

How is the Maori Fisheries Act 2004 relevant to you?

“The Act sets out certain statutory requirements that must be met by iwi in order to receive fisheries settlement assets.”

The Maori Fisheries Act 2004 (**Act**) came into force on 26 September 2004. The Act implements the agreements reached in the Deed of Settlement of 23 September 1992 and provides for the development of the interests of iwi in fisheries, fishing and fisheries related activities.

The Act does this by establishing a framework for the allocation and management of settlement assets. Some of the settlement assets are allocated and transferred to iwi while others will be under central management.

The Act sets out certain statutory requirements that must be met by iwi in order to receive fisheries settlement assets. The key, but not sole, requirement for receiving fisheries settlement assets is the recognition of a representative iwi organisation as a mandated iwi organisation.

We have set out below some of the features of the Act that we think you should know about if you are interested in being recognised as a mandated iwi organisation and receiving fisheries settlement assets.

You are a recognised iwi organisation

The Act recognises what are termed “recognised iwi organisations”. Recognised iwi organisations are those organisations recognised by Te Ohu Kai Moana Trustee Limited (TOKMTL) under the Act as the recognised iwi organisation for an iwi. Some of these recognised iwi organisations are set out in the Act. Your organisation is listed in the Act and, thus, is a recognised iwi organisation.

The Act recognises the power of recognised iwi organisations to:

- receive information concerning the new entities established under the Act, such as TOKMTL, Te Kawai Taumata, Aotearoa Fisheries Limited, Te Putea Whakatupu Trust and Trustee Limited and Te Wai Maori Trust and Trustee Limited;
- participate in the process for offering annual catch entitlement (ACE);
- participate in dispute resolution procedures; and
- represent iwi in consultation, negotiation and proceedings.

Recognised iwi organisations cannot, however, (amongst other things) receive or hold any settlement assets on behalf of their iwi; only mandated iwi organisations have this power.

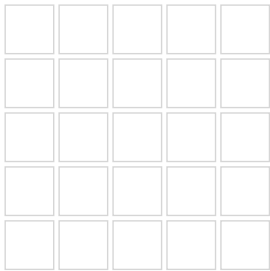
You could be recognised as a mandated iwi organisation

A mandated iwi organisation, in relation to an iwi, means an organisation recognised by TOKMTL under the Act as the representative organisation of that iwi under the Act.

Powers of Mandated iwi organisations

Mandated iwi organisations have a number of powers under the Act. The Act recognises the power of mandated iwi organisations to:

- directly receive and hold, on behalf of its iwi, settlement assets allocated and grants made to that iwi by TOKMTL (except for those that are to be held by the asset-holding company);
- receive distributions from Te Putea Whakatupu Trustee Limited and Te Wai Maori Trustee Limited;



Māori Services

- where relevant, enter into agreements with other mandated iwi organisations in relation to coastline claims and the allocation of harbour and freshwater quota;
- establish companies to undertake fishing and fisheries-related activities; and
- perform other functions under the Act.

These are important powers that have the potential to bring great benefits to your iwi.

Mandated iwi organisation features

To be recognised as a mandated iwi organisation, however, there are a number of features that your organisation must have. The Act provides that a mandated iwi organisation must, among other things:

- be a company, trust, body corporate set up under an enactment, or an incorporated society;
- have constitutional documents that comply with the Act;
- have directors, trustees or office holders who are able to demonstrate that they have been duly elected or appointed in accordance with the constitutional documents of the organisation;
- have a register of iwi members that complies with the Act and has the minimum number of members specified in the Act; and
- have at least one subsidiary, in the form of a company incorporated under the Companies Act 1993, to act as an asset-holding company to receive and manage certain assets.

Mandated iwi organisation criteria

The key requirements for mandated iwi organisations are very detailed. They are set out in the form of 11 kaupapa:

Kaupapa 1 requires that all adult members of an iwi have the opportunity to vote for the officeholders of the mandated iwi organisation at intervals not exceeding three years.

Kaupapa 2 requires that all adult members of an iwi have voting rights in elections for officeholders of the mandated iwi organisation, on amendments to the constitutional documents of the mandated iwi organisation and in relation to the disposal of income shares and settlement quota. They must also be able to put forward proposals for constitutional change.

Kaupapa 3 requires that the voting rights of iwi members are able to be exercised at appropriate times for officeholders of the mandated iwi organisation and that where there are electronic voting facilities every adult member of the iwi has the right to vote by electronic means.

Kaupapa 4 sets out the notice requirements for general meetings of the mandated iwi organisation.

Kaupapa 5 requires that every mandated iwi organisation has and maintains a register of iwi members.

Kaupapa 6 requires that the policy of a mandated iwi organisation in respect of the rights of whāngai and other persons who do not descend from a primary ancestor of the iwi must be determined in accordance with the tikanga of the iwi and stated in the constitutional documents of the mandated iwi organisation.

Kaupapa 7 provides that every mandated iwi organisation is accountable for its performance to all the members of the iwi and sets out specific reporting requirements in respect of its own performance and the performance of its asset-holding companies and any joint venture or other entity that conducts business using the settlement assets of the mandated iwi organisation.

Kaupapa 8 requires that a dispute resolution mechanism to deal with disputes between members of the iwi and the mandated iwi organisation is set out in the mandated iwi organisation's constitutional documents.

Kaupapa 9 provides that if a mandated iwi organisation wishes to have its own fishing operation or joint venture utilising its ACE, it must establish a fishing enterprise separate from the mandated iwi organisation and the asset-holding company but responsible to the mandated iwi organisation.

Kaupapa 10 requires that the officeholders of the mandated iwi organisation do not comprise more than 40% of the total number of officeholders of the asset holding entity (or any subsidiary) or any fishing enterprise.

Kaupapa 11 requires that every mandated iwi organisation exercises strategic governance over its asset-holding companies (and any subsidiaries) and any fishing company or joint venture and the process for the examination and approval of annual plans.

You may also need a coastline agreement

In order to obtain allocations of settlement quota based on coastlines

under the Act, a mandated iwi organisation must take reasonable steps to reach agreements in respect of the coastline with every affected iwi.

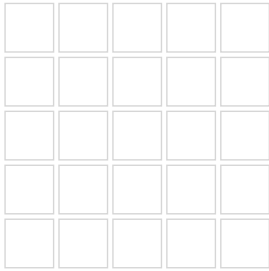
So, even if you are recognised as a mandated iwi organisation you will not be able to receive any fisheries settlement assets based on coastlines until you have reached agreement with your neighbours as to your coastline boundaries. Such a coastline agreement is only for the purposes of the Act, it is not binding in any other forum.

How we can help you - our expertise

Our Māori Services team has significant experience, gained through acting for a number of recognised iwi organisations. Our team has advised a number of those organisations on how to comply with the requirements to be recognised as mandated iwi organisations.

Significantly, we advised the first organisation to comply with those requirements (and that organisation also complied with the Crown requirements to receive Treaty settlement assets directly from the Crown).

Our Māori Services team also have extensive expertise in assisting claimants negotiate directly with the Crown for the settlement of historical Treaty claims.



Māori Services

David Tapsell, a Partner in the Māori Services team, has over 10 years' experience advising clients on commercial legal issues. In the last seven years, David has also had significant involvement with Māori clients focusing on commercial and Treaty advice.

Damian Stone, a Senior Associate in the Māori Services team, has significant experience in the area of Māori customary and Treaty rights and commercial law. He also has extensive knowledge of the mandated iwi organisation requirements, having previously acted as General Counsel for the Treaty of Waitangi Fisheries Commission (Te Ohu Kai Moana), and continues to advise iwi and other organisations on Treaty settlements, restructuring (including compliance with Te Ohu Kai Moana and Crown requirements), fisheries law and aquaculture.



David Tapsell - Partner



Damian Stone - Senior Associate

Conclusion

For any further information on the Act, advice on becoming recognised as a mandated iwi organisation, developing coastline agreements with neighbouring iwi, establishing an appropriate commercial structure to receive the fisheries assets or any further advice on related matters, please contact the Bell Gully Māori Services team at the numbers below.

For further information, please contact your usual Bell Gully adviser or:

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