

Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Bill

Government Bill

Explanatory note

General policy statement

The amendments to the Maori Commercial Aquaculture Claims Settlement Act 2004 provide the Crown with an additional option for complying with its aquaculture pre-commencement space obligation.

The objective is to allow the Crown to deliver on its contemporary Treaty of Waitangi obligations in relation to commercial aquaculture by providing a solution to the limited prospects for generating settlement assets for iwi by 2014 under the Maori Commercial Aquaculture Claims Settlement Act 2004. The amendments will also give effect to an agreement between the Crown and iwi of the South Island and Hauraki for an early settlement of the Crown's pre-commencement space obligation in those regions.

Clause by clause analysis

Clause 1 states the Bill's title.

Clause 2 provides that the Bill is to come into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **principal Act**).

Clause 4 sets out the purpose of the Bill, which is to provide the Crown with an additional way of complying with its obligation under section 22(1) of the principal Act in respect of pre-commencement space. To that end, the Bill incorporates provisions in the principal Act dealing with regional agreements.

Part 1

Amendments relating to preliminary provisions of principal Act

Clause 5 inserts a definition of regional agreement into section 4, which is the main interpretation provision.

Clause 6 amends the definition of settlement assets in section 5 by including in that definition payments of money and the transfer of any benefit to the trustee or an iwi aquaculture organisation under a regional agreement.

Part 2

Amendments relating to remaining provisions of principal Act

Clause 7 amends section 22, which sets out the Crown's obligation to ensure that the trustee is provided with space in the coastal marine area for the purpose of aquaculture activities that is equivalent to 20% of pre-commencement space. The amendments to section 22 provide the Crown with an additional way of complying with its obligation under that section. Under the amendments, the Crown can also comply with its obligation by entering into a regional agreement. The amendments also provide that if a regional agreement includes a provision of a kind referred to in *new section 29A(3)(b)* or is otherwise conditional, the Crown is taken to have complied with its obligation by entering into a regional agreement only if the agreement becomes unconditional.

Clause 8 inserts *new section 29A*. *New section 29A* describes a regional agreement as an agreement (including by deed) that is entered into by the Crown in respect of 1 or more regions of regional councils, or of 1 or more harbours listed in Schedule 2, with certain specified

parties if the Crown and those parties all agree that the Crown's obligation under section 22(1) is satisfied in respect of those regions or harbours on the terms set out in the agreement. The specified parties are the iwi aquaculture organisations of all iwi whose area of interest includes a region or harbour covered by the regional agreement or, for any iwi that do not have iwi aquaculture organisations, the recognised iwi organisations of those iwi.

A regional agreement must include the trustee as a party in order to confirm that the agreement has been entered into by all iwi aquaculture organisations for each region or harbour covered by the agreement or otherwise it must include a provision that it is conditional on the trustee confirming that to be the case. A regional agreement is enforceable as a contract in accordance with its terms.

Clause 9 amends section 31, which relates to registered entitlements to settlement assets. The amendment clarifies that a registered settlement assets allocation entitlement binds the iwi concerned specifically in relation to the allocation of settlement assets covered by a determination of the trustee in accordance with section 45(4) or Schedule 1, rather than in relation to all allocations of settlement assets within the regional coastline or harbour concerned.

Clause 10 consequentially amends section 32, which relates to the functions and powers of an iwi aquaculture organisation. The amendment clarifies that an iwi aquaculture organisation may enter into a regional agreement.

Clause 11 consequentially amends section 38, which relates to the duties of the trustee. The amendments clarify that the trustee may also enter into a regional agreement and that the reasonable costs and expenses of the trustee in performing its obligations in relation to a regional agreement are to be paid out of money appropriated by Parliament for that purpose.

Clause 12 substitutes a *new section 44*. *New section 44* provides that the trustee must make its determination as to settlement assets allocation entitlements and its allocation of settlement assets separately on a regional basis, unless a written agreement referred to in section 45(4) covers more than 1 region or harbour, in which case the trustee must make its determinations and allocation collectively on the basis of the regions and harbours covered by the agreement. For a region or harbour, the trustee must make either a single determination for all of the settlement assets of the region or harbour or a combination

of 1 or more determinations for the settlement assets of the region or harbour covered by a regional agreement and a single determination for all the other settlement assets of the region or harbour. The trustee may amend a determination to give effect to a written agreement referred to in section 45(4) to the extent that the agreement relates to settlement assets under a regional agreement that was entered into after the written agreement. The amendment then becomes a determination of settlement assets allocation entitlements.

Clause 13 amends section 47, which sets out the basis of allocation of settlement assets. The amendment clarifies that the trustee must determine settlement assets allocation entitlements in accordance with section 47 and Schedule 1 only in respect of settlement assets for which no written agreement referred to in section 45(4) has been made within the 12-month period specified in that subsection.

Regulatory impact statement: Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004

Executive summary

The Minister of Fisheries is proposing amendments to the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **principal Act**), which settles the Crown's contemporary Treaty of Waitangi obligations for marine commercial aquaculture space, to allow the Crown an additional option for complying with its aquaculture pre-commencement space obligation.

Pre-commencement space is any marine aquaculture space approved on or after 21 September 1992 and up to 31 December 2004. This includes applications for aquaculture space that is still considered under the previous aquaculture legislation if the application was publicly notified by the regional council prior to 28 November 2001.

The objectives of the amendments are to—

- provide a solution to the limited prospects for the principal Act generating settlement assets for iwi by 2014; and
- give effect to an agreement between the Crown and iwi of the South Island and Hauraki for an early settlement of the Crown's pre-commencement space obligation in those regions.

Adequacy statement

The Ministry of Fisheries Regulatory Impact Analysis Review Group has reviewed this statement and has deemed it to be adequate.

Status quo and problem

During the 3 years since the start of the aquaculture settlement, some problems with the settlement framework and progress for discharging the Crown's pre-commencement space obligation have become evident, namely—

- the difficulty of developing new space under the new aquaculture law to settle the Crown's pre-commencement space obligation; and
- the lack of enthusiasm among iwi aquaculture organisations for the purchase marine farm method of settlement.

Due to the concerns of both iwi and the Crown in the lack of progress in delivering on the Crown's pre-commencement space obligation, Cabinet has indicated a willingness to consider possibilities for amending the principal Act.

Objective

The objective of the proposed amendment is to allow the Crown to deliver on its contemporary Treaty of Waitangi obligations in relation to commercial aquaculture by recognising the problems with the existing settlement framework and the progress for discharging the Crown's pre-commencement space obligation. The proposed change allows a practical solution to the issues without renegotiating the underlying intent of the settlement. The proposed change does not change the existing Crown obligation for pre-commencement space, the change merely provides the Crown with an alternative option for delivering on this obligation.

Alternative options

A consultation document identified 2 possible alternative options.

Option 1: regional agreements

Some iwi and a regional council have suggested that an agreement could be entered into with the Crown to settle the pre-commence-

ment space obligation for their region. The principal Act, however, does not provide for such agreements. The principal Act would be amended to allow alternative means for the Crown to discharge its pre-commencement space obligation in a particular region by agreement with iwi. The quantum of the settlement itself (that is, equivalent to 20% of pre-commencement space) and the settlement being structured on regional council boundaries or harbours would not change. However, the requirement to use only the delivery methods specified in the principal Act would be removed under a regional agreement.

Option 2: Change the date for cash payments

In light of the current difficulties encountered in creating aquaculture space to meet the Crown's pre-commencement space obligation, the principal Act would be amended to make the cash payments at an earlier date. This option could deal with the pre-commencement space obligation with a single cash transaction for each region or specified harbour.

Preferred option

The preferred option is Option 1: regional agreements, which allows all iwi aquaculture organisations and recognised iwi organisations in a region plus the Crown and the trustee to agree on how to settle the Crown's pre-commencement space obligation in that region. The quantum of the settlement itself (that is, equivalent to 20% of pre-commencement space) and the settlement being structured on regional council boundaries or harbours would not change.

This is the preferred option due to the flexibility this settlement option offers. A regional agreement allows for early settlement using cash payments.

The preferred option will reduce the compliance cost and risks that the Crown faced with the existing settlement options.

Implementation and review

Subject to Cabinet approval, the changes proposed would be given effect to on enactment of the amending legislation.

Prior to the enactment of the amending legislation, various regional agreements for early settlement may be entered into between iwi and

the Crown; these agreements are, or will be, conditional on the enactment of the amending legislation. The definition of regional agreement in the Bill includes prior existing agreements.

Consultation

The proposed options were consulted on with all iwi and other parties including the aquaculture industry and regional councils who have an interest in aquaculture as part of the *Maori Commercial Aquaculture Settlement—Consultation on a plan to fulfil the Crown’s settlement obligations* document. Due to the good progress of the early settlement in the South Island and Coromandel, the Minister decided to extend indefinitely the consultation period until the Minister provides 60 days’ notice that consultation will close.

The agreement for the early settlement of the South Island and Coromandel, which was negotiated concurrently with the consultation process, using the options in the consultation document, represents a settlement of an estimated 92% (by value) of the Crown’s pre-commencement space obligation. Iwi parties to the agreement and the trustee have provided substantive support for the regional agreement option and the legislative amendment.

Hon Phil Heatley

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The Parliament of New Zealand enacts as follows:

1	Title This Act is the Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Act 2009 .	
2	Commencement This Act comes into force on the day after the date on which it receives the Royal assent.	5
3	Principal Act amended This Act amends the Maori Commercial Aquaculture Claims Settlement Act 2004.	10
4	Purpose The purpose of this Act is to provide the Crown with an additional way of complying with its obligation under section 22(1) of the principal Act in respect of pre-commencement space; and, to that end, this Act incorporates provisions into the principal Act that deal with regional agreements.	15

**Part 1
Amendments relating to preliminary
provisions of principal Act**

5	Interpretation Section 4 is amended by inserting the following definition in its appropriate alphabetical order: “ regional agreement means an agreement of a kind described in section 29A (whether entered into before, on, or after the date of commencement of the Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Act 2009)”.	20 25
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6 Meaning of settlement assets

Section 5(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) includes payments of money and the transfer of any other benefit to the trustee or an iwi aquaculture organisation under a regional agreement; and”.

Part 2

Amendments relating to remaining provisions of principal Act

7 Crown’s obligations

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(1) Section 22(3) is amended by inserting the following paragraph after paragraph (b):

“(ba) by entering into a regional agreement.”.

(2) Section 22 is amended by inserting the following subsection after subsection (3):

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“(3A) If a regional agreement includes a provision of a kind referred to in **section 29A(3)(b)** or is otherwise conditional, the Crown is taken to have complied with subsection (1) in the way specified in **subsection (3)(ba)** only if the agreement becomes unconditional.”

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8 New section 29A inserted

The following section is inserted after section 29:

“29A Regional agreements

“(1) The Crown may enter into an agreement (including by deed) in respect of 1 or more regions of regional councils, or of 1 or more harbours listed in Schedule 2, with the parties specified in **subsection (2)** if the Crown and those parties all agree that the Crown’s obligation under section 22(1) will be satisfied in respect of those regions and harbours on the terms set out in the agreement.

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“(2) The parties referred to in **subsection (1)** are—

“(a) the iwi aquaculture organisations of all iwi whose area of interest includes a region or harbour covered by the agreement; or

“(b) for any iwi that do not have iwi aquaculture organisations, the recognised iwi organisations of those iwi.

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“(3) A regional agreement must include—		
“(a) the trustee as a party to the agreement in order to confirm that the agreement has been entered into by all iwi aquaculture organisations for each region and harbour covered by the agreement; or		5
“(b) a provision that the agreement is conditional on the trustee confirming that the agreement has been entered into by all iwi aquaculture organisations for each region and harbour covered by the agreement.		
“(4) To avoid doubt, a regional agreement is enforceable as a contract in accordance with its terms.		10
“(5) Section 22(3)(c) does not prevent the Crown from making a payment to the trustee under a regional agreement before 1 January 2013.		
“(6) No court or tribunal has jurisdiction to inquire into the quantification or the adequacy of the benefits to be provided by or under a regional agreement.		15
“(7) However, subsection (6) does not exclude the jurisdiction of a court or tribunal in respect of the interpretation or enforcement of a regional agreement.”		20
9	Registered entitlements to settlement assets	
	Section 31 is amended by repealing subsection (4) and substituting the following subsection:	
“(4) A registered settlement assets allocation entitlement binds the iwi concerned in relation to the allocation of settlement assets within the regional coastline or harbour concerned as determined by the trustee in accordance with section 45(4) or Schedule 1.”		25
10	Functions and powers of iwi aquaculture organisations	
	Section 32(2) is amended by inserting the following paragraph after paragraph (b):	
“(ba) enter into regional agreements:”.		30
11	Duties of trustee	
(1)	Section 38 is amended by inserting the following subsection after subsection (2):	35

“(2A) The trustee may also enter into a regional agreement or otherwise agree to be bound by a regional agreement, and perform obligations and exercise rights under or in relation to the agreement.”

(2) Section 38(3) is amended by inserting “or its obligations referred to in **subsection (2A)**” after “subsection (1)”. 5

12 New section 44 substituted

Section 44 is repealed and the following section substituted:

“44 Determinations and allocations generally

“(1) The trustee must make its determinations as to settlement assets allocation entitlements and its allocation of settlement assets separately on the basis of the region of each regional council and each harbour listed in Schedule 2. 10

“(2) However, if a written agreement referred to in section 45(4) covers more than 1 region or harbour, the trustee may make its determinations as to settlement assets allocation entitlements and its allocation of settlement assets collectively on the basis of the regions and harbours covered by the agreement. 15

“(3) For a region or harbour, the trustee must make either—

“(a) a single determination for all of the settlements assets of the region or harbour; or 20

“(b) 1 or more determinations for the settlement assets of the region or harbour covered by a regional agreement and a single determination for all the other settlement assets of the region or harbour. 25

“(4) The trustee may amend a determination to give effect to a written agreement referred to in section 45(4) to the extent that the agreement relates to settlement assets under a regional agreement that was entered into after the written agreement and, if it does so, the amendment becomes a determination of settlement assets allocations entitlements.” 30

13 Basis of allocation of settlement assets

Section 47 is amended by repealing subsection (1) and substituting the following subsection:

“(1) If by the end of the 12-month period specified in section 45(4) the iwi aquaculture organisations for a region have not made 35

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a written agreement for all of the settlement assets of the region, the trustee must determine, in accordance with this section and Schedule 1, settlement assets allocation entitlements for any settlement assets for which no written agreement has been made.”

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