

Regulatory Impact Statement

AMENDMENTS TO THE 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 obligations for marine commercial aquaculture space, to allow the Crown an additional option for complying with its aquaculture pre-commencement space obligations.

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:

- i. provide a solution to the limited prospects for the Maori Commercial Aquaculture Claims Settlement Act 2004 generating settlement assets for iwi by 2014; and
- ii. 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 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:

- i. the difficulty of developing new space under the new aquaculture law to settle the Crown's pre-commencement space obligation; and
- ii. 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.

OBJECTIVES

The objective of the proposed amendment is to allow the Crown to deliver on its contemporary Treaty 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 re-negotiating the underlying intent of the settlement. The proposed changes do 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 two 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-commencement 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 obligations 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 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 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 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 does not change.

This is a 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 will 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 a 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.