



# Aquaculture Reform 2004 – Settling Maori Claims

## INTRODUCTION

This information sheet explains the Maori Commercial Aquaculture Claims Settlement Act 2004.

It is one of a series of four information sheets explaining different aspects of the aquaculture reform for people working in local government, and for their stakeholders. The other information sheets are:

- *Aquaculture Reform 2004 – An Overview*
- *Aquaculture Reform 2004 – From the Old to the New – Moving to the New Regime*
- *Aquaculture Reform 2004 – The Rules of the Game – Creating Aquaculture Management Areas.*

## THE MAORI COMMERCIAL AQUACULTURE CLAIMS SETTLEMENT ACT 2004

The Maori Commercial Aquaculture Claims Settlement Act 2004 provides a full and final settlement of Maori commercial aquaculture interests since 21 September 1992. It allows the marine farming industry to continue growing without risk of litigation relating to contemporary Treaty grievances, and ensures iwi access to coastal marine space to develop their marine farming interests.

There are two sets of obligations to the settlement. The Act:

- Commits the Crown to providing the Maori Commercial Aquaculture Settlement Trust<sup>1</sup> with the equivalent of 20 percent of 'existing' aquaculture space in the coastal marine area, issued on or after 21 September 1992. ('Existing' space is all marine farming space being transitioned into the new regime.) These provisions will all be made on a region-by-region basis, except in those harbours identified by the Second Schedule of the Maori Commercial Aquaculture Claims Settlement Act 2004. The allocation for each of these harbours is calculated and provided separately.

- Requires 20 percent of all new aquaculture space identified in the coastal marine area to be transferred to iwi, via the Maori Commercial Aquaculture Settlement Trust.

The process for iwi to apply for coastal permits, and the permits themselves, are, as for any other marine farm developer, subject to general Resource Management Act 1991 requirements.

Note that any claims to aquaculture space allocated **before** 21 September 1992 are being addressed through the historical Treaty claims process.

Maori will also be able to make claims for non-commercial marine farming customary use rights under foreshore and seabed legislation.

## NEW SPACE CREATED

Wherever new aquaculture space becomes available (through the creation of new Aquaculture Management Areas (AMAs) or the extension of existing ones), councils must identify 20 percent of the new space and allocate authorisations for that area to a trustee<sup>1</sup> on behalf of regional iwi.

The space provided should be representative of:

- 1) each farming type covered by the rules in the AMA's plan, and
- 2) the overall productive capacity of the new space.

It should also be of economic size.

The trustee then distributes the space to iwi.

<sup>1</sup> The aquaculture rights (or financial equivalent) allocated through the settlement process will be held by the Maori Commercial Aquaculture Settlement Trust and managed by its trustee until their distribution to iwi.



If the trustee cannot be provided with representative space of economic size for each of the aquaculture types covered, the space provided does not need to be representative but should be of economic size, if possible, and must be of average, or better-than-average productive capacity.

Because such a process may lead to fragmentation, councils can create an AMA specifically to provide new space to the trustee. Then, when other AMAs are developed within their region, councils can draw on the new space in the special AMA to meet settlement obligations. It means that, over time, councils can provide iwi with adjoining sites in a single block.

If any party is unhappy with a council's identification of the space in the AMA set aside for iwi, they can appeal this to the Environment Court.

### PROVIDING FOR 'EXISTING' SPACE

The Act commits the Crown to providing iwi with the equivalent of 20 percent of 'existing' aquaculture space in the coastal marine area. 'Existing' space is space already allocated on or after 21 September 1992, or in process (it will be transitioned into the new regime).

The Act gives the Crown three methods to provide this:

1. *Up to 20 percent of any new AMA space*

The Crown can instruct councils, by Orders in Council, to provide the trustee with up to 20 percent of any new AMA space created by council-initiated plan change under the aquaculture reform. This percentage is **on top of** the 20 percent relating to 'new space' (see above).

**Note:** This is only for council-initiated plan changes. If the new AMA space is created through a Private Plan Change, only the 20 percent related to 'new space' will be provided to iwi. (For more on this, see the information sheet, *The Rules of the Game – Creating Aquaculture Management Areas*.)

2. *Crown can buy the required additional aquaculture space on a willing-buyer/willing-seller basis*

In regions where insufficient new space is likely to be available, MFish has the option, after 1 January 2008, to buy the required additional aquaculture space on a willing-buyer/willing-seller basis and allocate this to iwi. If the purchased space contains farming structures or other 'improvements', iwi will have first option to buy these.

3. *Financial equivalent*

If the necessary space has not been provided to the trustee eight years after the Act commences, the Crown has the option of paying the financial equivalent.

The Act sets a 10-year goal for the Crown to complete the settlement.

After three years, the Ministry of Fisheries (MFish) will review the Crown's progress towards providing iwi with 20 percent of all coastal aquaculture area approved in each region since 1992. The Ministry will then consult with iwi and develop a plan detailing how further progress will be made.

### ALLOCATION TO IWI

Before the trustee can distribute the aquaculture rights (or financial equivalent), iwi must first establish iwi aquaculture organisations to receive these settlement assets. These will be the same mandated iwi organisations established under the Maori Fisheries Act to receive fisheries assets under the 1992 Fisheries Settlement, but they must also have been authorised by their iwi members to receive aquaculture assets under the aquaculture settlement.

Once a region's iwi have established the necessary organisation/s they will have 12 months to reach written agreement over how their region's aquaculture settlement assets will be divided. If agreement cannot be reached, the assets will be allocated on the basis of iwi claims to coastline length in the relevant region or, in specified harbours in the Act, based on agreement among iwi whose rohe abuts a harbour.

The trustee will transfer the assets to the iwi aquaculture organisation/s involved once relevant allocations have been determined. The eastern and western coastlines of the Waikato and Wanganui/Manawatu regions will be treated as separate regions for the purposes of these allocations.

Iwi aquaculture organisations who want to develop a settlement asset before all iwi coastline entitlements have been determined may ask the trustee to make an interim division of assets. Any interim division of assets would require the agreement of all iwi aquaculture organisations in the region. The Act provides dispute resolution processes to address iwi differences over coastline entitlements, division of assets, and numerous other decision points under the settlement provisions.

Once finally transferred to iwi, the aquaculture rights will remain the property and responsibility of the iwi aquaculture organisation for so long as their related AMA exists.

If any future council plan diminishes the area of this AMA and iwi are disproportionately affected, they will be able to seek redress from the Crown.

### **MINISTRY OF FISHERIES' ROLE**

MFish will implement the settlement and its associated administrative functions. Specific tasks include:

- Establishing and maintaining an aquaculture settlement register, containing information on existing marine farming space and aquaculture settlement assets, etc. Also, preparing regulations around the information the councils, the trustee and iwi are required to provide to this settlement register.
- Calculating the space required in each region to meet the settlement obligation relating to existing marine farming development; advising Ministers of this, and then supporting the 'Order in Council' process used to direct councils to identify the necessary additional space for allocation to the trustee.
- Establishing agreements with the trustee of the Maori Commercial Aquaculture Settlement Trust for its role in the settlement process .

- Preparing a plan, in consultation with relevant iwi, by 31 December 2007, assessing progress on meeting the Crown's settlement obligations relating to existing aquaculture space and setting out how the Crown intends to meet any outstanding requirements for space in the timeframes provided.
- Where necessary, buying marine farming space to be used as settlement space.
- Where marine farms are bought, providing iwi with the first right of refusal over the improvements.
- Providing, where necessary, for the management of any marine farms that are purchased, and the disposal of the improvements should iwi not take the right of refusal to purchase the improvements.
- Reviewing the 31 December 2007 plan towards the end of 2012, in consultation with relevant iwi, to assess further progress and consider potential use of financial equivalent.
- Assessing and providing any financial equivalent of marine farming space to iwi.
- Liasing with councils, the trustee, iwi and the marine farming sector generally.
- Ongoing monitoring, and advice to Ministers, where necessary, on possible redress to iwi where the proportion of iwi settlement assets in a region is reduced due to planning decisions of regional or unitary councils.



**MORE INFORMATION**

This information sheet and other information on the Aquaculture Reform 2004 is available on the Ministry for the Environment's website: [www.mfe.govt.nz](http://www.mfe.govt.nz)