

24 March 2023

Tēnā koutou,

Ngā mihi o te wā ki a koutou e whaiwhakaaro ki tēnei take whakahirahira.

Te Ohu Kaimoana invites iwi to consider the enclosed draft response to the Māori Affairs Select Committee on the Māori Fisheries Amendment Bill (the MFA Bill).

We want to encourage all iwi to actively participate in this process, and to make submissions on matters of particular interest or concern to your iwi. If you require support, Te Ohu Kaimoana is available to assist you in the development of your own submission to the Select Committee.

For Te Ohu Kaimoana, our role in this process arises from our responsibility to protect and advance the rights and interests of iwi/Māori under Te Tiriti o Waitangi and the Fisheries Settlement.

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 are statutorily recognised entities with the responsibility for Treaty Settlement assets on behalf of their iwi members. Our responsibilities as the trustee of the Fisheries Settlement are separate, distinct but complementary to those of iwi and hapū who hold mana whenua and moana and are beneficiaries of those settlement through those statutorily recognised entities.

With this in mind, when we undertook our review of the MFA Bill a number of issues arose that we consider may be of interest to Iwi. We have highlighted those issues in an appendix to this letter, and we welcome your feedback (as well as any wider comments you may wish to make regarding other parts of our response).

We welcome your feedback before Wednesday 5 April 2023. This will provide our kaimahi with time to implement your feedback into our final response, which is due to the Select Committee by 13 April 2023. To support this response, Te Ohu Kaimoana also intend to present our views kanohi ki te kanohi to the Māori Affairs Select Committee.

If you have any questions, concerns, or want assistance in the development of your own submission please contact Brianna Boxall at brianna.boxall@teohu.maori.nz

Nāku noa nā,

A handwritten signature in blue ink, appearing to read 'Lisa te Heuheu', with a long, sweeping flourish extending to the right.

Lisa te Heuheu
Te Mātārae

ATTACHMENT

Issue : Operational issues with the implementation of the increase of Te Pūtea Whakatupu and Te Wai Māori directors, but with a quorum of a majority of directors

Iwi resolved to increase the number of directors on Te Pūtea Whakatupu and Te Wai Māori from 3 to 5, with a quorum of a majority of directors. The MFA Bill includes amendments that reflect this resolution as required. Presumably, the intent behind this resolution was voted and passed because there is a desire to have more than 3 decision makers. However, in practice this amendment may result in less decision makers. The amendment from 3 directors to 3 to 5 directors, when considering the majority quorum provision, means that if at any point there are only 3 directors, the quorum drops to 2 directors. *If there are 4 or 5 directors, a majority is 3.*

Question for Iwi: Is the possibility of a quorum of 2 acceptable to Iwi as an outcome of implementing this resolution?

If not, a simple remedy could be that the quorum provision is amended to be: *"a majority, but not less than 3"*. This may mean unanimity is required by the directors in some circumstances, but unanimity is standard practice for trustees.

Issue: Removal of restrictions on the appointment of directors to Te Pūtea Whakatupu and Te Wai Māori.

As part of the amendment to increase directors on Te Pūtea Whakatupu and Te Wai Māori, the MFA Bill is removing sections 89 and 102.

At present, the restrictions in section 89 and 102 mean that only one Te Ohu director can be a director of either Te Pūtea Whakatupu or Te Wai Māori, nobody may be a director of both Te Pūtea Whakatupu or Te Wai Māori, no director of AFL or its subcompanies can be a director of either Te Pūtea Whakatupu or Te Wai Māori.

Removing sections 89 and 102 will mean that Te Ohu Kaimoana can appoint any number of its own directors, AFL directors, or directors of the other Trust as directors of Te Pūtea Whakatupu and Te Wai Māori. All appointments to Te Pūtea Whakatupu and Te Wai Māori will be made by Te Ohu Kaimoana, and the only way for Iwi to influence appointment is through their appointment of Te Ohu's directors.

Iwi may feel this does not give them, as opposed to Te Ohu, greater direct control of the 2 Trusts.

Question for Iwi: Are you comfortable with the removal of the restrictions on the eligibility to be a director of Te Pūtea Whakatupu and Te Wai Māori?

Issue: Future reviews of settlement entities only to occur if passed by special resolution

This issue relates to the implementation of resolution 11. Resolution 11 was that a future statutory review was to happen not sooner than seven years but no later than 10 years from the time the current proposed changes take effect. This amendment is addressed at clause 68 (section 116) of the MFA Bill.

However, this amendment is currently drafted in a way that means a review will only occur if a special resolution by Iwi is passed, and if no such resolution is passed no review will occur.

We would also like to highlight to Iwi that we now know it can take 8 years to complete a review. Given the time it has taken to progress the last review, Iwi may want to consider the timing of the next review.

Question for Iwi: Is this the outcome Iwi intended when passing this resolution?

Issue: Section 167 The Crown being able to purchase settlement quota

This proposed amendment does not reflect an Iwi resolution. Section 167 concerns the sale of settlement assets (quota) and the MFA Bill proposes to amend section 167 to include the Crown into the definition of a third party. Through this amendment, this would mean the Crown has the potential to acquire settlement assets (quota) through exercising its rights under options, mortgages, other security interests, and guarantees. In other words, this would allow the Crown to purchase settlement quota.

We are concerned that this amendment does not reflect a resolution passed by Iwi, and we welcome Iwi's considerations on this matter.