



Questions and Answers for Māori aquaculture public consultation

What is the Maori Commercial Aquaculture Claims Settlement Act 2004 and its purpose?

The Maori Commercial Aquaculture Claims Settlement Act 2004 provides for the full and final settlement of Māori commercial aquaculture claims since 21 September 1992. The Maori Commercial Aquaculture Claims Settlement Act 2004 establishes an obligation on the Crown to provide iwi, through Iwi Aquaculture Organisations, with aquaculture settlement assets equivalent to the value of 20% of all marine aquaculture space consented since 21 September 1992. These assets can be provided as space, its cash equivalent, or a combination of both.

How are aquaculture settlement assets delivered under the Maori Commercial Aquaculture Claims Settlement Act 2004?

The Maori Commercial Aquaculture Claims Settlement Act 2004 currently delivers aquaculture settlement assets by having the Crown enter into regional settlement agreements with all relevant iwi in a region. Te Ohu Kaimoana, as corporate trustee of the Māori Commercial Aquaculture Settlement Trust, facilitates the Crown and iwi entering into these regional settlement agreements by providing technical expertise on behalf of iwi in the estimation of the value of each settlement.

Once the Crown and all relevant iwi in the region have agreed and signed a regional settlement agreement, the amount and form of the settlement obligations for the entire region are transferred to Te Ohu Kaimoana and held until iwi in the region reach an agreement on how to allocate the assets amongst them.

There is no methodology for determining how the assets should be distributed amongst iwi. Te Ohu Kaimoana facilitates discussions between iwi within a region to reach an agreement on how the assets should be allocated amongst them and then transfers assets in accordance with those agreements.

What are the requirements for allocating and transferring assets?

The allocation and transfer of aquaculture settlement assets can only be made when there is a written agreement among all the relevant Iwi Aquaculture Organisations in a region or a determination is made through the dispute resolution process (which includes reference to the Māori Land Court).

All relevant iwi in a region must be represented by an Iwi Aquaculture Organisation before they can enter into a written agreement to allocate aquaculture settlement assets, or participate in a dispute resolution process. This is to ensure all iwi have robust governance systems in place, prior to entering into binding agreements on aquaculture settlement assets.

What is the dispute resolution process if not all iwi in a region agree on the allocation and transfer of assets?

If a dispute occurs regarding the allocation of aquaculture settlement assets and the parties are unable to reach a resolution through a mediation process, any party to the dispute may refer it to the Māori Land Court. The Court may refer the dispute back to the Iwi Aquaculture



Organisations for them to seek a resolution, or make a determination if it finds that the parties have taken reasonable steps to resolve the dispute.

What are the requirements for the dispute resolution process?

All parties to a dispute must participate in any dispute resolution process employed and must be represented by an Iwi Aquaculture Organisation.

What is the current issue with the allocation and transfer process?

Iwi in some regions are facing indefinite delays in receiving their aquaculture settlement assets from Te Ohu Kaimoana. For iwi in those regions it has not been possible to get a unanimous agreement on how assets should be distributed amongst them and the dispute resolution process could not be employed.

Why are there mandatory governance arrangements put in place under the Maori Commercial Aquaculture Claims Settlement Act 2004?

All iwi must be represented by an Iwi Aquaculture Organisation to ensure that they have robust governance systems in place, prior to entering into binding agreements on, and receiving, aquaculture settlement assets.

Are the mandatory governance arrangements under the Maori Commercial Aquaculture Claims Settlement Act 2004 suitable for all iwi?

The mandatory governance arrangements under the Maori Commercial Aquaculture Claims Settlement Act 2004 are not necessarily agreeable to all iwi, which is why some iwi have chosen not to adopt those arrangements. The reasons certain iwi disagree with some of the mandatory governance arrangements imposed by the Maori Commercial Aquaculture Claims Settlement Act 2004 vary. For example, some iwi would prefer different voting or asset holding structures than those imposed by the Act.

Why are you proposing to strengthen the allocation and transfer process in the Maori Commercial Aquaculture Claims Settlement Act 2004? And why now?

Several iwi and Iwi Aquaculture Organisations have expressed their frustration at their inability to access and develop their aquaculture settlement assets.

In mid-2018, Te Ohu Kaimoana presented a proposal to the Minister of Fisheries on the need to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004. Te Ohu Kaimoana consulted on its initial proposal between December 2017 and May 2018. During this time Te Ohu Kaimoana met several times with affected iwi and Iwi Aquaculture Organisations, who endorsed the proposal. Te Ohu Kaimoana considers there is a high level of support for their proposal from iwi and Iwi Aquaculture Organisations.

What are the proposal options?

The proposal options include:

Option 1- status quo;



Option 2- providing additional resources towards facilitating regional agreements. This would require no legislative changes, although it would mean increasing the level of funding provided to Te Ohu Kaimoana;

Option 3- providing Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture settlement assets in certain circumstances. This would require amendments to the Maori Commercial Aquaculture Claims Settlement Act 2004 for the option to be implemented and enforced.

What is the objective of the proposal?

The objective of this proposal is to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004 to better enable the allocation and transfer of aquaculture settlement assets to iwi. This will improve delivery of the Crown's aquaculture settlement obligations and support iwi aquaculture aspirations, as well as further support the growth of the aquaculture industry.

What are the criteria that were used to assess the options and why?

The criteria that were used to assess the options were determined to be the most likely to support the overall objective of the proposal. The criteria are:

- the Treaty and its principles;
- Settlement Act - ensuring effective management of aquaculture settlement assets as set out in the Maori Commercial Aquaculture Claims Settlement Act 2004 provisions;
- cost effectiveness - the intervention is cost effective for all parties;
- equity - all iwi have equal access to their entitlements;
- impact on Māori-Crown relations - Māori-Crown relations are impacted positively.

Why are you proposing option 2?

The option to provide additional resources towards facilitating regional agreements could be mutually beneficial for all involved if successful. The additional resources would enable Te Ohu Kaimoana to more closely work with each relevant Iwi Aquaculture Organisation in a disputed region and where possible work with those iwi who do not have the required governance arrangements in place to understand why that is the case and whether there is scope for them to change their position.

Why are you proposing option 3?

A new discretionary power would mean Te Ohu Kaimoana could allocate and transfer aquaculture settlement assets in circumstances where:

- it has not been possible for all iwi in a region to conclude a formal agreement on the allocation of the assets for a particular settlement; or
- the dispute resolution process provided for in the Maori Commercial Aquaculture Claims Settlement Act 2004 has been unable to resolve the issue.

For these circumstances, Te Ohu Kaimoana would have limited discretionary power to allocate and transfer aquaculture settlement assets when two or more Iwi Aquaculture Organisations agree on a partial allocation (up to their collective maximum entitlement), without requiring all iwi in a region to agree. Any portion of aquaculture settlement assets



entitled to iwi who are unwilling or unable to participate would remain held by Te Ohu Kaimoana.

What options require legislative change?

The only option that requires legislative change is option 3 - amending the Maori Commercial Aquaculture Claims Settlement Act 2004 to provide Te Ohu Kaimoana with limited discretionary power in certain circumstances.

Under the option 3 what control measures would be in put in place to limit Te Ohu Kaimoana's discretionary power?

For settlement assets derived from the Crown's new space or pre-commencement (non-harbour) settlement obligations, Te Ohu Kaimoana may only allocate the proportion of assets in a region that relates to the length of coastline of the relevant iwi and is unlikely to be disputed.

For settlement assets derived from the Crown's pre-commencement settlement obligations relating to a harbour listed in Schedule 2 of the Maori Commercial Aquaculture Claims Settlement Act 2004, Te Ohu Kaimoana may only allocate settlement assets to those iwi whose territory abuts that harbour. Further, Te Ohu Kaimoana may only allocate the proportion of assets in a harbour that relates to the proportion of the harbour claimed by that iwi that is unlikely to be disputed with the balance in trust until a final agreement or other resolution is concluded.

Where the settlement assets are in a form other than cash, (i.e. an authorisation conferring an exclusive right to apply for a coastal permit and/or an existing coastal permit), any Iwi Aquaculture Organisation that receives those assets may not alienate them and must transfer them (in whole or in part) to another Iwi Aquaculture Organisation if necessary in order to comply with any final agreement or determination in relation to allocation.

Te Ohu Kaimoana would not be able to use its limited discretionary power until at least 24 months after receiving regional aquaculture settlement assets from the Crown to provide sufficient time for all iwi aquaculture organisations in a region to come to an agreement. When making a partial allocation Te Ohu Kaimoana would have to notify all affected iwi of its decision. At this time all iwi would have an opportunity (30 working days) to lodge an objection, and should they do so the objection would be referred to the dispute resolution process.

If implemented, how would each option be monitored to ensure its progress?

Under options 1 and option 2, Te Ohu Kaimoana would continue to update MPI on the progress through its annual reporting process. Under option 3, Te Ohu Kaimoana would be required to develop and maintain a policy on when and how the new discretion would be exercised as well as report to relevant iwi and the Crown each time the new discretionary power is used.

Why are you not proposing other options?

Two other options that were considered include:



Fisheries New Zealand

Tini a Tangaroa

- Change the requirement for iwi agreement: this option proposed changing the requirement for all Iwi Aquaculture Organisations in a region to have unanimous agreement about how the aquaculture settlement assets should be allocated amongst them. The option proposed to amend the Maori Commercial Aquaculture Claims Settlement Act 2004 to allow Te Ohu Kaimoana to implement agreements between the majority (rather than all) of the Iwi Aquaculture Organisations of a region in certain circumstances. However, such a mechanism would make it difficult to adequately protect minority rights for those who may be unwilling or unable to participate in any agreement with others at the present time.
- Expand or amend the Māori Land Court dispute resolution/determination procedures: this option proposed to amend the Maori Commercial Aquaculture Claims Settlement Act 2004 to give Māori Land Court better tools/flexibility to deal with the current issues. However, the Māori Land Court process under the Maori Commercial Aquaculture Claims Settlement Act 2004 is not favoured by iwi due to the time and cost involved in the process, particularly on all compliant parties when parties to a dispute preventing agreement do not wish to participate.