportion to the populations listed in column 3 of Schedule 3 of the MFA Bill. The voting shares are cancelled. Redeemable preference shares are converted to ordinary shares (as covered at res 13).

35. We understand this resolution was supported to provide Iwi with full influence over key decisions regarding AFL, and to provide Iwi with direct control over the appointment and removal of AFL directors, and receive the full benefits of their shareholdings (income).

36. However, we note that this amendment will remove the ability of Te Ohu Kaimoana to represent the interests of beneficiaries collectively as shareholders, as decision making will be determined as a majority vote of shareholders.

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[9] Sections throughout the Bill referring to Te Kawai Taumata (including definitions) are amended or deleted and include the following sections of the MFA: 4, 5, 12, 23, 27, 29, 30, 36 to 38, 44, 52, 55 to 59, 64, 65, 89, 102, 113, 119, 122, 125 to 127, 180, 212 and Schedule 8.

[10] Section 44 of the MFA is proposed to be amended by the MFA Bill. It proposed to require Te Ohu Kaimoana's Constitution to provide for the appointment and removal of Te Ohu Kaimoana directors by MIOs and RIOs.

[11] Relevant new sections in the Bill include: 34(m), 35(1)(f), 36, 38, 60, 62 and Schedule 1AA.

37. We consider the MFA Bill as drafted gives effect to this resolution. We have minor drafting feedback in relation to implementing this resolution. This has been noted in a table at Schedule 1.

Resolution 3: Distribution of Te Ohu Kaimoana's surplus funds (other than surplus levy funding) to Iwi (the Equal Distribution Resolution)[12]

38. Arena Williams MP indicated that this resolution was a focus area for the Select Committee. In response, we have provided more information on the background of this resolution.

Background to this resolution

39. This Iwi resolution was that any surplus funds of Te Ohu Kaimoana would be distributed to Iwi on an equal basis. This resolution was received from the floor at an SGM in 2016, and amended the original proposed resolution by the second IWG that surplus funds should be distributed on the basis of the notional Iwi population. This is what is referred to in Crown policy documents as "resolution 3".

40. 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. The Equal Distribution Resolution passed with a majority of 28 – 23, was a non-binding resolution, and generated the most contention amongst Iwi.

41. We provided further context regarding the Equal Distribution Resolution to the Minister in our August 2017 Report that:
    a. distribution of surpluses on an equal basis would conflict with the allocation model, including the basis for distributing Te Ohu Kaimoana assets on winding up;
    b. some Iwi had made the point that distribution of a surplus on an equal basis is inconsistent with the basis for payment of levies, which they consider unfair;
    c. the August 2016 SGM was conducted in accordance with Te Ohu Kaimoana constitution;
    d. the feedback from Iwi on the 2017 report, including the opposition to distribution of surpluses on an equal basis and the reasons for that;
    e. in view of the closeness of the vote and the several issues raised by Iwi, Te Ohu Kaimoana had incorporated in the draft legislative amendments two alternative options for distributing surpluses: one based on an equal share; the other based on population.

42. In the week of 8 August 2022 the Minister for Oceans and Fisheries released an exposure draft of the Māori Fisheries Amendment Bill (the Exposure Draft). The Exposure Draft put forward for consultation on proposed legislative change included draft provisions that would, if enacted, give effect to the intent of the Equal Distribution Resolution.[13]

[12] Relevant new section in the Bill is 54H(5)(b).

[13] Crown policy documents refer to the Equal Distribution Resolution as "Resolution 3".

43. On 1 November 2022 Te Rūnanga o Ngāi Tahu (Ngāi Tahu) filed an application for judicial review with the High Court, arguing that the Equal Distribution Resolution was unlawful and that Te Ohu Kaimoana should not have included in its report to the Minister in response to the statutory review.

44. On 16 November 2022 the Minister informed us that he did not consider it appropriate to support the Equal Distribution Resolution at this time, and that it was his intention to recommend Cabinet introduce a Bill that provides surplus funds must be distributed on a population basis.

45. On 20 December 2022, the MFA Bill was introduced without the amendments required to give effect to the Equal Distribution Resolution.

46. On 1 March 2023 Ngāi Tahu discontinued their judicial review proceedings. All relevant information relating to these judicial review proceedings can be found on our website here.

Current proposed amendment

47. This amendment is addressed at section 54H (clause 32 of the Bill). It does not reflect the Equal Distribution Resolution.

Resolution 4: The ability to implement a compulsory levy model for Te Ohu Kaimoana that can be triggered in the future if required[14].

48. This Iwi resolution proposed to enable Iwi or Te Ohu Kaimoana to implement an annual levy for Te Ohu Kaimoana. Iwi proposed the funding levy to ensure Te Ohu Kaimoana has enough funding to enable it to perform its functions and duties. Iwi were to be responsible for approving a levy request, and this will require a simple majority vote passed at a general meeting.

49. We consider most of the statutory amendments required to implement this resolution have been incorporated into the MFA Bill, but do have drafting points which we have addressed in a table at Schedule 1.

Resolution 6[15]: The current Aotearoa Fisheries Limited legislative dividend requirement removed to allow shareholders to set it annually[16].

50. This Iwi resolution was to remove the current legislative dividend requirement, to allow shareholders to set the dividend policy.

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[14] Relevant new sections in the Bill include: 54A to 54G.

[15] Note: this is not a numbering issue. Resolution 5 has been skipped in this analysis. Resolution 5 was a resolution that did not meet the assessment criteria applied by the Crown and was not included in the MFA Bill. This resolution concerned Aotearoa Fisheries Limited and Sealord Assets being subject to first right of refusal.

[16] Relevant new sections in the Bill include: 76(6).

51. This resolution is implemented in the MFA Bill in the new section 76(6), which provides for holders of ordinary shares to set a dividend requirement other than 40% of the consolidated group net profit after tax.

52. In practice, the amendments to section 76 require the Directors of AFL that they must continue to pay a dividend of not less than 40% unless the shareholders relieve them of that obligation by shareholder resolution.

53. We consider the MFA Bill as drafted gives effect to this resolution.

Resolution 7: Major transactions for Aotearoa Fisheries Limited now has requirement of a 75 percent Iwi majority vote threshold[17].

54. This Iwi resolution would see Te Ohu Kaimoana no longer responsible for approving major transactions for AFL, instead a 75% majority Iwi voting threshold would be set up for major changes to business activities in AFL.

55. We consider the MFA Bill as drafted gives effect to this resolution. We do have a minor drafting point regarding the language of the amendment, and this is addressed at Schedule 1.

Resolutions 8 and 9: additional Directors for Te Wai Māori Trustee Limited and Te Pūtea Whakatupu Trustee Limited[18]

56. These two resolutions will increase the number of directors of both Te Wai Māori Trustee Limited and Te Pūtea Whakatupu Trustee Limited to a maximum of 5 with a majority quorum. It is also proposed to change director term from four years to three years, with a removal of the number of terms a director can serve.

57. We consider the MFA Bill as drafted gives effect to this resolution.

Resolution 10: New trading processes developed for Iwi wishing to sell quota assets within the Māori pool[19].

58. This Iwi resolution was to simplify the process for Iwi wishing to sell some of their assets to willing buyers within the Iwi/Te Ohu Kai Moana Group pool. The proposed amendments in the MFA Bill are provided for in section 162. The proposed sale will have to comply with the sales policy as expressed

[17] Relevant new sections in the Bill include: 61(2) and 61(3).

[18] Relevant new sections in the Bill include: 87 (Te Pūtea Whakatupu Trust), 100 (Te Wai Māori Trust).

[19] Relevant new sections in the Bill include for settlement quota - 158, 161, 162, 167; for ordinary shares – 69, 70, 72.

in the constitutional documents of the MIO, and these documents will need to provide for the terms on which the MIO can authorise sales of settlement quota and the process for approval.

59. It will be for each Iwi to decide what restrictions, if any, that they want to impose in their respective MIO's constitutional documents regarding sales of settlement quota.

60. This amendment will make it possible for Iwi to be permanently divested of their settlement quota assets.

61. We consider the MFA Bill as drafted gives effect to this resolution. We do have a minor drafting point regarding the language of the amendment, and this is addressed at Schedule 1. We also have substantive comments relating to the amendment of new sections 161 and 167 that relate to this amendment. These are discussed in paragraph 82 - 93.

Resolution 11: Further review of governance entities[20]

62. This Iwi resolution was a future review of the settlement entities and should not take place sooner than 7 years, but no later than 10 years from the time the current resolutions take effect.

63. We consider the MFA Bill as drafted gives effect to this resolution.

64. That said, the way this resolution is drafted in the MFA Bill means a statutory review will only occur if a special resolution by Iwi is passed. If no special resolution is passed, then no review will occur. We would consider it more appropriate if this resolution was incorporated into the MFA Bill in a way that required a review to occur within 7 to 10 years, unless there was a special resolution of Iwi that resolved against having a review.

Resolution 12: Te Ohu Kaimoana to allocate distributions to charitable entities, as nominated by Mandated Iwi Organisations[21]

65. This Iwi resolution would enable Te Ohu Kaimoana to distribute funds directly to charitable entities within a MIO or PSGE structure without being liable for tax.

66. We consider the MFA Bill as drafted gives effect to this resolution.

[20] Relevant new sections in the Bill include: 114 – 128.

[21] Relevant new sections in the Bill include: 54H(3).

Resolution 13: Conversion of redeemable preference shares in Aotearoa Fisheries Limited to be converted into preference shares[22]

67. This Iwi resolution would see Te Ohu Kaimoana's redeemable preference shares in AFL converted into income shares, which are then converted to ordinary shares to be distributed to Iwi.

68. We consider the statutory amendments required to implement this resolution have been incorporated into the MFA Amendment Bill. However, in terms of implementation realities, consideration should be given to the timing required to undertake this conversion process. Especially when there are different governance structures for Iwi. Te Ohu Kaimoana expects time will be needed to implement this change.

Additional Proposals from Te Ohu Kaimoana

69. Outside of those resolutions developed and voted on by Iwi, 4 additional proposals were developed by Te Ohu Kaimoana and consulted on with Iwi. The following proposals were included in the Second Report to the Minister in 2017.

Clarifying electoral provisions in Mandated Iwi Organisations constitutions

70. Te Ohu Kaimoana proposed the requirement to clarify that all adult members of an iwi have the opportunity to elect all Directors, Trustees, or Office Holders of the MIO of an Iwi. Specifically, the MFA at present does not specify that all adult members must have the opportunity to elect <u>all</u> governors, but simply the opportunity to elect the governors of the MIO. The issue is whether it is sufficient that all adults of the Iwi have the ability to elect one governor of the MIO.

71. In our Second Report to the Minister in 2017, we drafted an amendment to the relevant provision (Kaupapa 1 and 2 of Schedule 7) to remedy this issue and clarify this electoral provision. We consider the MFA Bill gives effect to this proposal and our earlier suggested draft amendment.

Simplifying recognition process of Post Settlement Governance Entities (PSGEs) as new MIOs

72. This proposal has come from many more Iwi reaching a settlement with the Government, and in doing so, establishing new PSGEs. Many Iwi wish to have these new entities replace their existing MIO, while retaining their existing AHC.

73. In light of this development, amendment is needed to allow for ownership of an existing AHC to be transferred to a new MIO recognised by Te Ohu Kaimoana. This process would also need to avoid

[22] Relevant new sections in the Bill includes Schedule 1AA clauses 1 to 3.

any need for iwi to establish a new AHC and incur the expenses of transferring settlement quota from the existing AHC to the new AHC.

74. This proposal required technical amendments to be 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.

75. We consider the MFA Bill gives effect to this proposal.[23]

The removal of current restrictions for Directors of Asset Holding Companies ("AHCs")

76. Te Ohu Kaimoana proposed the current restrictions on Directors for AHCs be removed. This proposal was made on the basis that the current MFA provides that no more than 40% of the Directors of a MIO can also sit as Directors on their AHC, including any subsidiary of an AHC and any fishing enterprise it establishes. The original intention of this provision was to ensure a level of independence in governance of the AHC. However, Te Ohu Kaimoana has identified that for many iwi the costs of obtaining additional Directors on AHCs is prohibitive and is an imposition on iwi.

77. The MFA Bill gives effect to this proposal as the relevant provision (Kaupapa 10, Schedule 7) has been repealed.

Clarifying the definition of Freshwater Fisheries in the Maori Fisheries Act[24]

78. Te Ohu Kaimoana proposed that the definition for *Freshwater Fisheries* should be amended to remove the exclusion for activities conducted under the Freshwater Fish Farming Regulation 1983. The exclusion limits the activities Te Wai Māori can advance on behalf of Māori, and there is no known justification for why this provision includes this exclusion.

79. The definition of Freshwater Fisheries in the MFA Bill gives effect to this proposal.

[23] Relevant new sections in the Bill include: s 16(1)(a) – amending to enable ownership of an AHC to be transferred to a MIO that replaces a former MIO; s 16(2)(a) – deleting g prohibition on a MIO entering into a transaction relating to or affecting its income shares; s 18B – includes options for shares in an AHC to be transferred to a new MIO; s 18E – repealed and replaces with provision stating that for the purposes of the IRD, 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.

[24] Relevant new section in the Bill is s 91.

Other amendments we wish to comment on

80. In this section of this response, we provide Te Ohu Kaimoana's position on parts of the MFA Bill which are not contemplated in the recommendations or resolutions that were presented to the Crown by Te Ohu Kaimoana.

Receiving Te Ohu Kaimoana's annual plan

81. In the Bill, Recognised Iwi Organisations (**RIO**) do not receive copies of Te Ohu Kaimoana's annual plan, but MIOs will receive this. However, RIOs will have the right to approve the new strategic plan (section 36A(3)(b)), and when reporting on the annual plan and strategic plan, Te Ohu will need to report to RIOs (as per the new section 23(2).

82. This discrepancy leans towards a case to include RIOs in section 36(1)(c), which will require a change to the current proposed Bill to allow RIOs to receive Te Ohu Kaimoana's annual plan. We propose that RIOs should receive copies of Te Ohu Kaimoana's draft annual plan. We do not regard this change to be a complicated exercise, as currently, only two RIOs remain.

Trading and the Crown – s 167

83. What has not been contemplated in the Resolutions passed by Iwi and the subsequent recommendations presented to the Crown, is what is currently s 167 in the MFA Bill. This section is related to the amendment which will enable Iwi to sell their settlement assets to a willing buyer within the Māori pool (known as resolution 10).

84. Section 167 of the MFA Bill amends the definition of "third party" as it relates to this section. Currently under the MFA 'third parties' cannot acquire quota. The amendments in the Bill would see the Crown excluded from this definition, and would mean the Crown has the potential to acquire settlement assets (quota) through exercising its rights under options, mortgages, other security interests, and guarantees.

85. This amendment has the potential to increase the ability of the Crown to acquire settlement assets and remove them from the Māori pool. There is no equivalent proposed at clause 49 of the MFA Bill (new section 72(4)) for sales of AFL shares. The Crown will not be able to acquire these AFL Shares.

86. If successfully acquired, it is not clear what the Crown would or could do with this quota or the reason why the Crown has included it in the Bill. This proposed amendment has not resulted from a resolution of Iwi, and there has been no consultation on the policy intent of this amendment with Iwi on its inclusion in the Bill.

87. We have attempted to engage with Ministry of Primary Industries to understand the policy behind these amendments, but they maintain they are unable to make parts of the Regulatory Impact

Statement or drafting instructions available to Te Ohu Kaimoana. The release of the heavily redacted versions of Cabinet papers and the Regulatory Impact Statement and refusal to release the drafting instructions has made it difficult to participate in the Crown's development of the MFA Bill.

88. Throughout the development of this response Te Ohu Kaimoana has been engaging with Iwi. The general response from Iwi to Te Ohu Kaimoana was that Iwi are opposed to the Crown inserting provisions into the MFA Bill that would allow the Crown to acquire settlement assets, particularly without informed consultation on the inclusion of those provisions. Iwi have been clear; they want to know the rationale and policy intention from the Crown on why these provisions have been included.

89. Te Ohu Kaimoana opposes this amendment in the MFA Bill. As discussed at paragraph 13 and 14, Te Ohu Kaimoana has statutory responsibility to advance the rights and interests of Iwi in the Deed of Settlement. This amendment has the potential to undermine the Māori Fisheries Settlement by enabling the Crown to acquire settlement quota, with no requirement for the Crown to return or hold that quota on behalf of Iwi. In effect, this amendment legislates the potential erosion of Māori Fisheries Settlement.

Policy intention behind the proposed amendments to s 158 and 161

90. We have concerns about any ability of the Crown to derogate from the Māori fisheries settlement by removing settlement assets from iwi ownership and control. Provisions that enable this are proposed in sections 158 and 161 of the MFA Bill. The policy intent behind the amendments to new subsections 161(4), 161(5) and 161(6)[25] were not shared or discussed with Te Ohu Kaimoana so it is difficult to understand what is intended with these amendments and why these changes are proposed.

91. The lack of transparency around the policy decision making process remains a matter of real concern to Te Ohu Kaimoana, particularly when these provisions relate to potential (re)confiscation of fisheries rights. We have repeatedly raised concerns with the Crown that amendments to implement a statutory review into governance arrangements, that have the express purpose of enhancing Iwi tino rangatiratanga, seem to include provisions that increase the Crown's ability to erode the settlement asset base.

92. Te Ohu Kaimoana strongly opposes the rationale that settlement quota can be forfeited under the Fisheries Act or by Court order. Māori fishing rights confirmed by Te Tiriti, and then again by the Māori Fisheries Settlement, are inalienable rights. Those rights (and their manifestation as quota shares) should not be able to be forfeited or subject to Court order, and the MFA Bill increasing the

[25] It appears that the references to subsection 158(1)(b) and (c) in 167(4) may be incorrect, possibly intended to refer instead to 158(1)(c) and (d). This issue is addressed in the schedule.

scope of the current provisions that do that only increases potential for the re-alienation of settlement assets. The constraints on what Crown can do with the confiscated settlement quota do not change fact that it is a means to forcibly redistribute settlement quota and that will impact some Iwi, including the ultimate beneficiary members both current and future generations who are not implicated in any wrongdoing, who may lose settlement assets.

Removal of restrictions on the appointment of Directors

93. At present, the restrictions in section 89 and 102 of the MFA mean that only one Te Ohu Kaimoana director can concurrently be a director of either Te Pūtea Whakatupu Trustee Limited or Te Wai Māori Trustee Limited. Similarly, no one can be a director of both Te Pūtea Whakatupu Trustee Limited or Te Wai Māori Trustee Limited at the same time, and a director of AFL (or its subcompanies) is also restricted from sitting as a director of either Te Pūtea Whakatupu Trustee Limited or Te Wai Māori Trustee Limited.

94. The MFA Bill proposes to remove sections 89 and 102, and this will mean that Te Ohu Kaimoana can appoint any number of its own directors, AFL directors, or directors of the other Kāhui Trust[26] as directors of Te Pūtea Whakatupu Trustee Limited and Te Wai Māori Trustee Limited. All appointments to Te Pūtea Whakatupu Trustee Limited and Te Wai Māori Trustee Limited will be made by Te Ohu Kaimoana, and the only way for Iwi to influence appointment to either Trust is through their appointment of Te Ohu Kaimoana's directors.

95. This amendment was not proposed by resolution of Iwi. The purpose of the resolutions approved by Iwi through the statutory review process was because Iwi wanted more direct control over Te Ohu Kaimoana and its subsidiaries. This proposed amendment gives more relative control to Te Ohu Kaimoana than to Iwi.

96. The intent of many of the resolutions passed by Iwi demonstrated the desire for them to have more direct control over Te Ohu Kaimoana and its subsidiaries (including Te Pūtea Whakatupu Trust and Te Wai Māori Trust). However, an unintended consequence of removing the restrictions on the appointment of directors includes removing the limit of the number of Te Ohu Kai Moana Trustee Limited directors that can be appointed to the boards of subsidiary entities. This was not intended, and we propose that the limit of only one Te Ohu Kai Moana Trustee Limited director being appointed to the board of subsidiary entities be retained, and therefore these sections of the MFA is not amended.

[26] Kāhui Trust includes: Te Ohu Kai Moana Trustee Limited, Te Wai Māori Trustee Limited, Te Pūtea Whakatupu Trustee Limited, Aotearoa Fisheries Limited (Moana NZ) and Sealord Group.

SCHEDULE 1: Suggested Drafting Amendments

This table primarily identifies parts of the MFA Bill that we consider require further amendments. Te Ohu Kaimoana understands and appreciates the speed with which the MFA Bill is progressing and the desire to have it pass before the House rises at the end of August. However, the shortened submission process means that our engagement with Te Wai Māori and Te Pūtea Whakatupu on the implications for their trust deeds and constitutions and Aotearoa Fisheries Limited on its constitution, while well underway are not yet complete.

While the commencement date may well be mid-2025, we anticipate that there may well not be another legislative opportunity to make any technical amendments.

Similarly, our engagement with Iwi is ongoing, and publication of our submission may reveal the need for further amendments. Hopefully, none will be substantive, but we will bring them to the attention of the Committee and raise them with MPI and PCO as appropriate. A possible exception is that specific taxation provisions may be needed to allow for continuity where settlement assets are transferred.

AMENDMENT/PART	**OUR RESPONSE**
General parts	
Amend the definition of "Settlement Assets": The current definition at paragraph (a) is, in effect, "the assts transferred to Te Ohu, including AFL and its assets".	This should also include reference to ordinary shares. Ordinary shares are defined as shares in AFL. This would make it clear that AFL remains a settlement asset, even though its no longer held by Te Ohu Kaimoana.
Matters regarding TOKMTL	
TOKMTL General Meetings: New section 44(2)(n) correctly requires TOKMTL to give notice of its general meetings to MIOs RIOs and RMOS.	What is also needed is an alignment with the Companies Act provisions, specifically in relation to waiver of irregularities in notices, accidental omission to give notice and resumption of adjourned meetings. The simplest way to do this might be to apply clause 2(3), (3A) and (4) of the First Schedule to the Companies Act as if the MIOs, RIOs, and RMOs were shareholders. A general provision allowing TOKMTL to regulate its own procedures in its constitution or by director or shareholder resolution might also be desirable so that TOKMTL can set procedures for AV general meetings, voting, proxies, minutes etc. Further, there is a need to specify the special position of RMOs. They get notice of general meetings, so presumably they are entitled to attend. So, they should also have a right to speak at general meetings. This right it not expressly available. That has to be inferred at present, but for clarity it should be explicit. That could be done in clause 25 by an amendment to section 29 stating that they cannot vote, but can attend and speak.

AMENDMENT/PART	OUR RESPONSE
<u>TOKMTL Director Appointments:</u> New section 44(2) (b) & (c) refer to directors being appointed with a minimum level of support specified in the constitution.	The starting point for most large companies, is that director appointments must be voted on individually, and are made by ordinary resolution of shareholders; see section 155 Companies Act, though that is subject to the company's constitution. If it is intended that directors be elected, individually, by majority vote of MIOs and RIOs hat should be clearly stated. If "minimum level of support" means something other than an ordinary resolution it needs to be defined.
<u>Alternate directors</u> Clause 37; Section 44(2)(g)(and elsewhere). These are described as acting "on behalf of" primary directors.	That is not the orthodox position. A director usually cannot send along an alternate director on their behalf with voting instructions to be followed. An alternate director, when acting, is acting as a director, and is accountable directly to the Trust Board. An alternate director does not have the defence that they were just following instructions. The clause should refer to the alternate director voting "as a director", or "instead of the director for whom they are acting". The same changes should be made in Schedule 2 at the new Part 2 to Schedule 1AA, clauses 9(5), 11(6) and 13(5); all transitional provisions. At clause 47(2) it would be preferable to remove "on behalf of" from section 62(1)(b) and substitute "instead of that director, but only while that director holds office as a director".
<u>Te Ohu Trust Deed</u> Clause 31(6): proposed section 31(1A) requires the trust deed to "include the *contents* required by" sections 37 to 40. Those are ongoing matters of detail, some of which, like the annual plan, necessarily vary annually.	It is difficult to tell what "contents" means in this context. It could require all 4 sections to be set out in full, but we remain unsure. The proposed section 36(1A) is probably not needed because the sections referred to impose statutory obligations that must be performed regardless of whatever the deed says. If something else is intended, the drafting in the Bill is not clear enough to convey whatever that might be.
<u>Decision process for surplus distribution</u> Clause 42: Sections 54G and 54H are activated if TOKMTL "determines"	Companies determine something usually by a simple majority of directors, but sometimes by ordinary or special resolution of shareholders. Here there is the potential of a special resolution of directors.

AMENDMENT/PART	OUR RESPONSE
	So, the sections should clearly state that they are activated by ordinary or special resolution of directors. It should not be by shareholder resolution, because meeting the solvency test after a distribution is an obligation on directors under the companies Act.
Distribution of surplus funds to RIOs Clause 42: Section 54H - RIOs are excluded from receiving these funds.	Unless there is some policy consideration of which Te Ohu Kaimoana is not aware, there is an unintended omission in proposed section 54H in the MFA Bill. Section 54H does not allow distributions of "other surplus" to RIOs, but they can receive surplus levy funding under section 54G. Section 54H(6) only seems to make sense if iwi that do not have MIOs have an entitlement, but there remain 2 RIOs who have not yet reached MIO status and are entitled to these funds.
Compulsory Levy for Te Ohu Kaimoana (s 54A)	We have no issues with the amendment itself, but we raise a simple drafting point for the proposed section 54A. That is, resolutions do not usually "ask", and this term carries connotations of mere request or discretion. Preferred terminology would be, *direct, instruct or authorise*. This would leave the directors with a discretion as to whether or not to proceed, while a majority of directors can initiate the process anyway, but MIO/RIO authorisation might give a level of comfort.
Sale of quota (s 162 and 167)	Section 162 refers to sales of quota, but section 167(2A) assumes section 162 applies to other types of transactions (presumably those in section 167(1); but section 162 is for sales only. Section 162 does apply, but only because section 167(1) and (2) have the effect of extending the normal meaning of sale. It is also not clear how the restriction in 161 applies to sales under s 162 and s167. It could be made much clearer by having section 162 refer to section 167 transactions directly, rather than applying the sales rules in section 162 to transactions that are not sales or, provide in section 162 that "sell" has the extended meaning conferred by section 167.
New section 158, 161 and 167	The relationship between the new sections 158, 161 and 167 is not clear. New section 158 describes the instances where settlement quota is able to be transferred. New section 158 does not provide an instance where the Crown,

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	or anyone for that matter, is able to attain settlement quota via a transaction under new section 167. New section 161(5) and (6) provide restrictions on what the Crown can do with settlement quota and when the Crown has to do it. However, in accordance with section 161(4) the application of 161(5) and (6) only applies when quota is transferred under 158(1)(b) and (c). It appears that the references to 158(1)(b) and (c) in 161(4) is incorrect, and it should instead refer to 158(1)(c) and (d). If not, this means the restrictions in 161(5) and (6) do not apply to the Crown when it acquires settlement quota through forfeiture under the Fisheries Act. Should the references in new section 161(4) be corrected, the Crown will be able to purchase settlement quota via section 167 without any restrictions on what the Crown can do with settlement quota.
Matters regarding Aotearoa Fisheries Limited (AFL)	
<u>Clarify who can hold AFL shares:</u> AHCs (or their subsidiaries) must hold all settlement quota and AFL shares of the relevant MIO (s 16)	There is no definitive statement as to who may hold AFL shares. There is merit in a clear statement. The following suggested wording could be inserted in the new Part 2 of Schedule 1AA, as clause 3A; **"3A Shareholders of Aotearoa Fisheries Limited** *Once the ordinary shares have been allocated to mandated Iwi organisations and the process in **clause 3** has been completed, the only parties who may hold ordinary shares are:* *"(a) asset holding companies or subsidiaries of asset holding companies, holding shares on behalf of their mandated Iwi organisations; and* *"(b) Te Ohu Kai Moana Trustee Limited, holding shares on trust under section 153."*
<u>Prohibition on gifting of AFL shares:</u> Sections 161, 162, and 167 restrict disposal of settlement quota so that they ultimately stay in the Māori pool. Section 161(1)(b) says a MIO must not gift its settlement quota.	There is no equivalent prohibition on gifting AFL ordinary shares. Gifts are not caught by limitations on sales. A prohibition could easily be added to new section 69, though that might not strictly be needed if the proposed clause 3A is added to Part 2 of Schedule 1AA. While the AFL constitution could prohibit gifts of shares, the constitution could be amended at any time by AFL shareholders.

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Audits of AFL:	Once AFL is separated from the Te Ohu Group, there is no clear reason why the audits of AFL should be channelled through Te Ohu; and nor should AFL have to report to Te Ohu with a plan to address the audit findings. So, while the section 112 and 113 processes remain appropriate for TPWTL and TWMTL, they should be amended so that there is a separate process for AFL audits to go to shareholders, and for AFL to report to them on addressing the audit findings.
AFL Major transactions: This is addressed in the submission at para [39] to [41]. Section 61(3) (Clause 46 of the Bill). Section 35(1)(c) does not require change because Te Ohu will no longer include major transactions of AFL. Section 35(1)(c) is amended by clause 30(1) of the Bill to refer to "special resolution or other approval"	It is not clear what "other approval means" in this amended clause. Under the Companies Act, this occurs either by shareholder resolution or director resolution. If a special resolution is required, then a directors' resolution as an alternative is not appropriate. We consider "other approval" should be removed from section 35(1)(c) at clause 30.
Te Ohu functions relating to AFL Clause 30(2): Section 35(1)(e) changes reference to income shares of AFL to ordinary shares in context of Te Ohu dealings	The change from income shares to ordinary shares in this section does not seem to be correct, and instead the amendment should simply delete the reference to "income shares". If the amendment stands it will allow Te Ohu to acquire or dispose of ordinary shares in AFL, and we did not think that was the intention of this proposed amendment. It also says that must be done in accordance with Part 4, but Part 4 will not apply to AFL share purchase and disposal processes. Under new section 153 (which is in Part 3) Te Ohu will hold shares in trust for the 2 remaining RIOs, but that is an entirely separate function.
Crown access to settlement quota Clause 82: New section 167(4) In addition to our substantive comments above, there are drafting issues related to this section. See also clause 49: New Section 72(4) re AFL shares	There will only be two primary parties to the transaction in section 167; the MIO, and the option, security, mortgage, or guarantee holder. New section 167(3) should refer to "any party to a transaction referred to in subsection (1) that is not a MIO, AHC, or a subsidiary of a MIO or AHC". This would mean there would be no need for subsection (4).

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	A similar change can be made at clause 49, new section 72(4) though the Crown is, rightly, unable to access AFL shares there.
Transitional provisions for directors Schedule 2. TOKMTL, AFL, TPWTL and TWMTL	Currently, there are no obvious reason for transitional provisions for the directors of TPWTL and TWMTL. The Bill does not increase the potential number of directors and remove restrictions on eligibility. The entities themselves do not change, and the existing directors must already be qualified. There is no change affecting them other than that more directors might be appointed. Also, TOKMTL can remove directors from TWPTL and TWMTL at any time (see sections 87(2)(c) and 100(2)(c)). So, clauses 12 and 13 of the proposed Part 2 to Schedule 1AA can be omitted. If they are to remain, then clause 9(6) should be replicated in clause 12.
AFL special resolutions Clause 8(10).	Paragraph (c) in clause 8(10) should be removed because it is not necessary. AFL will be subject to the Companies Act, which adequately defines "special resolution" in similar terms. If for some reason it is to remain, then the reference to subcompanies should be removed, because Sealords, for example, does not have AHCs holding its ordinary shares. Parliament should also be reluctant to legislate for subcompanies' procedures unnecessarily, especially when they have foreign investor owners. Also, the holder of the shares in AFL might be a subsidiary of an AHC rather than the AHC itself. That is not contemplated here. Te Ohu will also be a shareholder in the rare situation where it is holding AFL shares on behalf of a RIO. Removing the words in brackets would correct the definition, but then it adds nothing to the general provision in the Companies Act for all companies. The simplest solution is simply to remove paragraph (c) from the definition.
AFL Constitution Issues	*Redeemable shares* If AFL is to be permitted to issue redeemable shares, the Companies Act (section 68) requires that the constitution must provide for that.

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	In view of the detail in the MFA Bill about "ordinary shares" it seems appropriate to amend a new subsection into new section 68 of the MFA Bill; *"(2) Nothing in this section affects or restricts the ability of Aotearoa Fisheries Limited to issue redeemable shares".* Alternatively, redeemable shares could be added to the new section 62(1)(k). If any restrictions are intended, they should be specified in the MFA Bill. *Minority buyouts* Sections 110 to 115 of the Companies Act allows for shareholders who vote against special resolutions to force the company to buy them out in specified situations. The company may then sell the shares. We suggest that the MFA Bill make it clear that the AFL can only sell the shares to a MIO (or its AHC or a subsidiary of the AHC). *Other lesser issues* The MFA Bill at clause 47 amends section 62, and while most changes are workable, improvements could be made: 1. New section 62(1)(a) & (aa) would be better to refer to "all directors" rather than "a director" which might imply application to one, not all, directors. More importantly, there should be reference to subsidiaries of AHCs. 2. As a matter of general law, the Companies Act at section 155 says director appointments are voted on individually and made by ordinary resolution unless the constitution says otherwise. So, if that is the intention for AFL it should be spelt out in the MFA Bill clearly. Otherwise, AFL's shareholders might amend the constitution to provide for one vote per iwi, or some grouping basis for the appointment of directors. If that is

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	not to be allowed, it should be expressly prohibited. 3. New section 62(1)(ac)(iii) should say that the appointment does not extend beyond the end of the next AGM, and section 62(1)(ad) should have a similar provision. That covers the situation where there is no successor because the number of directors is reduced. 4. New section 62(1)(ae) is not needed, because the Companies Act has a detailed process for the removal of a director. *Remuneration of alternate directors* 5. New section 62(1)(af) relates to remuneration of directors of AFL. Under the current constitution, alternate directors get expenses, but only get remuneration if the appointing director agrees to forgo remuneration. That aligns with NZX practice and there are good reasons for it, including: a. otherwise, director fees can double; and b. it discourages appointed directors from absenting themselves. The process for TOKMTL, TWMTL and TPWTL directors is different, but so are the circumstances. AFL is a large commercial operation. Related to that is new section 62(1)(b) (clause 47(2) of the Bill) and clause 45 of the AFL constitution. As discussed above, the alternate director should not act "on behalf of" the appointing, absent, director. When the alternate director is acting, they should be acting the same as other directors, not being controlled by one of them who is absent. If it is intended that AFL have alternate directors who are permanent "shadow" directors, receiving all Board papers etc, and poised to step in whenever their appointing director is unavailable, and remunerated either at the same rate as other

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	directors, or some percentage of that, then such a change could be implemented, if requested by AFL and agreed to by MIOs. *Conflicts* 6. The references in new section 62(1)(ca) and (cb) to section 144 of the Companies Act are unhelpful because the constitution does indeed have different rules at clause 62 (as amended in 2010), and the AFL constitution has a definition of "interest" in its clause 60 that goes beyond section 139 of the Companies Act. *Priority/Preferential disposal of assets* 7. This relates to new section 62(1)(i). In this context, it is difficult to discern a difference in meaning between "preference" and "priority", so just use one term should be chosen.
<u>TPWTL and TWMTL Constitutions</u> Clauses 55 (new section 87) and 61 (new section 99). Contracts for services and number of directors Clauses 56 and 100	*<u>Disclosure of contracts for services</u>* Clauses 55 and 61 have been amended following Te Ohu Kaimoana's earlier comments, but are still not quite right in the area of contracts for services (not service). The problem is with the words "between parties that are, or include the following" That is still going to catch contracts that only one party is a party to. A solution is to say no more than; " (v) contracts for services between TPWTL/TWMTL and any of its directors or alternate directors" *Changes in numbers of directors* Sections 87 and 100 are mirror provisions for the two trusts (clauses 56 and 100 of the MFA Bill). In each case, subsection (2)(d)(iii) should have the following amendment: *"until the ~~director's successor is appointed~~ end of the next AGM, or TOKMTL advises that the vacancy is not to be filled*' We have provided rational for this change above at our response for new section 62((1)(ac)(iii). However, there is a

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	further option here because the number of directors might be reduced.

Te Ohu
Kaimoana