

# Departmental Disclosure Statement

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Māori Fisheries Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 December 2022

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## Part One: General Policy Statement

Under the 1992 Fisheries Deed of Settlement (the fisheries settlement), the Crown and Māori agreed to a full and final settlement of any claims by Māori to fisheries. The Maori Fisheries Act 2004 (the Act) sets out a framework for the allocation and transfer of fisheries settlement assets to iwi, institutional arrangements, and a governance framework for managing fisheries assets for current and future generations of Māori.

The Act requires an independent review of the settlement entities to be carried out no later than the 11<sup>th</sup> year following the commencement of the Act. An independent review was finalised in March 2015. It recommended significant changes to the governance structures of the settlement entities and simplified processes for trading assets.

In accordance with the Act, Te Ohu Kai Moana undertook extensive iwi engagement. They established two Iwi Working Groups to develop a set of proposals from the review, consulted widely with iwi on the proposed changes, and held a series of meetings to pass resolutions.

As a result of the review and consultation with iwi, Te Ohu Kai Moana recommended a suite of changes to the Act. The changes are intended to give iwi a greater degree of rangatiratanga over their assets, improve benefits to all Māori, reduce costs and improve efficiency. This Māori Fisheries Amendment Bill (the Bill) amends the Act to give effect to those proposals.

In general, the amendments will provide for:

- mandated iwi organisations and their asset-holding companies to take more direct control of Te Ohu Kai Moana and Aotearoa Fisheries Limited:
- changing governance arrangements of the entities to make them consistent with each other and standard corporate governance practice:
- cancellation of Aotearoa Fisheries Limited voting shares, and conversion of Aotearoa Fisheries Limited income shares to ordinary shares.
- Te Ohu Kaimoana to allocate those ordinary shares to mandated iwi organisations: and
- Simplification of the process for trading settlement quota assets and ordinary shares within the pool of fisheries settlement commercial entities.

### Key components

- Te Kawai Taumata electoral-college system for appointing Te Ohu Kai Moana directors is removed and replaced with a new electoral system enabling iwi to directly appoint and remove Te Ohu Kai Moana directors on a one vote per iwi basis. This shortens the distance between iwi and key decision-makers.
- Require Te Ohu Kaimoana redeemable preference shares in Aotearoa Fisheries Limited to be converted into ordinary shares and distributed to iwi. This change will provide iwi with full influence over key decisions regarding Aotearoa Fisheries Limited as iwi will have direct control over the appointment and removal of Aotearoa Fisheries Limited directors.

- Te Ohu Kai Moana's surplus funds to be distributed to iwi in accordance with the percentage specified for each iwi in column 3 of Schedule 3.
- The ability to implement a compulsory levy model for Te Ohu Kai Moana that can be triggered in future if required. The purpose of a funding levy proposal is to provide Te Ohu Kai Moana with enough funding (having regard to its likely other funding sources and reserves) to enable it to perform its functions and duties.
- The current Aotearoa Fisheries Limited legislative dividend requirement is modified to allow shareholders to set it annually.
- Major transactions for Aotearoa Fisheries Limited to require a 75 percent iwi majority voting threshold. With Te Ohu Kai Moana no longer playing a governance role in Aotearoa Fisheries Limited, a change is required to enable iwi to take over this role.
- Increase Te Pūtea Whakatupu Trust and Te Wai Māori Trust maximum director limit from three to five, with a majority quorum, change the appointment term of directors from four years to three years, and remove restrictions on the number of terms a director can serve.
- Simpler trading processes developed for iwi wishing to sell quota assets within the Māori pool. This change will enable iwi to sell their settlement assets to a willing buyer within the Māori pool without notifying all members within the Māori pool and running a bidding process.
- A requirement for a future review of governance entities not sooner than seven years but no later than 10 years from the time the current proposed changes take effect.
- Enable Te Ohu Kai Moana to allocate distributions to any entity that has charitable status and is nominated by the mandated iwi organisation. This will allow Te Ohu Kai Moana to distribute funds directly to charitable entities within the mandated iwi organisation or Post Settlement Governance Entities structures without being liable for tax.
- Clarification of electoral provisions in mandated iwi organisations' constitutions.
- Simplified recognition process of Post Settlement Governance Entities as new mandated iwi organisations
- Removal of current restrictions on mandated iwi organisation directors being appointed as directors of the respective Asset Holding Companies.
- Clarification of the definition of Freshwater Fisheries.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
Independent Review of Māori Commercial Fisheries Structure under the Maori Fisheries Act 2004, Tim Castle, February 2015. Available on Te Ohu Kaimoana website at: <a href="https://teohu.maori.nz/wp-content/uploads/2018/12/Maori_Fisheries_Review_2015.pdf">https://teohu.maori.nz/wp-content/uploads/2018/12/Maori_Fisheries_Review_2015.pdf</a>	
Māori Fisheries Review: Second Report to the Minister for Primary Industries, Te Ohu Kaimoana, August 2017. Available on Te Ohu Kaimoana website at: <a href="https://teohu.maori.nz/wp-content/uploads/2022/08/FIN-MFA-for-MinPI-combined.pdf">https://teohu.maori.nz/wp-content/uploads/2022/08/FIN-MFA-for-MinPI-combined.pdf</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Maori Fisheries Act Review: Regulatory Impact Analysis, Ministry for Primary Industries, June 2021. Accessible on the Ministry for Primary Industries website at: <a href="https://www.mpi.govt.nz/dmsdocument/49237-Maori-Fisheries-Act-review">https://www.mpi.govt.nz/dmsdocument/49237-Maori-Fisheries-Act-review</a>	
Some of the content of the RIS is withheld for the following reasons under the Official Information Act:	
<ul style="list-style-type: none"><li>• the confidentiality of advice tendered by Ministers of the Crown and officials;</li><li>• the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty;</li><li>• would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied;</li><li>• would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; and</li><li>• to maintain legal professional privilege.</li></ul>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement (RIS) "Maori Fisheries Act Review" and confirmed that the RIS meets the quality assurance criteria.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
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One of the policies analysed in the RIA, known as Resolution 3, proposed to distribute surplus funds to iwi on an equal basis. Following feedback from iwi and Crown Law Office, Resolution 3 has now been removed from the Bill and replaced with a proposal to distribute surplus funds in proportion to iwi population.	
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Section B of the <u>Regulatory Impact Statement</u> provides an analysis on costs and benefits of this Bill. Māori/iwi are the main beneficiaries. The proposed changes will give Māori/iwi a greater degree of rangatiratanga over their fisheries assets. Iwi have identified some of the benefits associated with more direct control will be the ability to:</p> <ul style="list-style-type: none"> <li>• create greater alignment between their commercial operations;</li> <li>• ensure the settlement entities deliver on priorities identified by iwi in a cost-effective manner; and</li> <li>• improve settlement entities' operational efficiency by removing restrictions that are no longer needed or fit for purpose.</li> </ul> <p>Any costs that arise from the changes will be borne by the entities. Te Ohu Kaimoana (the settlement trustee) consider that risk of any material additional costs arising from the changes is small.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

MPI has not identified any international obligations that conflict with the policies contained in the Bill.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

MPI consulted with iwi, whose interests are directly affected by the Bill.  
MPI has worked closely with Te Ohu Kaimoana (the settlement trustee) throughout the development of the policy and the drafting of the Bill. Te Puni Kōkiri and Te Arawhiti have also been consulted during the development of the policy.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

**NO**

The proposals in this Bill are consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

**NO**

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

**NO**

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

**NO**

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Te Ohu Kaimoana undertook extensive iwi engagement in 2015 and 2016 following the independent review of the Maori Fisheries Act. They established two Iwi Working Groups to develop a set of proposals from the review, consulted widely with iwi on the proposed changes, and held a series of meetings to pass resolutions.</p> <p>An exposure draft of the Bill, along with a summary of proposals, was provided to Te Ohu Kaimoana, Mandated Iwi Organisation (MIOs), Recognised Iwi Organisations (RIOs) and Representative Māori Organisations (RMOs) to test whether the Bill reflected the resolutions that iwi voted for. Consultation ran for almost eight weeks, from mid-August to mid-October. MPI held five online hui and two one-on-one hui with iwi groups during that time.</p> <p>11 of the 64 iwi groups attended hui, and eight iwi groups provided written feedback. Based on the feedback received, iwi groups generally agree that the draft Bill reflects the intent of the resolutions they voted for. The majority of feedback related to Resolution 3 regarding the distribution of surplus funds of Te Ohu Kaimoana to iwi on an equal basis. Submitters consider that Resolution 3 would undermine the fisheries settlement and create inconsistencies with how funds are dealt with elsewhere in the Act. Subsequently, the Bill was changed to require distribution of surplus funds on a population basis, which reflects the model in the Act.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>MPI worked with Te Ohu Kaimoana to assess the workability of the proposals and, as a result, most of the provisions in the Bill have a delayed commencement date to allow mandated iwi organisations, Te Ohu Kaimoana and Aotearoa Fisheries Limited to amend their constitutions to give effect to the amendments.</p> <p>The tax implications of the Bill have been assessed by the Inland Revenue Department and addressed.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
Resolution 4 includes the ability to implement a compulsory levy model for Te Ohu Kaimoana that can be triggered in future if required to ensure Te Ohu Kaimoana can continue performing its duties and functions.	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill contains a power to bring forward the commencement date of provisions through an Order in Council.	

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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