Ministry of
Fisheries
Te Tautiaki i nga tini a Tangaroa

aquaculture unit
Ahumoana Ahutāngata

Information sheet 5

Delivering the Māori Commercial Aquaculture Claims Settlement

This guidance note provides an overview of changes to the Māori Commercial Aquaculture Claims Settlement Act 2004 (Settlement Act) and how the settlement will be delivered following the 2011 aquaculture law reforms and the amendments made to the Settlement Act by the Māori Commercial Aquaculture Claims Settlement Amendment Act 2011 (the Amendment Act).

In using this guidance note, regional councils will need to consider any specific settlement requirements in their region and how those requirements relate to aquaculture. In this guidance note, the term "regional council" includes both regional and unitary councils.

Additional guidance notes have been compiled on other aspects of the legislative reforms. These guidance notes are available at www.aquaculture.govt.nz.

What is the Māori Commercial Aquaculture Claims Settlement Act?

The Settlement Act provides for the full and final settlement of contemporary Māori claims to commercial aquaculture. The Settlement Act was developed as part of the 2004 aquaculture law reforms and provided for claims to be settled by allocating authorisations for 20% of aquaculture management areas (AMAs) to iwi.

The 2011 aquaculture law reforms remove the requirement for AMAs to be established before new space for aquaculture activities can be applied for. Because of this change a new delivery mechanism for the settlement has been developed.

The Amendment Act amended the Settlement Act to enable the settlement to be delivered on a regional basis through regional agreements or, when an agreement is not reached within the specified time frame, through a default option.

Regional agreements will be negotiated between the Crown and iwi organisations (iwi) listed in schedule 4 of the Māori Fisheries Act 2004.[1]

Features of the settlement mechanism under the 2011 reforms

The 20% obligation originally established in the Settlement Act remains.

The settlement will be delivered on a regional basis, through agreements between the Crown and iwi. There is also a default option if regional agreements cannot be reached within the specified time frame (see *The default option* on page 3).

The Crown must ensure that the trustee, who is acting on behalf of iwi, is provided with settlement assets that are representative of 20% of the new space in one or more of the following ways:

- entering into one or more regional agreements (s.10 of the Settlement Act) or a default option (s.11 of the Settlement Act) if a regional agreement cannot be reached
- the provision of authorisations to apply to occupy space in the coastal marine area for the purpose of aquaculture activities and any payment required by s. 13(4) of the Settlement Act
- the payment of a financial equivalent of that space.

1 Iwi listed in schedule 4 are the only entities that can receive commercial aquaculture settlement assets from the Crown. Under the Settlement Act settlement assets are transferred to Te Ohu Kaimoana (the trustee) which will then distribute them to the appropriate iwi.

Defining new space

As of 1 October 2011 new space is defined in the Settlement Act as space that first becomes subject to a coastal permit for aquaculture activities under s.116A of the Resource Management Act 1991 (RMA). For more information see *Aquaculture Legislative Reforms 2011 technical guidance note 1: Aquaculture planning and consenting*.

New space does not include:

» space that is pre-commencement space as defined in s. 20 of the Settlement Act; or

» space where a regional council is or was required to comply with s. 44B to 44D and, if necessary, s. 44E of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or

» any space that has been transferred to the trustee as a settlement asset before the commencement of the Settlement Act.

Delivering through regional agreements

Through the regional agreement process deliverables for the settlement may include space, cash, or anything else that is agreed to. Negotiated settlements may be based on anticipated new aquaculture development over a period of time or another arrangement that iwi and the Crown determine to be equitable. The agreed deliverables are transferred to the trustee for allocation to iwi.

Powers have been given under the Settlement Act to the Minister responsible for Aquaculture to gazette space in the coastal marine area to meet settlement obligations (aquaculture settlement areas). The gazettal power is initially being used to gazette space for settlement purposes while regional agreements are being negotiated.

As part of the gazettal process the Minister responsible for Aquaculture must take into account suitability of the space and the overall productive capacity of anticipated "new space".

Under s.9 of the Settlement Act the Crown's obligations for new space are:

The Crown must ensure that the trustee is provided with settlement assets that are representative of 20% of the new space by one or more of the following ways:

(a) the provision of authorisations to apply to occupy space in the coastal marine area for the purpose of aquaculture activities and any payment required by s. 13(4);

(b) the payment of a financial equivalent of that space;

(c) entering into one or more regional agreements under s. 10 of the Settlement Act.

Authorisations within aquaculture settlement areas

Within aquaculture settlement areas, authorisations will be created giving iwi the exclusive right to apply for consent for aquaculture activities in that space. Authorisations will be provided by the appropriate regional council as directed by the Minister responsible for Aquaculture (s. 13(2)). The authorisations for aquaculture activities in the space will be provided to the trustee.

In most cases authorisations will endure as was the case under the 2004 law. However, the Settlement Act sets out that the authorisation will lapse if:

» a resource consent application for aquaculture activities has been declined for space that is subject to the authorisation; or

» a resource consent has been cancelled (in line with RMA provisions).

Applications for coastal permits within aquaculture settlement areas

Applications for coastal permits to undertake aquaculture activities under the RMA are prohibited within areas gazetted as aquaculture settlement areas unless the applicant is the holder of an authorisation obtained under the Settlement Act. Applications for other activities may be accepted, but consenting authorities would only be able to grant a coastal permit provided that the activity is compatible with aquaculture and following consultation with iwi in the region.

Applications for coastal permits in aquaculture settlement areas (pursuant to authorisations obtained under the Settlement Act) are subject to the requirements of the RMA and the undue adverse effects test under the Fisheries Act 1996.

Time frames for negotiating regional agreements

Time frames for negotiating regional agreements are as follows:

» A negotiated regional agreement within two years after the commencement of the Settlement Act with the Northland region; the east coast of the Waikato region; the Tasman region; and the Marlborough region.

» For all other regions, whichever is the later of the following:

  – within three years after the commencement of the Settlement Act; or

  – within two years after the receipt of the first resource consent application for the purpose of aquaculture activities after the commencement of the Settlement Act.

The default option

If regional agreements are not reached in the appropriate time frame, the Settlement Act includes a default settlement option that involves the transfer of settlement authorisations from the gazetted aquaculture settlement areas to the trustee. If insufficient authorisations are available a financial equivalent will be transferred to the trustee as settlement of the Crown's new space obligations.

Regional council responsibilities

Under s.165K of the Resource Management Act 1991 the Governor-General (at the request of the Minister of Conservation) may direct a regional council whose regional coastal plan or any proposed regional coastal plan provides for a rule in relation to a method of allocating authorisations for space in a common marine and coastal area to provide the trustee with 20% of the authorisation (representative space).

This means that regional councils will need to consider the 20% allocation for the settlement during their marine spatial planning. When developing any "go zones" for aquaculture, regional councils should consider and plan for which 20% of the zone will be used for the settlement. The selected space must be representative. The regional council will not receive any income from the tendering of the allocated area nor will any cost be imposed onto the trustee for the transfer of the authorisations.

Planning for settlement delivery

The Minister responsible for Aquaculture is required to prepare a plan by December 2012 for the ongoing delivery of settlement obligations. This plan, developed in consultation with the trustee and iwi, will detail the Crown's progress in terms of meeting the settlement obligation and the processes and methods for maintaining the settlement into the future. Once the plan is completed, the Minister must provide copies of the plan to the relevant regional council, the trustee, and the relevant iwi.

The plan is to be reviewed every five years.

Where to find out more

Information on the aquaculture reforms is available at www.fish.govt.nz and www.aquaculture.govt.nz.

This document is intended to give general guidance on aspects of marine-based aquaculture following the changes made by the 2011 aquaculture legislative reforms. It is not legal advice. For legal advice on any aspect of the reforms you should consult your lawyer.

The general disclaimer on the Ministry of Fisheries website www.fish.govt.nz/en-nz/info/legal/default.htm also applies to this document and should be read in conjunction with it.