



TE ŌHU
KAIMOANA

IWI INFORMATION PACK 2.0

MĀORI FISHERIES AMENDMENT ACT 2024

Understanding the changes required
to Mandated Iwi Organisation
governance documents

01

CONTENTS AND BACKGROUND

The purpose of this document is to provide iwi with a brief background on the Māori Fisheries Amendment Act (MFAA), and specifically, the changes that will need to be made to the governing documents of Mandated Iwi Organisations (MIO). All MIO will be required by this new legislation to make these necessary changes prior to July 2026.

Navigating this paper

Part 01

This part of the information paper provides useful context to understand the almost 10-year history leading up to the passing of the MFAA.

Part 02

This provides a breakdown of the seven required changes, including details on how these changes came to be, and suggested draft clauses to support iwi understanding.

Part 03

All iwi governance documents must comply with the MFAA by the 26 July 2026. To support achieving this, this part of the paper provides a suggested timeline to work to.

Background

This information pack should also be treated as a second installment to a MFAA overview circulated to iwi in September 2024. That paper was prepared to support iwi understanding of all changes that have been made since the passing of the MFAA, and was further discussed at a national Iwi wananga on 9 September. To support your wider reading of all changes, please see this [September information pack](#). The MFAA became law on 26 July 2024, however most of the provisions do not take effect until 2 years after the date of royal assent (26 July 2026). With a significant amount of work to do to implement the MFAA, accordingly, the legislation allows two years to deliver the legislative changes.

Brief history of the origins of the MFAA

The Maori Fisheries Act 2004 (MFA) requires that an independent review of the Māori Fisheries Settlement entities be carried out no later than the 11th year following commencement of the Act. In August 2014, a reviewer was appointed by a Committee of Representatives and that reviewer completed his review and released his report in March 2015.

In response, Te Ohu Kaimoana established an Iwi Working Group 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.

FIGURE ONE



In June 2015 at a special general meeting, Iwi passed 15 resolutions. These resolutions required amendment to the MFA to be implemented. 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.

In May 2016, a second iwi working group was established and consulted with iwi with a focus to firm up resolutions for Iwi to vote on at a special general meeting for 30 August 2016. Following this meeting, in September 2016, Te Ohu Kaimoana provided a report to the Minister of Oceans and Fisheries detailing the outcomes resolved by Iwi.

A timeline of these events through to this September 2016 report is included in Figure one.

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. In summary, the recommendations from the 2015 review as well as the proposals developed by the two iwi working groups established to address the review, resulted in 18 resolutions from iwi requiring changes to the Māori Fisheries Act. Of those 18 resolutions, 14 were developed and voted for by MIO, and 4 additional technical proposals were developed by Te Ohu Kaimoana and consulted on with iwi.

Following this in 2017, there was a delayed period of progress.

Then in August 2022, the Minister for Oceans and Fisheries released an exposure draft of the Māori Fisheries Amendment Bill (the Bill). This exposure draft and the Bill were prepared without any input from Te Ohu Kaimoana in the drafting instructions or into the legislative policy decision-making by the Minister.

In March 2023, the first reading of the MFA Bill took place, which was then followed by a period of engagement with the Māori Affairs Select Committee. Te Ohu Kaimoana engaged heavily with the Crown and iwi throughout 2023.

The second reading of the MFA Bill took place in March 2024, followed by the third and final reading in May. The Māori Fisheries Amendment Act 2024 was given Royal Assent in July 2024.

Overview of the MFAA

The Māori Fisheries Amendment Act is intended to reduce costs, improved efficiency, move towards greater rangatiratanga, and increase the entities’ ability to provide settlement assets benefits to all Māori. Those entities include Te Ohu Kaimoana, Aotearoa Fisheries Limited, Te Wai Māori and Tapuwae Roa. There is a full suite of changes which need to be made across the Te Ohu Kaimoana Kāhui entities, and to iwi governance documents. As such, there is a significant amount of work to do to implement the MFAA. Accordingly, the legislation allows two years to deliver the legislative changes.

02

MANDATED IWI ORGANISATIONS CONSTITUTIONAL DOCUMENTS

This part of the information paper is focused on the amendments that will need to be made to MIO governance documents to align with the MFAA and bring these documents into compliance with this new legislation.

Iwi will have until July 2026 to ratify these changes. This is the responsibility of MIO to complete, however, Te Ohu Kaimoana reserve a statutory obligation to review all amended governance documents and approve that they are complying with legislation.

There are 7 changes which need to be made. Below each are described in further detail, including context leading to this amendment. Te Ohu Kaimoana has also proposed example clauses which MIO may find useful when considering these changes.

Importantly, the material in this paper does not constitute legal advice.

We encourage MIO to carefully consider their own constitutional documents and seek independent legal advice as needed. Not all iwi are the same and

a one-size-fits-all approach cannot be applied here. The landscape of iwi entities is different, as there is a combination of charitable trusts, incorporated societies and common law or private trusts.

We also note that entities who do not action the required changes within the timeframe might risk and/or put in jeopardy any financing, insurance, or other arrangements where MIO officers are required to certify that they comply with all relevant laws. Of also important note, the Maori Fisheries Act requires that for continuing recognition of a mandated iwi organisation, the constitutional documents of the organisation must comply with the requirements stipulated within this act, and now this also includes the Amendment Act.

1. Electoral Provisions change: Votes by members of an iwi

Leg reference – MFAA, cl 99 Schedule 7 amended
– see (1)-(2)

What is this change

This clarifies electoral provisions and makes it explicit that all adult members of a MIO can elect 1 or more officeholders. It removes any previous ambiguity on potentially limiting adult member voting rights to not extend to all officeholder positions.

Background to the change

While the constitutions of many MIO favour an approach that enables iwi members to elect one trustee (e.g. based on their affiliation to hapū or recognised marae), the MFA at present does not specify that all adult members must have the opportunity to elect all governors, but simply the opportunity to elect the governors of the MIO. These amendments to the MFAA ensure they align with an electoral approach to voting utilised by many MIO (and Crown policy in respect of PSGEs). This may require subsequent amendments to MIO constitutional documents, but in the vast majority of situations, its highly likely its already provided for in its constitutional documents. We encourage MIO to carefully check their constitutional documents to confirm whether this requirement is already provided for, or if an amendment may be required, in addition to seeking independent legal advice. We provide an example clause of one way you could amend your constitutional documents to incorporate these amendments.

Example clause

Each adult member has the opportunity, at intervals not exceeding 3 years, to participate in the election of 1 or more trustees of the [MIO name].

All adult members of [iwi name] have voting rights:

- › in elections for the appointment of 1 or more of the trustees or other officeholders of the [name of MIO] in accordance with the constitutional documents; and
- › on amendments to the constitutional documents of the [name of MIO]; and
- › on the recognition of a new mandated iwi organisation in place of [name of existing MIO]; and
- › on any other matter specified in the constitutional documents as a matter on which they have voting.

2. MIO reporting to its membership change: reporting on interactions with Aotearoa Fisheries Limited

Leg reference – MFAA cl 99, Schedule 7 amended
– see (5)(D)

In addition to reporting on interactions with Te Ohu Kai Moana Trustee Limited, MIO will also need to report on interactions with Aotearoa Fisheries Limited.

Background

This amendment recognises the closer relationship MIO will have in the governance of Aotearoa Fisheries Limited and provides greater transparency MIO members about that relationship. It is highly likely that most MIO governance documents will already provide for the requirement to report on the interactions of the MIO in relation to fisheries matters, including interactions with Te Ohu Kaimoana and other MIO, as this was an existing requirement in the MFA. MIO should consider whether this is already provided for in their constitutional documents and if so, may be able to simply add “Aotearoa Fisheries Limited” to the existing list of entities.

Example clause

Contents of Annual Report

The Annual Report prepared under [clause x] shall also include:

- › a report on the interactions of [name of MIO] in fisheries matters
- › with other entities within the iwi; and
- › with other mandated iwi organisations; and
- › with Te Ohu Kaimoana Trustee Limited; and
- › with Aotearoa Fisheries Limited.

3. New requirement in MIO annual plan to provide a policy in respect of sales and exchanges of settlement quota and the acquisition of shares in Aotearoa Fisheries Limited

Leg reference – MFAA cl 99, Schedule 7 amended – see (6)

Background

This amendment recognises the closer relationship MIO now have in the governance of AFL and provides more transparency to members about that relationship. It is highly likely that most MIO constitutional documents will already provide for the matters that must be covered in its annual plan pursuant to the MFA. MIO should check whether this list is already provided for and if so may be able to simply add “and the acquisition of shares in Aotearoa Fisheries Limited”.

Example clause

Trustee to prepare Annual Plan:

The Trustees shall, no later than one (1) month before the commencement of each Financial Year, prepare an Annual Plan that specifies information in respect of that Financial Year, including but not limited to:

information required by the Māori Fisheries Act 2004 including:

- › the policy of [name of MIO] in respect of sales and exchanges of settlement quota and the acquisition of shares in Aotearoa Fisheries Limited; and
- › any changes in that policy from the policy for the previous year; and
- › proposal to change the constitutional documents of any fishing company owned by [name of MIO].

4. Ownership of iwi fisheries assets: Reference to income shares in governance documents must change

Leg reference – MFAA Schedule 2, New Part 2 inserted into Schedule 1AA – see (3)

Background

This amendment reflects the change in shareholdings in Aotearoa Fisheries Limited. As such, voting shares in AFL currently held by TOKM will be cancelled and all income shares will be converted into ordinary shares. This is stipulated in the MFAA. This change will require a global edit to MIO constitutional documents replacing references to income shares with ordinary shares.

Example clause

Simply, a global edit replacing all references to AFL income shares with ordinary shares, but the opportunity could be taken to check whether any consequential changes to the documents or related policies might be required.

5. Restrictions on MIO directors as Asset Holding Company (AHC) directors removed

Leg reference – MFAA cl 99, Schedule 7 amended – see (8)

Background

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. This provision was intended to ensure a level of independence in the governance of the AHC. During the consultation period with iwi from 2015 to 2017, many iwi shared that the costs of obtaining additional directors on their AHCs is prohibitive and this requirement also conflicts with the principle of rangatiratanga.

This amendment removes this imposition on iwi. As this is no longer a requirement, MIO should consider whether they wish to remove the relevant clause.

Note

Any change is not mandatory, but turns on a legitimate policy consideration for MIO to retain the restriction, or possibly decide to impose a lesser restriction if they wish.

Example clause

Consider removing any clause which requires that, at no time may the Trustees comprise more than 40% of the total number of directors of an AHC, a Fishing Enterprise, or any entity that holds Fisheries Assets.

6. Exercising the rights of a shareholder in Aotearoa Fisheries Limited:

Leg reference – MFAA, cl 99 Schedule 7 amended – see Kaupapa 11

Background

This amendment clarifies that AHCs are required to act in accordance with the directions of the relevant MIO, including in relation to the rights of a shareholder in AFL. AHCs are agents of MIO who can exercise as much or as little discretion over the direction they give to their AHCs. It is highly likely that constitutional documents will already provide for the matters which the Trustees must exercise strategic governance over pursuant to the MFA. MIO should check whether this is the case and amend those provisions according to new Kaupapa 11 regarding strategic governance, specifically that the MIO must “direct the exercise of the rights of a shareholder in Aotearoa Fisheries Limited held by any of its asset-holding companies or their subsidiaries”.

The constitutional documents must stipulate that the MIO will direct the exercise of the rights of a shareholder in AFL held by any of its asset-holding companies or their subsidiaries.

Example clause

Strategic Governance

The Trustees must:

- › exercise strategic governance over its asset-holding companies, any subsidiary of an asset-holding company, and any fishing company or joint venture responsible to [name of MIO]; and
- › direct the exercise of the rights of a shareholder in Aotearoa Fisheries Limited held by any of its asset-holding companies or their subsidiaries; and exercise strategic governance over the process to examine and approve annual plans that set out –
 - › the key strategies for the use and development of iwi fisheries assets;
 - › the expected financial return on the assets;
 - › any programme to –
 - › manage the sale of annual catch entitlements derived from the
 - › settlement quota held by asset-holding companies or their
 - › subsidiaries; and
 - › reorganise the settlement quota held by asset-holding companies or their subsidiaries by buying and selling or exchanging settlement quota in accordance with the Māori Fisheries Act 2004.

7. Sale of settlement quota must be expressly permitted in governance documents:

Leg reference – MFAA, cl 15 section 17 amended; and cl 81, section 162 replaced

Background to this change

We heard from iwi following the 2014 Independent review, that the process provided in the MFA to transfer settlement quota within the Māori pool was too complex and onerous for iwi. The MFAA removes these onerous provisions and provides flexibility for MIO to implement a “willing buyer, willing seller” model that works best for them. The MFAA requires the constitutional documents of each MIO must provide for the circumstances in which, and the process for approval, by the MIO for sale of settlement quota. It is open to each MIO to design that process how it wishes i.e. may require a resolution each time or the MIO may adopt a policy – the key is the decision is up to the MIO to decide. We provide an example clause of one way in which you could do this but encourage MIO to discuss internally (including with their AHC) what would be operatively efficient yet provide sufficient security for the MIO, in addition to seeking independent legal advice

Note: this amendment turns on a policy consideration for MIO. As MIO will need to decide what rules it will establish for itself when it comes to selling settlement quota to the extent permitted by the law (or alternatively, choose not to sell at all). The following example is minimal and does not go into details a MIO may want to consider and/or write into its constitution. Details such as: what species a MIO agrees to sell or be open to purchasing, the QMA area, the price. MIO may also want to consider discretionary powers, for example, the board is authorised to make decisions on the sale of settlement quota subject to the parameters set by its members.

Example clause:

Settlement quota must not be sold or gifted, except to another mandated iwi organisation or an entity within the AFL Group pursuant to section 161 of the Māori Fisheries Act 2004.

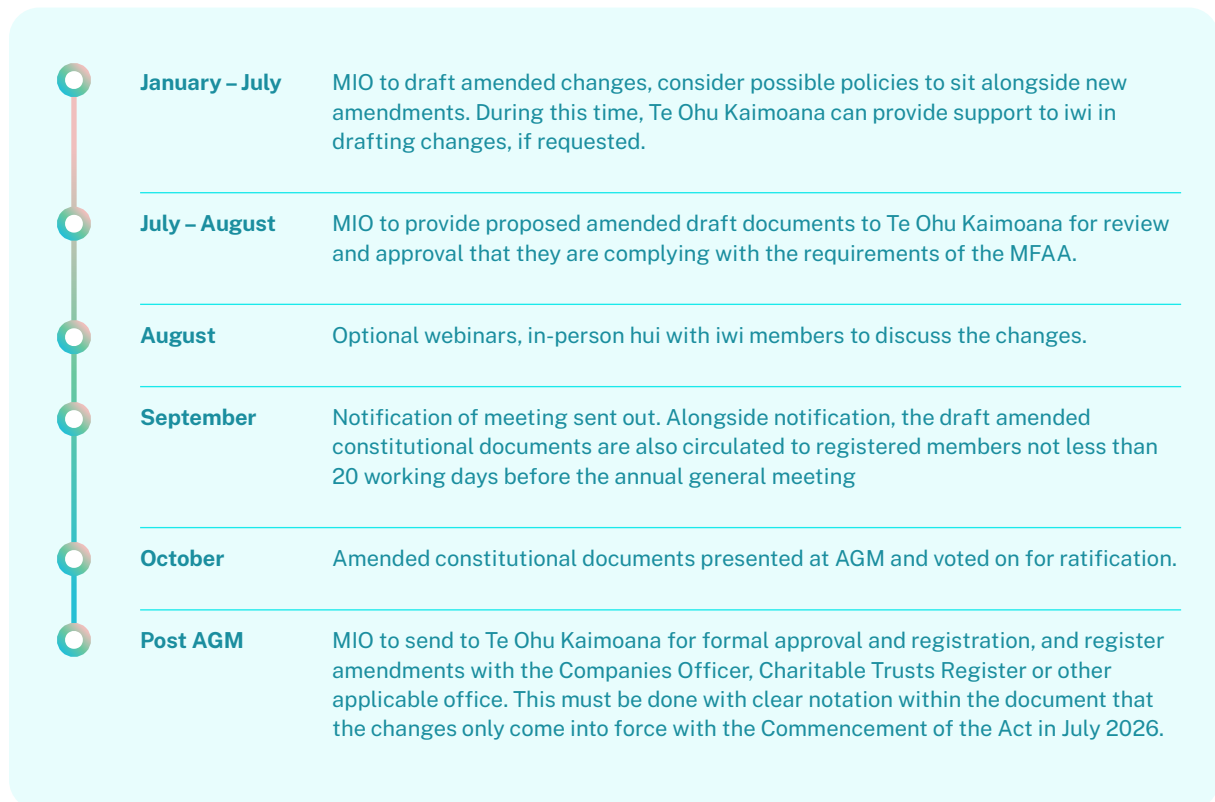
Any decision to sell settlement quota by an Asset Holding Company, or wholly owned subsidiary of an Asset Holding Company, must be permitted by [name of MIO] by way of an ordinary resolution. For the avoidance of doubt, [name of MIO] must authorise the sale of any settlement quota by way of ordinary resolution before any settlement quota may be transferred according to any agreement made by an Asset Holding Company, or wholly owned subsidiary of an Asset Holding Company.

03

SCENARIO TIMELINES

This proposed timeline is based on those Mandated Iwi Organisations who report back to their membership at annual general meetings in the last quarter of the calendar year. An iwi AGM in October has been used for the following example.

2025 Timeline looks like:



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NEXT STEPS

Te Ohu Kaimoana is available to meet and discuss the contents of this paper with iwi on request.

Please contact Brianna Boxall, General Counsel, brianna.boxall@teohukaimoana.nz in the first instance.

For further reading, Te Ohu Kaimoana has a consolidated list of all useful MFAA related material on its [website](#).



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