

Details of the Maori Commercial Aquaculture Claims Settlement

The Maori Commercial Aquaculture Claims Settlement Act 2004 provides a “full and final settlement” of all Maori claims (current and future) over commercial marine farming in the coastal marine area, from 21 September 1992 onwards.

The Act contains the framework for providing aquaculture settlement assets to iwi.

The Minister of Fisheries is required to assess the Crown’s progress towards completing its pre-commencement space settlement obligations, and consult with iwi over how further progress will be made.

Any claims relating to marine farming space created before September 1992, and/or omissions of the Crown should be addressed through the Treaty of Waitangi historical claims settlement process.



Ministry of
Fisheries
Te Tautaki i nga Iwi a Tangaroa

TERMS & DEFINITIONS

- 1 Unitary authorities are certain District or City Councils that assume the responsibility of regional councils for their planning area. They are the Marlborough, Tasman and Gisborne District Councils, and the Nelson City Council.
- 2 The term “full and final settlement” comes from Section 3, Maori Commercial Aquaculture Claims Settlement Act 2004.
- 3 All the settlement assets will be held by the Trustee of the Takutai Trust – Maori Commercial Aquaculture Settlement Trust (Te Ohu Kai Moana Trustee Ltd), until their distribution to Iwi Aquaculture Organisations, as defined under the Maori Commercial Aquaculture Claims Settlement Act 2004.
- 4 The term ‘existing space’ was used in the Aquaculture Reform Bill; but in the Maori Commercial Aquaculture Claims Settlement Act 2004, such space is referred to as ‘pre-commencement space’.



The Aquaculture Reforms

Recently there have been some changes to the way marine farming (or 'aquaculture') is planned for and managed around New Zealand's coast.

Why the changes?

Before the 1990s, marine farming was a reasonably small industry in New Zealand, with small farms dotted around the coast, mostly in the Marlborough Sounds, Northland and around the Coromandel Peninsula. Over the next 10 years, marine farming took off and demand for water space increased five-fold. The clean and nutrient-rich waters of New Zealand were rightly recognised as a great place to grow quality seafood, quickly. By 2000, it had become clear our legislation for planning and approving marine farms could not cope with this demand.

There were two main complaints: marine farmers wanting new space were unhappy because of delays and costs in processing their marine farm applications; while communities were concerned that the possible effects of marine farming were not being fully recognised and managed.

What was the aquaculture permit moratorium?

The Government decided to stop receiving any new marine farm applications until it had worked out a better way of dealing with aquaculture development. It did this by imposing a moratorium on new permit applications from 28 November 2001. The moratorium ended on 31 December 2004 - the day before the new aquaculture reforms took effect.

The government and local councils are still working their way through a number of permit applications for marine farms that were 'notified' by councils before the aquaculture moratorium came into effect in November 2001. These must still be processed under the old (pre-moratorium) legislation.

What do the Changes do?

The changes aim to balance four things:

- economic development
- looking after the environment
- settling the Crown's Treaty obligations to Maori
- responding to community concerns

The Resource Management Act now requires all marine farming in the coastal marine area (within 12 nautical miles of the coast) to take place in Aquaculture Management Areas, set up by regional councils or unitary authorities¹. These AMAs must be designated in the council's Regional Coastal Plan.

How does it work now?

An Aquaculture Management Area can either be proposed by a council, through a Council-initiated Plan Change, or by a private individual or group through a Private Plan Change (in which case the costs are met by the initiators).

As with any plan change, the council must consult with affected groups and the general public before the AMA can be approved and become part of its Regional Coastal Plan.

As part of this process, the Ministry of Fisheries checks whether the proposal would have an undue adverse effect on fishing. Any areas where there is an undue adverse effect on customary or recreational fishing are removed from the proposed AMA. But if there is an effect on commercial fishing, a 'reservation' is put over that part of the site, and agreement must be reached between affected rights holders before that part can be developed.

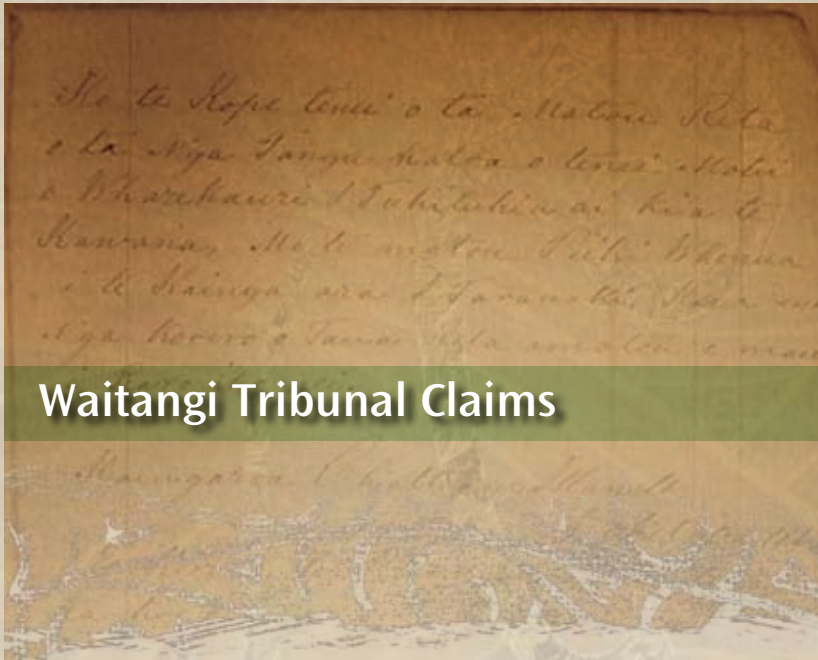
Once an AMA has been approved, the council can allocate water-space rights for marine farms – either by tender, or in a way specified by their coastal plan. The water-space rights allow the holder to apply for a marine farming Resource Consent over a specified portion of that AMA.

This Resource Consent must be obtained before farming structures like lines or cages can be set up.

Who is in charge?

The lead role for aquaculture planning is now in the hands of New Zealand's 12 regional councils and four unitary authorities . They are responsible for all coastal planning, including deciding where marine farming is appropriate. The Ministry of Fisheries contributes to this process by testing for any undue adverse effects on fishing.

The Ministry of Fisheries also oversees the Crown's delivery of its commercial aquaculture settlement obligations to Maori.



Waitangi Tribunal Claims

How do aquaculture claims relate to the Treaty of Waitangi?

The possibility of conflict between the principles of the Treaty of Waitangi and the aquaculture reforms was raised in claims before the Waitangi Tribunal by representatives of Ngati Kahungunu, Ngati Whatua, Te Atiawa ki te Tau Ihu, Ngati Koata, Ngai Tahu, and Ngati Kuia.

The Waitangi Tribunal agreed the proposed reforms would breach the principles of the Treaty, as it found “Maori have an interest in marine farming that forms part of the bundle of Maori rights in the coastal marine area”.

The Tribunal suggested further consultation between the Crown and Maori was needed to work out what should be done to ensure Treaty interests were adequately provided for. The Tribunal’s findings are contained in *Ahu Moana: The Aquaculture and Marine Farming Report* (report Wai953).

The Government felt that, without resolution, these Treaty claims would create uncertainty for the marine farming industry and local government decision-makers because of the ongoing risk of legal challenge by Maori.

So after discussions with the Waitangi Tribunal claimants, and the Treaty of Waitangi Fisheries Commission (Te Ohu Kai Moana), Government implemented the Maori Commercial Aquaculture Claims Settlement Act 2004 as a “full and final settlement of Maori claims to commercial aquaculture on or after 21 September 1992”².

How was the Maori Commercial Aquaculture Settlement worked out?

In 1992, the Crown negotiated a settlement with Maori over their rights to commercial fisheries in New Zealand fisheries waters (the 1992 Fisheries Settlement). This settlement was necessary because the (then recently-introduced) Quota Management System was found to breach Maori fisheries rights protected by the Treaty of Waitangi.

In terms of settling aquaculture claims, the Government decided the aquaculture settlement should be consistent with the principles of the 1992 Fisheries Settlement.

What is the commercial aquaculture settlement?

The commercial aquaculture settlement will provide iwi with assets equivalent to 20 percent of the water-space rights created in coastal waters since September 21 1992. This includes the rights to 20 percent of any new space allocated in Aquaculture Management Areas in future.



Receiving Settlement Assets

Who gets settlement assets?

If your iwi has a coastline in its rohe and is listed under the Maori Fisheries Act 2004, it will be eligible to receive assets under the aquaculture settlement.

Settlement assets will be allocated to Iwi Aquaculture Organisations. These will be the same mandated iwi organisations established under the Maori Fisheries Act 2004 to receive fisheries assets under the 1992 Fisheries Settlement, but they must also have been authorised by their iwi members (through provisions in their constitutions) to receive aquaculture assets under the aquaculture settlement.

Settlement assets will be allocated on a region-by-region basis, based around the jurisdictions of regional councils and unitary authorities. The exception is those harbours identified by the Second Schedule of the Maori Commercial Aquaculture Claims Settlement Act 2004 - where settlement assets will be allocated to iwi whose rohe abut that harbour.

These harbours are:

North Island

Parengarenga Harbour

Mangonui Harbour

Waikare Inlet

Mangawhai Harbour

Houhora Harbour

Whangaroa Harbour

Whangaruru Harbour

Whitianga Harbour

Rangaunu Harbour

Te Puna Inlet

Whangarei Harbour

Tairua Harbour

Tauranga Harbour	Ohiwa Harbour	Aotea Harbour
Kawhia Harbour	Raglan Harbour	Port Waikato
Manukau Harbour	Kaipara Harbour	

South Island

Croisilles Harbour	Pelorus Sound	Queen Charlotte Sound
Admiralty Bay	Port Gore	Port Underwood

The eastern and western coastlines of the Waikato and Wanganui/Manawatu regions will be treated as separate regions for the purposes of these allocations.

What if there is no marine farming in my region?

Settlement allocations will be made whenever your region's council creates Aquaculture Management Areas.

So although there may be no marine farms in your area now, if allowance is made for them some time in the future, through the creation of AMAs, you will be eligible to receive a share of the new space created.

How do iwi get settlement assets?

As happened with the fisheries settlement of 1992, regional aquaculture water-space and financial settlements will be initially passed to a Trustee³, who will then allocate these to the region's iwi in accordance with the aquaculture settlement Act.

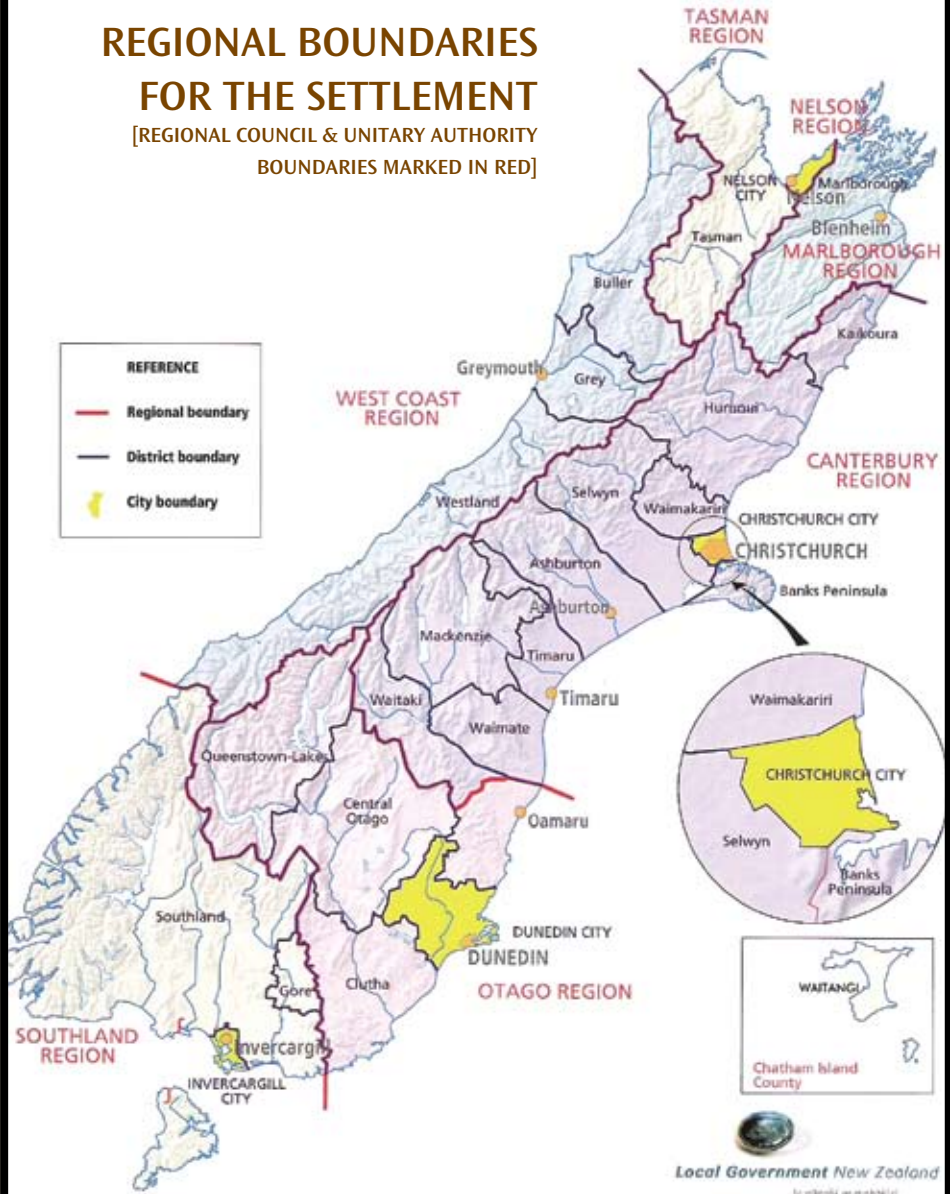
The Trustee can only distribute the aquaculture settlement assets to an Iwi Aquaculture Organisation.

Once all a region's iwi have established their necessary organisation/s, they have 12-months to reach written agreement over how their region's aquaculture settlement assets will be proportionately divided.

If they can't agree within this timeframe, the Trustee will determine what proportion of the settlement each iwi will receive, based on iwi claims to coastline length (or harbour agreements).

REGIONAL BOUNDARIES FOR THE SETTLEMENT

[REGIONAL COUNCIL & UNITARY AUTHORITY
BOUNDARIES MARKED IN RED]



Once decisions on proportionate share have been made, Iwi Aquaculture Organisations then have to agree on how the settlement assets themselves will be allocated.

The Trustee will then transfer the assets to the iwi organisation/s involved.

What is the role of Iwi Aquaculture Organisations?

Iwi Aquaculture Organisations are responsible for aquaculture settlement assets allocated to that iwi. They must act for the benefit of all members of the iwi, and are responsible for establishing commercial entities to manage these settlement assets.

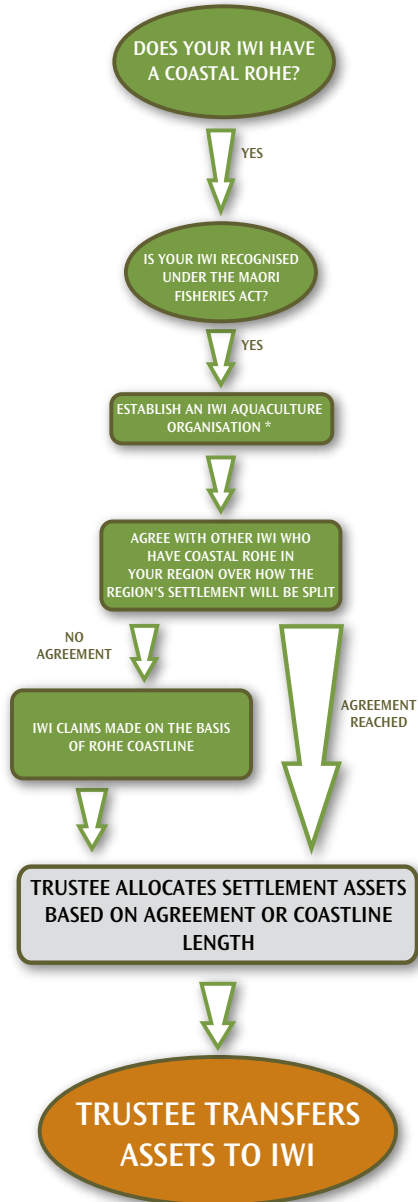
What say iwi disagree with decisions made?

The Act provides dispute resolution processes to resolve specified disputes (including iwi disputes over coastline entitlements and division of assets).

Can interim arrangements be made?

Iwi Aquaculture Organisations may ask the Trustee³ to make an interim division of assets, before all the region's iwi coastline entitlements have been decided. Any interim division of assets would require the agreement of all Iwi Aquaculture Organisations in the region.

The Settlement Made Simple



* AN IWI AQUACULTURE ORGANISATION MUST BE A MANDATED IWI ORGANISATION UNDER THE MAORI FISHERIES ACT 2004 WHICH HAS ALSO BEEN MANDATED TO RECEIVE AQUACULTURE ASSETS



Using Settlement Assets

What water-space rights will be provided and what can iwi do with them?

Most of what will be provided to iwi will be the rights to apply for a marine farming resource consent in a particular part of an Aquaculture Management Area* (under the new legislation, marine farmers need a resource consent from the relevant council before they can build any farming structures like lines or cages). The possession of these rights gives iwi an opportunity to get into the business of marine farming.

The resource consent, and consent application process, is subject to all Resource Management Act requirements for marine farming, including conditioning of consents, resource consent expiry, and possible coastal occupation charges.

AMAs may also contain areas subject to ‘reservations’, due to undue adverse effects on commercial fishing. Iwi will be allocated 20 percent of the rights to apply for resource consents in any such areas but, as with other marine farm developers, they must reach agreement with the affected fisheries’ rights holders before these areas can be developed and resource consents obtained.

*After 1 January 2008, the Crown could choose to purchase some existing marine farms to meet any outstanding obligations relating to ‘pre-commencement space’⁴ under the settlement. In these situations, iwi are likely to be provided with the existing resource consent for that area rather than an authorisation to apply.

Iwi can sell their rights (subject to 75 percent agreement of iwi members that vote at a properly constituted meeting), lease them, or use them to develop their own marine farming businesses - either by themselves or in association with other interests.

Alternatively, iwi may choose not to do anything with these rights.

How long do these rights last?

Marine farming resource consents last for a defined time frame, after which they expire. However, where water-space is provided as settlement assets, iwi will retain the right to re-apply for new consents in these areas, so long as their associated Aquaculture Management Area continues to exist.

AMAs exist within the context of a council's Regional Coastal Plan, and these may change over time.

If any future council plan reduces the area of this AMA, and iwi are disproportionately affected – i.e. they end up with less than the previous percentage of rights they held over the region's AMAs - they will be able to seek redress from the Crown.



Providing Settlement Assets



The Crown will provide Maori with the equivalent of 20 percent of all marine farming space created around New Zealand's coasts and harbours since 21 September 1992. The aquaculture settlement Act sets out two ways it will do this:

1. it will provide water-space rights for 20 percent of all **'new' space** created;
2. it will provide either equivalent water-space rights or the financial equivalent for 20 percent of the **'pre-commencement space'**⁴.

These assets will be provided to a Trustee³, on a region-by-region basis. The Trustee will then allocate these amongst each region's iwi, in accordance with the Act.

What is **'new' space**?

Any marine farming space that becomes available under the new aquaculture regime (that came into effect on January 1st 2005) is deemed to be 'new' space. This includes space covered by any marine farm permit applications that did not get 'notified' by councils before the moratorium came in on 28 November 2001.

What is **'pre-commencement space'**⁴?

Any marine farming space covered by permits, leases, or licenses first issued between 21 September 1992 and 1 January 2005 is referred to as 'pre-commencement space'. This includes any space that is first approved under the old legislation after 1 January 2005. So any authorisations issued in this way are deemed to be 'pre-commencement space' (even though they will have been issued after January 1st 2005).

How will 'new' space be provided?

Wherever 'new' aquaculture space becomes available, through the creation of new Aquaculture Management Areas, councils will identify 20 percent of the 'new' space and provide the relevant resource consent application rights to the Trustee³.

Where possible, the space provided should be of economic size, and representative of:

- each farming type covered by the rules in the AMA's plan
- the overall productive capacity of the new space

If the Trustee cannot be provided with representative space of economic size for each of the farming types covered, the space provided does not need to be representative, but should be of economic size where possible. If that cannot be achieved, then the space should all be provided in one area.

If the space provided is not to be representative, then it must be of average, or better-than-average productive capacity.

Councils can create an Aquaculture Management Area specifically to provide new space for settlement purposes. When other AMAs are developed within their region, councils can draw on the new space in that special AMA to meet settlement obligations. It means that, over time, councils can provide iwi with adjoining sites in a single block.

Can anyone appeal these allocations?

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

How will 'pre-commencement space'⁴ be provided?

The Crown can fulfil its 'pre-commencement space' obligations in one or a combination of three ways:

- 1 In addition to the 20 percent 'new' space provided, the Crown can tell councils to make a further allocation to the Trustee³ (of up to 20 percent) from a newly-created Aquaculture Management Area. However, this only applies to AMAs created through a Council-initiated (rather than Private) Plan Change.
- 2 It can buy existing aquaculture space for settlement purposes on a willing-buyer, willing-seller basis, from 1 January 2008, and provide this to the Trustee.
- 3 It can provide the Trustee with the financial equivalent. However, this option can only be considered if there is still an outstanding obligation on 1 January 2013.

In 2007, the Ministry of Fisheries will begin reviewing the Crown's progress in completing this settlement. It will then consult with iwi, and come up with a plan on how further progress will be made.

Government will do its best to complete these settlement requirements for 'pre-commencement space' by 31 December, 2014.

What about non-commercial aquaculture?

Claims relating to non-commercial aquaculture can be dealt with either through the Treaty of Waitangi historical claims settlement process, or under the Foreshore and Seabed Act 2004.

What about freshwater aquaculture and land-based marine farms?

The commercial aquaculture settlement only relates to commercial marine farming in coastal waters out to 12 nautical miles. The settlement does not relate to freshwater aquaculture, land-based marine (saltwater) farms, or aquaculture beyond councils' coastal jurisdiction (12 nautical miles).



For more about the Maori Commercial Aquaculture Settlement ...

A copy of the Maori Commercial Aquaculture Claims Settlement Act 2004 can be obtained from:
http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes

A copy of Ahu Moana: The Aquaculture and Marine Farming Report (Wai953) can be obtained from:
http://www.waitangi-tribunal.govt.nz/publications/published_reports.asp

Te Ohu Kai Moana Trustee Ltd has agreed to act as the Trustee of the Maori Commercial Aquaculture Settlement Trust, and will be allocating all aquaculture settlement assets in accordance with The Maori Commercial Aquaculture Claims Settlement Act 2004.

Contact Te Ohu Kaimoana Trustee Ltd
(Ph 04 931 9500 or email tari@teohu.maori.nz or www.teohu.maori.nz).

The Ministry of Fisheries is responsible for overseeing the Crown's delivery of aquaculture settlement assets to the Trustee.

Contact the Maori Aquaculture Manager at the Ministry of Fisheries
(Ph: 04 470 2600 or email info@fish.govt.nz or www.fish.govt.nz).

For more about the Aquaculture Reforms ...

Under the recent aquaculture reforms, Regional Councils and Unitary Authorities are now responsible for authorising aquaculture developments.

For more information about the reforms, resource consents and Aquaculture Management Areas in your region, contact your local regional council or unitary authority. Alternatively, visit the Ministry for the Environment website: <http://www.mfe.govt.nz/issues/resource/aquaculture>

For more about aquaculture permit applications being processed under the old regime, or the effects of proposed marine farms on fishing, contact The Nelson Office Aquaculture Team at the Ministry of Fisheries, Nelson. (Ph: 03 548 1069 or email: aquacultureinfo@fish.govt.nz).