

<p style="text-align: center;">Assessment for Mandated Iwi Organisation <u>Insert MIO Name (Insert constitution version)</u></p>					
Relevant Provisions of the Maori Fisheries Act 2004	Constitutional requirements for a General Mandated Iwi Organisation (MIO)	Clause in Iwi Constitution Document	Te Ohu Staff Assessment Key:	Guide Template Reference	Comment/s
ESTABLISH MIO LEGAL ENTITY					
Section 14(a)	The criteria for recognition and continuing recognition of a mandated iwi organisation under section 13(1) are that— (a) the organisation is a company, trust, body corporate set up under an enactment, or incorporated society; and			2.1	
MIO OBLIGATION TO ACT FOR ALL IWI MEMBERS					
Section 12(1)(a)	(1) Under this Act, a mandated iwi organisation must— (a) act for the benefit of all the members of the iwi, irrespective of where those members reside;			3.1	
ESTABLISH ASSET HOLDING COMPANY					
Section 12(1)(d)	(d) ensure that it has 1 or more asset-holding companies that, in each case,— (i) is wholly owned by the mandated iwi organisation;			3.2(e), 8.1(a)	
Section 16(1)	(1) An asset-holding company required by section 12(1)(d) must— (a) be and remain wholly owned by the mandated iwi organisation that established the company; and (c) receive and hold, on behalf of the mandated iwi organisation that owns the company, for so long as they are to be retained, all settlement quota and income shares allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by, the iwi under this Act; and (d) provide dividends solely to the mandated iwi organisation owning the asset-holding company; and (e) not undertake fishing or hold a fishing permit.			8.1(f), 8.1(g)	

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Section 16(2)	16 (2) However, an asset-holding company— (a) must not enter into any transaction relating to or affecting the income shares it holds unless the mandated iwi organisation has complied with its obligations under sections 69 to 72; and (b) in its function of receiving and holding settlement quota and income shares, is bound by all the requirements specified for mandated iwi organisations in relation to those matters.			8.1(h) 8.1(i) 8.1(j)		Deleted: 7	Deleted: 7	Deleted: 7		
ASSET HOLDING COMPANY SUBSIDIARIES										
Section 16(3)	(3) An asset-holding company may— (a) establish 1 or more subsidiaries to be its subsidiary asset-holding companies; and (b) transfer to a subsidiary some or all of the assets received under subsection (1)(c).		<u>Discretionary section</u>	8.1(k) 8.1(l)		Deleted: 7	Deleted: 7	Deleted: 7.1(m)		
Section 16(4)	(4) A subsidiary established under subsection (3)(a) must— (a) be and remain wholly owned by the asset-holding company that established it; and (b) receive and hold, on behalf of the asset-holding company, settlement quota and income shares transferred to it by the asset-holding company under subsection (3)(b); and (c) provide dividends solely to the mandated iwi organisation owning the asset-holding company that established the subsidiary; and (d) comply with subsection (2); and (e) not undertake fishing or hold a fishing permit.			8.1(m)		Deleted: ??				
AMENDMENTS TO CONSTITUTIONAL DOCUMENTS										
Section 18(1)	(1) To the extent that the constitutional documents of a mandated iwi organisation, asset-holding company, or subsidiary of an asset-holding company relate to matters provided for by or under this Act, a proposal to change those documents— (a) must not be inconsistent with this Act; and (b) unless the change is required as a consequence of a rule made or amended under section 25,— (i) must not be made earlier than 2 years after the date on which the mandated iwi organisation is recognised by Te Ohu Kai Moana Trustee Limited under section 13(1); and (ii) may only be promoted if the iwi resolves at a general meeting of the mandated iwi organisation that the change is for the collective benefit of all members of the iwi.			11.1 11.2 7.3(q)(ii)(aa)		Deleted: 0	Deleted: 0	Deleted: 6	Deleted: 2	Deleted: g)

MIO DISCRETION TO ACT BEYOND IWI MEMBERS					
Section 26	(1) The constitutional documents of a mandated iwi organisation may permit the organisation to benefit— (a) Maori who are not members of the iwi; (b) the community generally. (2) If the constitutional documents of a mandated iwi organisation make provision as contemplated by subsection (1), that does not disqualify the organisation from being recognised as a mandated iwi organisation or affect the validity of its constitutional documents, to the extent that they relate to matters provided for by or under this Act.			3.1	
3-YEAR MAXIMUM TERM FOR ELECTED REPRESENTATIVES					
Kaupapa 1 (2)	(2) Elections for individual offices may be held at different times, and for different terms of office. However, no person elected to office may hold office for a period longer than 3 years without facing re-election.			4.1 4.2 6.1 Schedule 1 para. 1(b)	
RIGHTS OF ADULT MEMBERS TO PARTICIPATE IN DECISION MAKING OF MIO					
Kaupapa 1 (1)	(1) All adult members of an iwi must have the opportunity, at intervals not exceeding 3 years, to elect the directors, trustees, or officeholders, as the case may be, of the mandated iwi organisation of the iwi.			6.1 Schedule 1 4.1	Deleted: 4.2¶ 6.2(h) (process)
Kaupapa 2 a (i)	All adult members of an iwi— (a) have voting rights— (i) in elections for the appointment of directors, trustees, or other officeholders of the mandated iwi organisation; and			4.1 6.1 Schedule 1	Deleted: (I) Deleted: 4.3¶ 4.6¶ Schedule 1¶ 6.2(h) (process)
Kaupapa 2 a (ii) to (iv)	(ii) on amendments to the constitutional documents of the mandated iwi organisation; and (iii) in relation to the disposal of income shares under section 70; and (iv) in relation to the disposal of settlement quota under sections 159 and 162; and			7.3(g)(ii) 6.1 Schedule 1	Deleted: 4.3¶ Schedule 1¶ 6.2(g)¶ 6.2(h) (voting procedures)
Kaupapa 2 (b)	(b) may put forward proposals for constitutional change for the consideration of the directors, trustees, or other officeholders, as the case may be.			11.3	Deleted: Not in template!
Kaupapa 3 1 + 2	(1) A mandated iwi organisation must ensure that voting rights of iwi members are able to be exercised at appropriate times in an election of directors, trustees, or other officeholders, in accordance with the constitutional documents and policies of the mandated iwi organisation, but iwi members have no right to vote in respect of the appointment of the employees of a mandated iwi organisation.			4.1 4.2 6.1 Schedule 1	

	(2) If a mandated iwi organisation has electronic voting facilities, every adult member of the iwi has the right to vote by electronic means, but electronic voting must not be the only means by which a member may vote.			Schedule 1 para.2(c)	
PUBLIC & PRIVATE NOTICES TO IWI MEMBERS					
Kaupapa 4 1 Notification of meetings	(1) A general meeting of a mandated iwi organisation must be notified by a public notice that must include— (a) the date and time of the meeting and its venue; and (b) the agenda for the meeting; and (c) where any relevant explanatory documents may be viewed or obtained; and (d) any other information specified by or under this Act.			7.3(c) Schedule 1 Part B	Deleted: 4.6(a)¶ Schedule 1 (insert there on)
Kaupapa 4 2 (a)	(2) In the case of the general meeting of a mandated iwi organisation required by section 17(2) (which relates to ratification of the constitutional documents of the mandated iwi organisation), the meeting must be notified by both— (a) a public notice that gives— (i) the information required under subclause (1); and (ii) advice that a vote is to be taken to ratify the constitutional documents of the mandated iwi organisation; and			7.3(g)(ii) 7.3(c) Schedule 1	Deleted: 4.6(b) (change to template)
Kaupapa 4 2 (b)	(b) a private notice, sent to every adult member on the register of iwi members, that gives— (i) the information required for the public notice; and (ii) a copy of the ballot paper for the vote to be taken at the meeting; and (iii) advice as to the address to which, and the date by which, the completed ballot paper must be returned.			Schedule 1 Part B para 5(c) para 5(b)	Deleted: 4.6(h)
Kaupapa 4 3 (a)	(3) In the case of a general meeting of a mandated iwi organisation required by kaupapa 2 (which relates to elections), section 18 (which relates to changing a constitutional document), section 70 (which relates to the disposal of income shares), or by sections 159 or 162 (which relate to the conversion and disposal of settlement quota), the mandated iwi organisation— (a) must give a public notice that includes— (i) the information required under subclause (1)(a); and (ii) the matter or issues on which the vote is to be taken; and			7.3(b) 7.3(c) Schedule 1	
Kaupapa 4 3 (b)	(b) must give a private notice with the information required under subclause (2)(b) to any adult member of the iwi who,— (i) at the time of registering on the register of iwi members, made a written request to be sent a private notice and postal ballot papers for every meeting relating to 1 or more of the relevant provisions; or (ii) whether or not on the register, makes a written request for a			Schedule 1 Para.5b 5.4	

	private notice in respect of a particular meeting.				
MIO REGISTER OF IWI MEMBERS					
Kaupapa 5	<p>Every mandated iwi organisation must—</p> <p>(a) have, and maintain in a current state, a register of iwi members—</p> <p>(i) that includes the name, date of birth, and contact details of every member of the iwi who applies for registration; and</p> <p>(ii) that is available for inspection by registered members of the iwi; and</p> <p>(b) provide for—</p> <p>(i) adult members of the iwi to register themselves; and</p> <p>(ii) other members to be registered by a parent or legal guardian; and</p> <p>(iii) persons registering on the register of iwi members to be able to state whether they wish to receive a private notice for general meetings and postal ballot papers relating to the matters listed in subclause (3) of kaupapa 4; and</p> <p>(c) make ongoing efforts to register all iwi members.</p>			<p>5.1(a)(i)(ii)</p> <p>5.3</p> <p>5.4</p>	
Kaupapa 6	<p>(1) The policy of a mandated iwi organisation relating to the rights of whangai or other persons who do not descend from a primary ancestor of the iwi must be—</p> <p>(a) determined in accordance with the tikanga of the iwi; and</p> <p>(b) stated in the constitutional documents of the mandated iwi organisation</p> <p>(2) In this kaupapa, whangai refers to a person adopted by a member of an iwi in accordance with the tikanga of that iwi, but who does not descend from a primary ancestor of the iwi.</p>			<p>5.2</p> <p>Whangai definition</p> <p>Definition of members</p> <p>[name of iwi]</p>	<p>Formatted: Font: 8 pt</p> <p>Formatted: Font: 8 pt</p>
Kaupapa 8	<p>There must be a dispute resolution mechanism to deal with disputes between members of the iwi and the mandated iwi organisation relating to matters arising under this Act, including a means to deal with disputes raised by persons whose applications for registration are not accepted.</p>			<p>9.1</p> <p>9.2</p> <p>9.3</p> <p>9.4</p> <p>9.5</p>	

MIO REPORTING RESPONSIBILITIES TO IWI MEMBERS					
<p>Kaupapa 7</p>	<p>(1) Every mandated iwi organisation is accountable for its performance to all the members of the iwi, including members not living within its territory, and therefore has reporting responsibilities in relation to—</p> <p>(a) its own performance; and</p> <p>(b) the performance of—</p> <p>(i) its asset-holding companies; and</p> <p>(ii) any joint venture or other entity that conducts business using the settlement assets of the mandated iwi organisation.</p> <p>(2) Each year, each mandated iwi organisation must hold a general meeting at which it provides an opportunity for the members of the iwi to consider—</p> <p>(a) the annual report for the previous financial year, made available not less than 20 working days before the meeting, that reports against the objectives set out in the annual plan for the previous year, including—</p> <p>(i) information on the steps taken by the mandated iwi organisation to increase the number of registered members; and</p> <p>(ii) a comparison of its performance against the objectives set out in the annual plan, including—</p> <p>(A) changes in shareholder or member value; and</p> <p>(B) dividend performance or profit distribution; and</p> <p>(iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets; and</p> <p>(iv) a report giving information of the sales and exchanges of settlement quota in the previous year, including—</p> <p>(A) the quantity of settlement quota held by the asset-holding company of the mandated iwi organisation in that year; and</p> <p>(B) the value of settlement quota sold or exchanged; and</p> <p>(C) the identity of the purchaser or other party to the exchange; and</p> <p>(D) any transaction with settlement quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and</p> <p>(E) the settlement quota interests that have been registered against the quota shares of the mandated iwi organisation; and</p> <p>(F) the value of income shares sold, exchanged, or acquired; and</p> <p>(v) a report on the interactions of the mandated iwi organisation in fisheries matters—</p> <p>(A) with other entities within the iwi; and</p> <p>(B) with other mandated iwi organisations; and</p>			<p>7.1</p> <p>7.2</p> <p>8.3</p> <p>7.4</p>	

	<p>(C) with Te Ohu Kai Moana Trustee Limited; and (vi) any changes made under section 18 to the constitutional documents of the mandated iwi organisation or those of its asset-holding companies or any subsidiaries of the asset-holding companies; and (b) an annual plan for the next financial year, that must include— (i) the objectives of the annual plan; and (ii) the policy of the mandated iwi organisation in respect of sales and exchanges of settlement quota; and (iii) any changes in that policy from the policy for the previous year; and (iv) any proposal to change the constitutional documents of any fishing company owned by the mandated iwi organisation; and (c) in relation to every asset-holding company of a mandated iwi organisation or any subsidiary of an asset-holding company that receives settlement assets,— (i) an annual report on— (A) the performance of that asset-holding company or any of its subsidiaries; and (B) the investment of money of that asset-holding company or any of its subsidiaries; and (C) the matters set out in paragraph (b) of kaupapa 11; and (ii) any proposal to change the constitutional documents of the asset-holding company or any of its subsidiaries. (3) Information referred to in this kaupapa must be made available in writing on request by any member of the iwi.</p>				
MIO FISHING OPERATION					
Kaupapa 9	<p>(1) If a mandated iwi organisation wishes to have its own fishing operation, utilising annual catch entitlement from its settlement quota to harvest, process, or market fish, or to be involved in a joint venture for those purposes, it must establish a fishing enterprise separate from, but responsible to, the mandated iwi organisation to undertake those operations. (2) An enterprise set up to undertake such operations must be a separate entity from the asset-holding company or subsidiary established by an asset-holding company to which any settlement quota or income shares of the iwi are transferred.</p>			8.2	
STRATEGIC GOVERNANCE					
Kaupapa 10	<p>The elected directors, trustees, or officeholders, as the case may be, of a mandated iwi organisation must not comprise more than 40% of the total number of directors, trustees, or officeholders of an asset-holding company, a subsidiary established by an asset-holding company, or a fishing enterprise established in accordance with Kaupapa 9.</p>			8.3	

<p>Kaupapa 11</p>	<p>Every mandated iwi organisation must exercise strategic governance over —</p> <p>(a) its asset-holding companies, any subsidiary of an asset-holding company, and any fishing company or joint venture referred to in Kaupapa 9; and</p> <p>(b) the process to examine and approve annual plans that set out—</p> <p>(i) the key strategies for the use and development of iwi fisheries assets:</p> <p>(ii) the expected financial return on the assets:</p> <p>(iii) any programme to—</p> <p>(A) manage the sale of annual catch entitlements derived from the settlement quota held by asset-holding companies or their subsidiaries:</p> <p>(B) re-organise the settlement quota held by asset-holding companies or their subsidiaries, as by buying and selling settlement quota in accordance with this Act.</p>			<p><u>3.4</u> <u>Definition of</u> <u>"Fishing</u> <u>Enterprise"</u> <u>includes a</u> <u>JV.</u></p>	
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FURTHER REQUIREMENTS					
Section 25	<p>For the purpose of recognising and continuing to recognise mandated iwi organisations under section 13(1), Te Ohu Kai Moana Trustee Limited may make or amend rules in accordance with section 54 in respect of the criteria or requirements that apply to mandated iwi organisations and their constitutional documents.</p> <p>Section 25 and 54 collectively allow TOKMTL to make rules that affect the criteria or other requirements applying to the constitutional documents. These rules must remain consistent with the Act. Where TOKMTL considers such rules are merited, section 54 requires that TOKMTL present proposals to make rules and allow a 20 working days for affected Mandated Iwi Organisations to make written submissions to TOKMTL on the proposals. TOKMTL is currently considering if there is merit in making rules for the following:</p> <p>1. In Kaupapa 4 of Schedule 7, the Act is not clear in regard to the length of the notification period required for general meetings. TOKMTL proposes a 20 working day notification period. This 20 day period will provide appropriate timeframes for members to return postal ballots and participate in candidate nomination procedures prior to the meeting itself.</p>			7.3(c)	
	<p>2. The Act does not provide for an effective appointment process for alternate representatives. Given that the responsibility of these alternates is equal to the elected representatives, TOKMTL proposes that alternate representatives should be duly appointed within the proper elections process for representatives;</p>			Schedule 1 Para. 2c	
	<p>3. The Act does not require Mandated Iwi Organisations to make available copies of constitutional documents to its members upon request. TOKMTL proposes that constitutional documents should provide for this;</p>			7.5	
	<p>4. The Act has interpreted 'whangai' as relating only to individuals who do not whakapapa to the Iwi of that particular Mandated Iwi Organisation. The Act provides for the constitutional documents of the Mandated Iwi Organisation to outline a policy on whangai and their respective rights. Whangai who are also minors (under 18</p>			5.2(c)	

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	<p><u>years of age). can therefore be registered by adult guardians who can whakapapa to the Iwi, if authorised by the constitutional document. However, the Act fails to allow minors (under 18 years of age) who can whakapapa to the Iwi a right to register or be registered by guardians where these guardians can not whakapapa to the Iwi. TOKMTL proposes that constitutional documents of the Mandated Iwi Organisation should provide for this particular grouping of Iwi members. Needs to be clarified with Tama</u></p>				
AMENDMENT REQUIREMENTS IN EXISTING CONSTITUTIONAL DOCUMENT					
Clause Reference in Iwi Constitutional Document	Clause Content	Process Requirements		Further	

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