

SUBMISSION

To

The Northland Regional Council

From

TAKUTAI TRUST

**MĀORI COMMERCIAL AQUACULTURE
SETTLEMENT TRUST**

Wednesday 14 February, 2007

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Tēnā koe Tony

**Regional Coastal Plan for Northland: Proposed Plan Change 4
Policy and Regulatory Regime for Aquaculture Management Areas:
File Number 990.3.35.1**

**Proposed Threshold Test for
Invited Private Plan Change Requests:
File Number 990.3.35.3**

INTRODUCTION

1. This submission is from the Takutai Trust (“Takutai”) in response to the consultation document entitled “*Regional Coastal Plan for Northland Proposed Plan Change 4, Policy and Regulatory Regime for Aquaculture Management Areas*” and “*Proposed Threshold Test for Invited Private Plan Change Requests*” released on 27 October 2006.
2. We acknowledge and congratulate the Northland Regional Council (NRC) for the process undertaken in considering aquaculture development for the Northland region. We appreciated the opportunity to provide comments on earlier drafts and to participate in Council workshops and discussion on aquaculture. We note our earlier submissions on draft versions of the plan, dated May 29, and August 18, 2006

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Settlement Trust

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3. Te Ohu Kaimoana Trustee Ltd (“Te Ohu”) is a statutory body established under s.31 of the Maori Fisheries Act 2004 (the MFA). Te Ohu is the trustee for settlement assets under the Māori Commercial Aquaculture Claims Settlement Act 2004 (the Settlement Act). Takutai Trust is the trust that will hold assets from the aquaculture settlement. Our duties as trustee are:
 - To receive settlement assets from the Crown or Regional Councils;
 - Hold and maintain settlement assets on trust to iwi aquaculture organisations (IAO);
 - Allocate settlement assets to iwi; and
 - Facilitate steps by iwi to meet the requirements for the allocation of settlement assets.
4. The Settlement Act provides a full and final settlement of Māori commercial aquaculture interests since 21 September 1992. The settlement provides iwi with assets equivalent to 20 percent of the water-space rights created in coastal waters since September 1992. This can be provided in two ways:
 - Water-space rights for 20 percent of all “new” space created; and
 - Either equivalent water-space rights or the financial equivalent for 20 percent of “pre-commencement” (existing) space.
5. Under the Settlement Act, regional councils in providing for aquaculture activities must by public notice identify 20 percent of new space for allocation to Takutai. We have a duty to allocate and transfer the relevant authorisations to the iwi of the region, once iwi have agreed on the allocation of aquaculture settlement assets.

GENERAL COMMENT

6. We believe that aquaculture is part of the future of Māori in the seafood sector. Aquaculture provides an opportunity for Māori to take an active part in the seafood industry and to concentrate their efforts on activities that will provide them with the greatest overall benefit – whether based on fisheries or aquaculture.
7. The Aquaculture Settlement has the potential to position iwi as key players in the industry. The Aquaculture Settlement will provide:
 - Opportunities for aquaculture development generally.
 - Appropriate management of the environment effects of aquaculture by ensuring that all key stakeholders including iwi are duly consulted as part of the AMA development process.
 - Incentives for iwi to help spearhead new aquaculture developments in their regions.

- Māori marine farmers with the opportunity to actively participate in the industry either as developers or joint venture partners.

Our comments are underpinned by the implications of the Aquaculture Settlement and ensuring that Plan Change 4 is an enabling mechanism to promote and support Māori success in aquaculture.

8. We support the balanced view now apparent in Plan Change 4 which considers both the positive and negative aspects of aquaculture. The document is comprehensive and provides the reader with detailed information on key policy and implementation issues relating to aquaculture development in Northland.
9. We support the NRC approach of enabling aquaculture applications to be submitted in the Northland region as a whole. We support the Council's decision not to identify excluded areas and consider that the NRC approach will promote and open up the region for appropriate aquaculture development, therefore providing Māori development opportunities. The key will be ensuring that the objectives, policies and methods contained in the plan provide sufficient guidance to potential applicants. In addition, we believe it will be important for the Council to continue to update its existing "uses and values" and "aquaculture evaluation" information to assist potential applicants identify appropriate locations for AMA development. A key resource in this respect will be the aquaculture strategy that is to be developed by iwi of Te Tai Tokerau, as well as management plans of individual iwi.
10. For the purpose of this submission, we focus mainly on the following areas:
 - Issues of significance to iwi.
 - Mapping tools.
 - Information for planning and consent processes
 - Staging of the invitation process and dealing with competing applications.
 - Representative space.

Our submission follows key headings in the consultation documents.

SPECIFIC COMMENT

The Effects of Aquaculture in Northland

11. We refer to Page 9 of the document, and note our August submission in which we asked whether relevant iwi were aware of the values of "natural character" identified in respect to Rangaunu, Houhora and Parengarenga harbours in the previous draft of the plan. Given the purpose of the Act, and the range of matters set out – other values associated with such areas will also need to be considered, including the requirement to have regard to kaitiakitanga. We note that this concept broadly encompasses the various obligations of tangata whenua to care for the relationship between people and the natural

environment. This recognises and provides for the unique relationship of Māori and their traditions with their ancestral lands, water, sites, wahi tapu and other taonga. This is reflected in Māori values and management practices that promotes and supports social, cultural and economic development opportunities. We wish to ensure that by singling out these areas, iwi aspirations to develop aquaculture are not unnecessarily constrained.

12. We urge the Council to work with iwi organisations to ensure that information about the values of areas such as these is balanced.

Allocation of Authorisations to the Trustee under the Māori Commercial Aquaculture Claims Settlement Act 2004

13. We refer to Page 12 of the document, and reiterate our August submission to remove non-settlement issues from this section. Information pertaining to 80% of the remaining space is not within the scope of the allocation of authorisations to Te Ohu, the trustee.
14. We support and note the revised changes to the table on Page 13, as suggested in our August submission.

Issues

15. Again, we support and note the overall balanced view of the positive and negative characteristics of aquaculture.
16. We support Issue 2, where aquaculture can provide for social and economic opportunities for whanau, hapū and iwi. If the aquaculture settlement is to generate benefits for iwi, it will be important to encourage Māori aspirations for economic development through aquaculture. We will be working with mandated iwi aquaculture organisations as they move to achieve this goal.

Objectives

17. Objective 3, Page 17 refers to customary kaimoana harvest. We note that the UAE process carried out by Mfish should go some way to ensure that the establishment of AMAs does not adversely affect customary fishing. On the other had, we note our August submission on this matter, which referred to the concept of small scale “customary” marine farms identified in the Ngati Wai Aquaculture Plan. We believe it is possible for aquaculture to complement and enhance customary non-commercial fisheries, and therefore a policy that could help implement objective 3 could involve positive consideration of AMA proposals that support and enhance customary fishing. In that respect we are aware of the Ngāti Wai position that NRC promotes and provides for customary farms for non-commercial objectives that support low environmental impacts. This is consistent with the protection of customary fisheries.
18. Our August submission also referred to “representative space” and we note that this is further discussed in Paragraphs 33-37 of this submission.

Policies

19. Policies 3 and 4, Page 18 refer to the development of “Use and Value Maps” and “Aquaculture Evaluation Maps”. Takutai supports the decision made by NRC not to include the Use and Value Maps and the Aquaculture Evaluation Maps in the coastal plan, but to use them for broad guidance purposes. If incorporated in the plan, any changes to the maps would involve a full plan change, which would be an expensive and time consuming process.

On the other hand we note our August submission that urged the Council to implement a robust and consultative process to update the maps and that it be implemented prior to the invitation process. Furthermore we propose that the following be added to the end of the last paragraph under section 27.1.5 – The Identification of Possible AMA sites:

“The Council will update the Use and Value Maps and the Aquaculture Evaluation Maps six months before it issues invitations for Private Plan Change requests”.

20. The process should include support for an iwi technicians’ group to be formed with the support of iwi organisations, to help identify information significant for iwi, hapū and whanau. We suggest that the Council include a method in the plan to this effect as follows:

“The NRC shall establish and resource a technical working group comprising iwi representatives to identify and consider mapping information that is culturally significant for iwi, hapū and whanau with regard to AMA development in the Northland region”.

21. Policy 15, Page 21 states that an AMA will not be considered in areas of a coastal marine area where a marine reserve, a marine mammal sanctuary or Ramsar site has been established or publicly notified. We do not support this and refer to our August submission. We consider that marine farming should be allowed to be established where its effect on the values of these areas can be avoided remedied or mitigated.
22. Policy 25 and Rules 31.5.2 a, c and d, stipulate that the duration of coastal permits may not exceed 25 years. As mentioned in our August submission, the rules for AMAs should be effects based rather than provide only for one or two forms of marine farming. Applications for new forms of farming in which the effects are largely unknown could be classified as discretionary and consents could be issued for shorter periods, with renewal subject to a review of monitoring information. Well known forms of aquaculture should be classified as controlled activities, with consent duration of 35 years. We also note that the 35 year consent duration is needed for a secure return on investment. We would support shorter timeframes for new aquaculture activities for which the effects are not well understood.

23. We also note the reference to foreshore and seabed issues noted in Policy 25. In our August submission we requested the Council be more explicit about the issues of concern.

Methods of Implementation

24. Paragraph 16, Page 27 refers to the development of an aquaculture forum. We support this and as stated in our August submission, we note that the range of key stakeholders have been expanded to include Takutai and iwi.

Information Requirements for Private Plan Change Requests to Establish an AMA

25. Getting the balance right between information required for Private Plan change requests and consent applications will be important if industry parties are to have any incentives to respond to or invest in the process. This matter is closely related to the staging of the process, which we still do not believe has been structured in a way that will encourage investment in aquaculture.
26. Section 27.6, Page 28 provides for base and additional information requirements for AMA development. As noted in our previous submission, we still believe that the bulk of the information required of applicants should be obtained during the plan change process rather than the consent process. All the matters listed under Section 27.7.1 (d) and (e) should be considered during the AMA assessment. We would hope that any persons wanting to establish an aquaculture operation would already have this information gathered during business planning.
27. While we believe that the bulk of the information required should be incorporated into the plan change process, that process should in turn be divided into two:
- An expression of interest stage, in which a minimum of information would be required about the applicant, the type of farming being considered, the type of effects associated with that form of farming (in a general sense); the exact area of interest (submit coordinates); assessment of the scope of consultation and research required, identification of relevant iwi planning documents etc.
 - Preparation of a full plan change proposal. This would include detailed research, consultation plan – covering most of the matters contained in 27.6 and 27.7.
28. We comment further on the staging of the process and threshold tests below.

THRESHOLD TEST AND EVALUATION CRITERIA FOR INVITED PRIVATE PLAN CHANGE REQUESTS

RMA vs LGA

29. Takutai Trust believes the process for inviting private plan changes, and the relevant tests need to be included in the plan under the RMA rather than the LGA. The tests are largely related to managing the effects of aquaculture on the environment and are more directly linked to the RMA - which must promote sustainable management of resources – than the LGA.

Competition

30. We are concerned that the proposed process and information requirements as currently structured in Plan Change 4, does not provide enough certainty to applicants that their investment in the various stages will yield benefits. While elements of the Council’s threshold tests contain provision for dealing with competition, we do not believe that the process is clear enough.
31. The RMA requires Councils to implement a “fair and reasonable” process. If full preparation of plan change details are required with the initial proposal the results would be neither fair or reasonable and the end result would be little or no aquaculture development. Full plan preparation would be expensive and the applicants would have no certainty of success. If there is more contenders for the same space, some applicants would expend large amounts of money for no return.
32. We understand that the law may need to be changed to clarify the process. However we suggest that in the meantime, the process could be made clearer by providing for the following stages:
- **Expressions of interest:** Council invites expressions of interest
 - **Initial assessment:** Council carries out an initial assessment of all expressions of interest to ensure they meet minimum requirements (to be set out as stage one threshold tests and information requirements).
 - **Identifying competition:** Council advises applicants where there is more than one expression of interest for the same area. Applicants could choose to try and work together under one umbrella, or take the risk of preparing for the second stage and be subject to a comparative evaluation process.
 - **Stage two – submission of completed proposals:** Applicants who pass the first stage and who decide to proceed with the second develop a completed plan change proposal. These proposals are subject to stage two threshold criteria and information requirements. The process should work in such a way that every incentive is provided to applicants to resolve overlapping “expressions of interest” before the second stage. If they do not, then they take the risk that their completed request will be rejected in favour of another, or combined with another. In addition, as noted earlier,

we would envisage that applicants whose proposals are accepted would carry out the bulk of the research required to ensure that as far as possible, any consent applications they make stand a good chance of success. It is at this stage (rather than the expression of interest stage) that issues of representative space should be dealt with.

- **AMA complete and authorisations issued:** applications for consents are lodged and processed.

SUGGESTIONS FOR IMPLEMENTING THE COUNCIL PLAN

Representative Space

33. Figure 1 (page 14) illustrates the planning process for an IPPC and provides for the allocation of 20% of authorisation to the trustee. We appreciate the complexities of defining “representative space” as stated in Sections 9 and 10 of the Settlement Act. Representative space is a complex and emerging issue within the development of aquaculture in New Zealand. Therefore it is timely that as a consequence of the NRC plan change process, that serious attention is given to defining representative space and the consideration of preliminary options to resolve this matter. This is particularly important given the expectation that applicants – who will need guidance on this matter – endeavour to identify the space in consultation with Takutai.
34. Key determinants of defining representative space include economic size and average productive capacity. We note that section 9 (7) of the Settlement Act refers to the identification of representative space, and section 10, relates to the identification of economic size.
35. We consider that there are initial questions to consider in defining representative space. These may include:
 - What does economic size mean in regard to an AMA? (distance from port, economic for whom, economic in what sense etc).
 - How to determine that the space in an AMA is of economic size?
 - What does the productive capacity of an AMA mean?
 - Is the overall productive capacity of the new space in an AMA available?
 - Are there provisions in a Council plan that relate to the new space available?
 - How to identify the average productive capacity of an AMA?
 - What is average productive capacity compared to “original” new space?
 - How to determine space in an AMA that is economic even though it is not representative?
 - Is new space in an AMA, the same as “available space”?
 - Is space defined in a new area or in the same AMA? (single area or within the same AMA).
 - How will Council identify 20%? (by surface area, water volume, productive capacity etc).

36. It is in the best interests of the NRC, Takutai and iwi to have a clear and common understanding of the process for identifying representative space. We consider it advantageous to have agreement and promote aquaculture with applicants in advance.
37. We propose that an expert working group be established to explore the practical options and processes for identifying representative space. We note our August submission that proposed a working group be established comprising NRC, iwi, Takutai, and Ministry of Fisheries representatives. Other members may also include experienced marine farmers, scientists and economists.

Iwi Management Plans

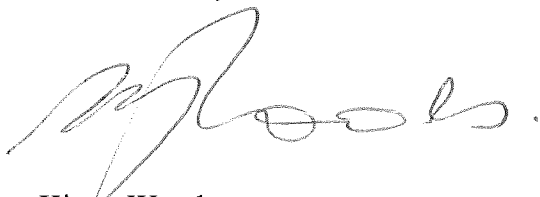
38. We believe that the Plan Change and AMA development in the Northland region will also benefit from the consideration of iwi management plans and / or collective iwi strategic plans. We encourage the NRC to give due consideration to this unique information that describes tribal aspirations and strategic goals. We note that these plans maybe provided by iwi aquaculture organisations in the region.

CONCLUSION

39. Again, we commend NRC for its proactive approach in establishing an aquaculture management framework for Northland. We valued the opportunity to provide input into the NRC planning process and discussions on aquaculture development in the Northland region.
40. To conclude, we request that we also wish to be heard in support of our submission.

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Noho ora mai, nā



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