



**Moderated NZ ETS: Free allocation for fishing quota owners and insertion of a Treaty of Waitangi clause**

<b>Date:</b>	9 September 2009	<b>MfE Priority:</b>	URGENT
<b>Security Level:</b>		<b>Number of Attachments:</b>	Nil
		<b>MfE Ref No:</b>	09-B-02726

	Description	Relevant dates
Minister for Climate Change issues Hon Dr Nick Smith	<p><b>Direct</b> officials to redraft on the basis of free allocation to quota owners</p> <p><b>Agree</b> to include in legislation a reference to having given effect to the Treaty of Waitangi via the pre-1990 forestry provisions</p> <p><b>Agree</b> any other parts of the Act that the Treaty of Waitangi will be given effect to via consultation provisions</p>	None.

**Ministry for the Environment Contacts**

Name	Position	Telephone		1st Contact
		(cell)	(work)	
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## **Purpose**

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1. You have requested information on two issues:
  - a. Changing the recipient of the fisheries sector free allocation from fishing vessel operators to quota owners
  - b. Inserting a Treaty of Waitangi Clause in the Climate Change Response Act

## **Free allocation for fishing quota owners**

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2. Given the anticipated Cabinet decisions on moderating the NZ ETS, the size of the allocation package for the fishing sector is likely to be 700,000 NZUs. The value of this pool is approximately \$NZD 17 million.
3. As per your decision on our previous advice on this topic (09-B-00397), drafting of amendments to the Climate Change Response Act is proceeding on the basis of fishing vessel operators receiving free allocation.
4. There are arguments for either fishing vessel operators or quota owners to receive free allocation. These arguments lean towards fishing vessel operators because:
  - a. Operators are more likely to bear the short term impacts of the NZ ETS
  - b. Operators could use their free allocation to change emitting behaviour if they so choose
  - c. There is not an obvious relationship between the impacts on quota from increased fuel prices.
5. The numbers of persons owning quota (approximately 1600) is similar to the number of commercial fishing vessels (approximately 1300).
6. It is difficult to assess the impact of a switch to quota owners on Maori. However, it appears that iwi are predominantly quota owners rather than fishing vessel operators. Iwi own 27% of quota (in terms of the number of shares). However, the impacts will vary between iwi given that different iwi have different commercial fishing arrangements. Some iwi use their own vessels to catch their own Annual Catch Entitlement (ACE) and that of other iwi, whereas other iwi sell the majority of their ACE to others.
7. The choice of method to divide the allocation pool will also have potentially significant effects depending on the type of quota held as discussed below. Given that Te Ohu Kaimoana (TOKM) are yet to allocate settlement quota to all iwi, providing allocation to quota owners will add another level of complexity to this process.
8. If a decision was taken to give free allocations to quota owners rather than fishing vessel operators, allocation would probably have to be given on a lump sum basis based on quota ownership on some historic date, stated in legislation. There is no ideal date, but the date of the introduction of an amendment Bill (anticipated to be 22 September 2009) would appear as good as any. This would be specified on the face of the Bill.
9. Allocating to quota owners would avoid the need for fuel use data to be collected from fishing vessel operators but a method of dividing up the free allocation pool among quota owners is still required. Options include:

- a. Pro-rating the allocation on the basis of tonnes of quota held at a point in time (favouring those who hold large amounts of quota)
  - b. Pro-rating the allocation on the basis of the value of quota held at a point in time (favouring those who hold high value quota)
  - c. Attempting to determine a relationship between quota value and a general proxy for fuel costs (which will be a function of fishing method and stock) and allocating on that basis.
10. Options a and b would be relatively straightforward but would provide relatively arbitrary amounts of compensation for impacts which are due to increases in fuel prices. Option c may be more difficult but would not be impossible.
11. Because of the distributional effects between different quota owners, the choice between the options above (or some combination thereof) would be a key subject of discussion during the allocation plan process.

## Inserting a Treaty of Waitangi Clause in the Climate Change Response Act

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- 12. [withheld].
- 13. [withheld].
- 14. [withheld]
- 15. [withheld].
- 16. [withheld].
- 17. [withheld].
- 18. [withheld].

### Recommended Action

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**We recommend that you:**

- (a) **Note** that legal drafting is occurring based on fishing vessel operators receiving free allocation as per decisions in 09-B-00397
- (b) **Direct** officials to redraft on the basis of free allocation to quota owners **YES/NO**
- (c) **Note** the more parts of the Act that are covered by treaty clauses, the greater the risks of uncertainty, cost and delay from litigation.
- (d) **Agree** to include in legislation a reference to having given effect to the Treaty of Waitangi via the pre-1990 forestry provisions **YES/NO**
- (e) **[withheld]**
  - i. **[withheld]** **YES/NO**
  - ii. **[withheld]** **YES/NO**

iii. [withheld]	YES/NO
iv. [withheld]	YES/NO
v. [withheld]	YES/NO

Stuart Calman  
**Climate and Risk**

**Date**

Hon Dr Nick Smith  
**Minister for Climate Change Issues**

**Date**

## **Annex 1 Recognition of the Treaty of Waitangi in the New Zealand Public Health and Disability Act 2000 (the Act)**

### **Treaty of Waitangi provision**

Section 4 states that Part 3 of the Act provides mechanisms to enable Maori participation in the decision making and delivery of health care services.

These mechanisms aim to recognise and respect the principles of the Treaty of Waitangi and improving health outcomes for Maori.

### **Specific Mechanisms in part 3**

Specific mechanisms employed in Part 3 may be summarised into several key categories.

- Set objectives for District Health Boards (DHBs) to reduce health disparities and improving health outcomes for Maori. (s22)
- Set functions of DHBs as being to
  - establish and maintain processes to promote and develop Maori participation and contribution to Maori health (s23(1)(d and e))
  - provide health information to Maori (s23(1)(f))
- Proportional representation for Maori on DHBs (s29(4))
- Maori representation on committees (ss34-36)

### **General mechanisms in part 3**

General mechanisms employed in Part 3 may be summarised into several key categories.

- Requirement to consult (e.g. s20 if geographical area of DHB is to be altered consultation is required).
- Requirement to fully consider submissions (e.g. s20(3)(a) consideration of submissions received in relation to changing area of DHB).
- General duty to promote and protect health of people and communities (e.g. s22 objectives of DHBs)
- Promoting of community participation (e.g. s22(h) one objective of DHB is to foster community participation)

- Provision of information (e.g. s23 a function of DHBs is to issue relevant information to the resident population).

## **Key provisions**

### **4 Treaty of Waitangi**

In order to recognise and respect the principles of the Treaty of Waitangi, and with a view to improving health outcomes for Maori, Part 3 provides for mechanisms to enable Maori to contribute to decision-making on, and to participate in the delivery of, health and disability services.

### **22 Objectives of DHBs**

(1) Every DHB has the following objectives:

- (e) to reduce health disparities by improving health outcomes for Maori and other population groups:
- (f) to reduce, with a view to eliminating, health outcome disparities between various population groups within New Zealand by developing and implementing, in consultation with the groups concerned, services and programmes designed to raise their health outcomes to those of other New Zealanders:

### **23 Functions of DHBs**

(1) For the purpose of pursuing its objectives, each DHB has the following functions:

- (d) to establish and maintain processes to enable Maori to participate in, and contribute to, strategies for Maori health improvement:
- (e) to continue to foster the development of Maori capacity for participating in the health and disability sector and for providing for the needs of Maori:
- (f) to provide relevant information to Maori for the purposes of paragraphs (d) and (e):

### **29 Membership of boards**

(4) In making appointments to a board, the Minister must endeavour to ensure that—

- (a) Maori membership of the board is proportional to the number of Maori in the DHB's resident population (as estimated by Statistics New Zealand); and
- (b) in any event, there are at least 2 Maori members of the board.

### **34 Community and public health advisory committees**

The board of a DHB must, within 3 months of the commencement of this Act, establish a committee, to advise on health improvement measures, called the community and public health advisory committee, and must provide for Maori representation on the committee.

### **35 Disability support advisory committees**

The board of a DHB must, within 3 months of the commencement of this Act, establish a committee, to advise on disability issues, called the disability support advisory committee, and must provide for Maori representation on the committee.

### **36 Hospital advisory committees**

The board of a DHB must, within 3 months of the commencement of this Act, establish a committee, to advise on matters relating to hospitals, called the hospital advisory committee, and must provide for Maori representation on the committee.