



**Submission to the *Primary Production Committee* on the
*Aquaculture Legislation Amendment Bill (No 2)***

5th February 2009

Introduction

1. This submission is by Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) in its role as corporate trustee of both the Māori Aquaculture Settlement Trust (Takutai Trust) and Te Ohu Kai Moana Trust. Te Ohu Kaimoana welcomes the opportunity to comment on this Bill. We wish to be heard in support of this submission. Contact details are provided at the end of the submission.
2. The Takutai Trust was established through the Māori Commercial Aquaculture Claims Settlement Act 2004 (the Aquaculture Settlement Act)¹. The Aquaculture Settlement Act provides a full and final settlement of Māori commercial aquaculture interests since 21 September 1992 and provides for iwi to receive assets equivalent to 20% of the water space rights created in coastal waters between September 1992 and January 2005, and 20% of any new space approved after the commencement of the Aquaculture reforms on 1 January 2005.
3. The purpose of the Takutai Trust is to:
 - (a) receive settlement assets from the Crown or regional councils;
 - (b) hold and maintain settlement assets on trust until they are transferred to Iwi Aquaculture Organisations (IAOs);
 - (c) allocate settlement assets to iwi on the basis of a model set out in the Aquaculture Settlement Act; and
 - (d) facilitate steps by iwi to meet the requirements for the allocation of settlement assets².

¹ Aquaculture Settlement Act, s 34

² Aquaculture Settlement Act, s.35

4. Te Ohu Kai Moana Trust was established under s.31 of the Māori Fisheries Act 2004. The purpose of Te Ohu Kai Moana Trust is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:
 - ultimately benefit the members of iwi and Māori generally
 - further the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
 - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.
5. In carrying out its role, Te Ohu Kaimoana works actively with iwi organisations who have received, or who will receive settlement assets under both the Aquaculture and Fisheries Settlements. We also work actively with the wider seafood industry (both fisheries and aquaculture) and participate in industry organisations to protect the interests of iwi and Māori as the beneficiaries of the settlements.

Overall Comment

6. Te Ohu Kaimoana supports the policy intent of the key changes provided for the Bill:
 - enabling aquaculture agreements under the old legislation
 - facilitating the use of the invited private plan change process and
 - allowing for experimental aquaculture.
7. Our submission provides comments and suggestions for each of these key issues bearing in mind that Te Ohu Kaimoana is the trustee of two settlements (fisheries and aquaculture) that must be able to be used and developed in a manner that is mutually supportive. We do not wish to see a situation that leads to the operation of one settlement leading to the other being undermined. We also note that Te Ohu Kaimoana will (on behalf of iwi) become involved in every part of new space across the country. We consider it important that we and iwi are involved early in any processes to establish aquaculture, so that we can ensure that any potential problems in establishing new space are resolved early.
8. Our submission therefore sets out additional key measures we consider are necessary to better allow Te Ohu - as trustee - and iwi to participate in these processes. In a number of situations we are promoting the use of voluntary agreements. These include agreements between the Trustee (with iwi) and the applicants for any new space over representative space as well as between aquaculture and fisheries interests (through quota owning organisations) as another means to resolve issues potential conflicts, with the legislation providing recognition of such agreements, while still retaining the default processes currently in the legislation where no agreement is reached.
9. Our submission also comments on other measures in the Bill where we have concerns.
10. This general support of the proposed amendments must not be interpreted that with these changes Te Ohu Kaimoana is satisfied that we will have acceptable aquaculture legislation once this Bill is enacted. We will not. Te Ohu Kaimoana

remains committed to working with iwi, industry, councils and Government departments to advance a fundamental review of the law and practice of the aquaculture regime. We consider that aquaculture as an activity is unfairly discriminated against in the Resource Management Act compared to other activities and the presumption of 'prohibited unless approved' has also coloured how the statute is implemented.

11. We remain very supportive of a 'first principles' review of the aquaculture regime to make improvements. We expect that any such review will take as a given that in improving any systems it must deliver the agreed outcomes of the Māori Aquaculture Settlement. At the same time, any reformed regime must facilitate aquaculture development in a manner that does not impinge on the integrity of the Māori Fisheries Settlement, and maintains high environmental standards.
12. The review will necessarily take some time to occur, and some considerable time will be needed before any changed system is effectively implemented. Te Ohu Kaimoana therefore supports the need to amend the current legislation in the interim in order to address the matters covered in this Bill.
13. Te Ohu Kaimoana supports the submissions made by Aquaculture New Zealand and SeaFIC.

Background

What the aquaculture reform proposed for iwi

14. As noted above the Aquaculture Settlement provided that the iwi of a region should collectively receive 20% of any new space created after the commencement of the reforms on 1 January 2005.
15. In addition to this the Crown accepted an obligation to provide to the iwi of a region aquaculture settlement assets equivalent to 20% of the space approved for aquaculture between 21st September 1992 (when the Fisheries Deed of Settlement was signed) and the commencement of the reforms on 1 January 2005.
16. This 20% pre-commencement obligation now equals approximately 2,300 hectares across the country with over 1,200 hectares in the Tasman District Council boundary and approximately 150 hectares in the east coast portion of the Environment Waikato region.
17. Three options were provided in the reforms for the Crown to meet that obligation. It could:
 - through the use of regulations, take up to a further 20% of any new space created by a council initiated or conventional private plan change to a Regional Coastal Plan; or
 - purchase established marine farms after 1 January 2008; or
 - pay the equivalent to the value of the pre-commencement space on or after 2013.
18. Last year the Minister of Fisheries set out a review of progress towards meeting the settlement pre-commencement obligations. The Minister's report noted the lack of progress and stated that substantive progress was not anticipated in those areas with the greatest obligation before 2014. As a consequence, some

changes were proposed to allow for regional settlements using a combination of measures including early settlement through cash.

19. Subsequent to the release of the report, the Minister invited the iwi of Te Tau Ihu to develop a proposal for him to consider. This opportunity was picked up and the iwi of Te Waipounamu and Hauraki - working with Te Ohu Kaimoana - submitted a proposal to settle the obligations for all pre-commencement space obligations in Te Waipounamu (across all regional councils and unitary authorities in the South Island) and the Hauraki Gulf portion of Environment Waikato.
20. Iwi and the Crown signed an Agreement-In-Principle on a quantum to settle those obligations in October 2008 and work is now continuing on a Deed of Settlement and amending legislation to appropriately recognise that those regional agreements will settle the Crown's obligation.
21. The Minister of Fisheries has left his review and proposed changes open for consideration and has invited iwi with pre-commencement obligations in other regions to develop proposals for settlement. That work is underway.
22. Now that this part of the Aquaculture Settlement is being actively settled (or legislatively provided for in a different manner) the key issue for iwi is gaining new space to participate in aquaculture.

Key issues for Te Ohu Kaimoana

Representative Space

Agreements on representative space between iwi, Te Ohu Kaimoana and the applicants for new space

23. Decisions taken by the Ministry of Fisheries on whether there are undue adverse effects in the Aquaculture Management Area (AMA) applications in Tasman District Council, along with imminent decisions about undue adverse effects in the Wilson's B AMA in the Hauraki Gulf portion of Environment Waikato offer the promise of iwi receiving 20% of that space. Soon, after the seeming endless preparatory regulatory phase – more than 12 years in both cases – iwi may finally be able to advance into the business and activity of aquaculture in these areas.
24. The next step for those AMAs approved by the Ministry of Fisheries for aquaculture is to identify the 20% representative space. The legislation currently provides processes for Regional Councils to identify this space in each case.
25. The Committee will be aware that as part of our submission to the Aquaculture Legislation Amendment Bill 2008 Te Ohu Kaimoana noted that in both of the areas identified above, there were underlying applications for the entire areas approved and it was likely that with the guidance provided to Councils in the legislation any decision on representative space could result in 'winners' and 'losers' leading to further litigation and delay.
26. Te Ohu Kaimoana proposes that measures be included in the legislation that encourages Te Ohu Kaimoana and iwi to work with the applicants to agree the location of the 20% representative space.

27. Agreement on representative space will assist all parties to proceed with development with some certainty provided an additional amendment is included in the Bill to allow any such agreements between the parties to be recognised and given effect without needing to follow the default processes in the Aquaculture Settlement Act.
28. Of course the ability to use such agreements only operates where iwi, Te Ohu Kaimoana and the applicants do genuinely reach agreement – if that is not achieved, the standard processes in the Act will apply.
29. The applicants, iwi and the Tasman District Council support this proposal and did so to the Select Committee last year.
30. The consortium of Wilsons' B applicants and the iwi of Hauraki support the proposal. Environment Waikato is aware of the proposal and supportive of the concept provided it is given a clear path in the legislation and does not blur its responsibilities.. In the period between the 2008 Amendment Bill and now, Te Ohu Kaimoana has worked with the iwi in Hauraki and the consortium of Wilsons' B applicants to agree on the location of the 20% representative space.
31. We note that in addition to these circumstances the proposal can work in all situations where the applicants are known. It is therefore able to be used when an AMA results from the use of the Invited Private Plan Change – the most likely route in the current legislation to identify and get approval of new space for aquaculture.
32. To give effect to this proposal we suggest drafting of amendments to ss.10 – 12 of the Settlement Act that will:
 - (a) allow the Council to adopt any identification of 20% of the Interim AMAs for allocation to iwi agreed between Te Ohu Kaimoana / iwi and the relevant applicant in respect of each subzone of the Interim AMAs;
 - (b) require the Council to identify “representative space” of economic size only if no agreement has been reached between the parties within a reasonable time;
 - (c) confirm that Te Ohu Kaimoana is entitled to enter into such agreements with applicants on behalf of iwi, provided that they have consulted with affected iwi prior to doing so;
 - (d) amend the new s.165BC of the Resource Management Act 1991 to clarify that the applications which are the subject of that section may be amended to become either joint applications by the applicants and Te Ohu Kaimoana/iwi holders of authorisations in respect of 20% of the relevant subzone or to become applications in respect of the 80% subzone only if Te Ohu Kaimoana / iwi and Applicants agree not to proceed with joint applications; and
 - (e) Where such agreements have been concluded between Te Ohu Kaimoana / iwi and given effect by the Council, no right of appeal or review will lie with any person.
33. To ensure that the details can work we have prepared indicative drafting of this proposal. This is attached as Appendix 1 to this submission.

Aquaculture Agreements

Ability for Te Ohu Kaimoana to enter into (Reservation) Aquaculture agreements on behalf of iwi

34. It has always been recognised that aquaculture development in some locations can adversely impact on fishing activities that occur in that location. The legislation has always provided as part of any approval process a consideration of this impact as part of any approval process.
35. The legislation provides that the Ministry of Fisheries must assess whether a proposed aquaculture development will have an undue adverse impact on fishing interests.
36. The Ministry must determine a threshold below which the proposed aquaculture development can proceed. However, if the impact of aquaculture exceeds that threshold for customary non-commercial or recreational fishers, the proposal cannot proceed. If it does not go beyond the threshold for those interests but does for commercial fisheries interests, the Ministry puts a reservation on the area and development can only proceed if - within six months - the aquaculture applicants reach agreement period with the commercial fisheries interests that the effects are suitably mitigated.
37. Te Ohu Kaimoana welcomes the changes made in the Bill that clarify when such reservation aquaculture agreements must be lodged. For most applicants this is 6 months after authorisations are offered or allocated.
38. Sections 15 of the Maori Commercial Aquaculture Claims Settlement Act and 186ZI of the Fisheries Act provide that aquaculture agreements between IAOs and quota owners (or permit holders in respect of affected non-quota stocks) must be lodged within 6 months after the trustee has determined the entitlements of all iwi with an interest in the relevant space and all of those iwi have established Iwi Aquaculture Organisations.
39. While this policy is understandable [in that it reserves the six month period for iwi to reach aquaculture agreements until after allocation agreements between iwi have been agreed] it could mitigate against iwi interests.
40. As it could take many months or even years for iwi to get to the point of being able to enter agreements with applicants, the agreement process is not likely to begin until much later than the equivalent 6 months available to other applicants in respect of space (where they are known in advance, as in the case of the interim AMAs in Tasman and Hauraki and in respect of AMAs resulted from an Invited Private Plan Change).
41. This could put iwi at a disadvantage if, for example, fishers were prepared to make an agreement with those other applicants (to allow 80% of an AMA to be farmed) but either demanded a higher 'price' for agreement in respect of the last (iwi) 20% or took the view that 80% was enough and refused to make any agreement with iwi.
42. Having the option of attempting to reach agreement in respect of the 'iwi 20%' at the same time as other applicants would put iwi on a more level playing field and provide greater scope for cooperation between all those with interests in the

AMA. Te Ohu Kaimoana considers that it also makes sense in that the Iwi are already likely to be involved as holders of Settlement quota (see below) that could be affected by any aquaculture development and will participate in the decision-making from that perspective at the earliest time.

43. It is proposed, therefore, that a further amendment be added to the bill allowing the Trustee (with the support of iwi) to make a (Reservation) Aquaculture Agreement within the same timeframe as that available to other aquaculture applicants.
44. If iwi do not agree to the Trustee undertaking such a role or if the Trustee was unable to reach an agreement with fishers, then the status quo would remain available allowing iwi to attempt to make their own agreements within the 6 months after they receive authorisations.
45. This proposal has the support of both iwi and applicants in areas most immediately facing the possible need for aquaculture agreements, namely the Tasman District and Hauraki portion of Waikato region.

Alternative process for reaching Aquaculture agreements between fishers and aquaculture interests

46. As noted above Te Ohu Kaimoana is trustee for the trusts holding the two Māori settlements – the Fisheries Settlement and the Aquaculture Settlement. Iwi organisations receive some of their Fisheries Settlement assets when recognised as mandated by Te Ohu Kaimoana (which is usually the time that they are recognised as Iwi Aquaculture Organisations (IAOs)) and the remainder when Mandated Iwi organisations (MIOs) reach agreement with one another about their shares of inshore fisheries and the remaining 25% of deepwater fisheries under the Māori Fisheries Act. IAOs can receive aquaculture assets only after
 - there are aquaculture settlement assets for a region that have been transferred to the Trustee and
 - all the iwi organisations in that region are recognised as IAOs and
 - they collectively agree on what portions of Aquaculture Settlement assets they each will receive, including in some cases exactly what assets will be transferred to each IAO's company.
47. While the set of beneficiary iwi of the two trusts is not the same at a national level, many iwi will receive both fisheries settlement assets and aquaculture settlement assets. Because of this iwi represent a microcosm of both industries.
48. If fisheries management areas and regional council boundaries were coincident, iwi could theoretically internalise their decision-making on the merits of aquaculture viability versus reducing the viability of fishing operations. However fisheries management boundaries are not the same as regional council boundaries. It is expected that it will regularly occur that a different group of iwi may hold fisheries assets compared with aquaculture settlement assets.
49. To illustrate this, you might have a regional council region which has only 3 iwi claiming aquaculture entitlements. However any additional aquaculture activity may have an impact on the fisheries in the region 'A' and 8 iwi companies could hold quota shares for the fisheries in the QMAs that overlap that region. The next

regional council (region 'B') may also be included in the QMA and the remaining 5 iwi may claim entitlements in that region.

50. For an aquaculture development in region 'A', 3 iwi will be able to assess whether they wish to advance the aquaculture activity because they will receive both the benefit from aquaculture as well as bear the cost on fishing activity. The other 5 iwi do not gain from the aquaculture activity but bear the costs on their fishing activity. When looking at aquaculture development in region 'B' the opposite effect results.
51. With the same iwi being in different roles with aquaculture and fishing activities taking place in different regions, there is a need to develop a robust principled system that recognises and mitigates the impacts of aquaculture development using aquaculture settlement assets on fisheries settlement assets.
52. Te Ohu Kaimoana has been looking to develop such a system for iwi to use in their dealings and we hope it might find broader application by other aquaculture and fisheries interests since iwi are just one of the participants in any aquaculture development and one of many quota owners in inshore fisheries.
53. Such a system could be used pro-actively by aquaculture interests and quota interests to reduce time and costs through the current regulatory pathways. For it to be effective it would need to occur before the Ministry determines whether a proposal for aquaculture goes beyond the Undue Adverse Effects threshold. However it would need to be an informed process and participated in by all possible affected parties.
54. It is proposed that the legislation require the Minister, on request from relevant aquaculture interests, to provide them with information :
 - on the species caught in commercial quantities in the relevant area that is proposed for aquaculture, and
 - that identifies who are the affected parties with a commercial interest in these fisheries.
55. We propose that aquaculture interests and relevant quota holders be given a period of time to reach an agreement that mitigates any potential effects that aquaculture may have on commercial fishing, and that where such an agreement is reached, it is submitted to the Ministry of Fisheries. Providing the agreement is supported by all relevant parties, the Ministry would then confirm that there is no resultant undue adverse effect on commercial fishing – and the aquaculture proposal could proceed.
56. Alternatively, where there is no full agreement, the Ministry would commence its formal assessment of the effects of the aquaculture proposal on commercial fishing alongside its assessment of the effects of the proposal on non-commercial customary and recreational fishing.
57. We note that the Ministry still has to carry out an assessment of the effects of an aquaculture proposal on customary and recreational fishing. In an ideal world, representatives of these interests would also be involved in reaching similar agreements. We believe that over time, as iwi move to bring together their commercial and non-commercial interests, they would be able to reach agreements about the potential effects of aquaculture on both their non-commercial and commercial fishing interests. In addition it would be desirable for

a mandated and representative body to be able to do the same in respect of recreational fishing. While there is some way to go before that can happen – however we believe that provision for commercial agreements makes a good start.

Invited Private Plan Changes

58. Te Ohu Kaimoana welcomes the proposed amendments to the process for invited private plan changes as this will assist in unblocking the only route that is currently likely to provide new space for aquaculture. As noted earlier we consider that the legislation unnecessarily and unfairly places greater tests against aquaculture than other activities.

59. As noted to the Select Committee when submitting on the Amendment Bill in 2008, Te Ohu Kaimoana - as trustee of the Takutai Trust - will be the only agency that will be involved with every plan change across the country. This is because we will be working with and for the iwi of the region involved who will receive in accordance with an allocation agreement their shares of the 20% of representative new space. For that reason, Te Ohu Kaimoana wishes to be pro-active in resolving potential problems in a way that works for all parties, rather than wait until decisions are taken by regulatory agencies.

60. While we understand the policy intent of the use of 'excluded areas' Te Ohu Kaimoana considers that these should be justified under the disciplines of the RMA. We seek clarity from the Select Committee as to the term of any excluded area :

- is it removed from being available for aquaculture until a Council rescinds that exclusion ie a permanent prohibition unless action is taken?; or
- does it last only until a new plan change addressing aquaculture is applied to that area?

Te Ohu Kaimoana strongly prefers the latter.

61. As noted above Te Ohu Kaimoana wishes to be pro-active in working with iwi and applicants in gaining agreements on the precise location of the 20% representative space. If this can occur as early as possible, it will assist in developing the detail of any applications as well as agreements on the nature of the relationship between applicants and the particular areas they wish to develop within an AMA. For example there are a number of options:

- completely separate operations with a concurrent boundary,
- separate ownership of consents and aquaculture operations but with common arrangements through a JV or company on all common resource consent conditions, or
- separate ownership but a JV or joint company for all aquaculture operations including resource consent conditions.

Agreement on these more detailed arrangements will have a significant effect on what Councils need consider and therefore the time taken for the process.

62. To assist this we request that provisions be included in the Bill that would have the Council make available to the Trustee (and through the Trustee to the iwi of the region involved) contact details of all applicants, the location(s), areas and types of marine farming activity intended for any area by that applicant. We

would expect that this would occur when the Council receives expressions of interest or a response to an invitation under **s165Z**. Te Ohu Kaimoana is not seeking to gain any confidential commercial information on these applications, just enough to begin an informed discussion with each applicant. While we would hope that this would already have occurred as a matter of good practice by applicants we consider its inclusion as an important backstop to facilitate agreements and progress aquaculture.

63. One situation where the iwi partner could have a significant role in resolution is where there are overlapping applications. In this circumstance iwi could possibly receive 20% of both applications should they be satisfactorily agreed. As a common (but minority) party in both applications, iwi through Te Ohu Kaimoana could fulfil a useful broker role.
64. We therefore request that this notification be provided to Te Ohu Kaimoana (and the relevant iwi) at the time under Section **165ZFE (1)** that the Council involved provides the information set out in that subsection to those persons where there are overlapping interests. However we request that Te Ohu Kaimoana be sent the details of all applications not just those that are overlapping.
65. We would also request that subsection 6 of the proposed **s 165ZKE** be clarified. Currently it is unclear what will be the result of this subsection. Does it mean that the parties cannot agree that one will have the previously overlapping space and the other space elsewhere? Does it mean that the two parties cannot form a joint venture for the same space? Or does it mean that if they cannot resolve the overlap if the Council makes a decision based on the original application?
66. In addition it is not clear to us what happens in the event that the parties agree to alter their applications only to have one or both create new overlap situations that they were not aware of (since they were only sent details of the original overlap). This could be avoided if all applicants were sent details of other applications. However if this is not favoured, provided Te Ohu Kaimoana (and through us, iwi) has the information set out above, the situation could be avoided.
67. In the event that overlapping interests cannot be resolved by the parties, the council decides who has the right to proceed by tender or by an alternative fair and reasonable process that has been adopted using the special consultative procedure in the Local Government Act. If the latter is the case details, of this will be part of the information that the council has notified under **s 165ZFE**.
68. It is assumed that the council will assess any application against the criteria set out in their alternative process and award the right to progress a private plan change to the candidate that scores highest. It is not clear from the Bill whether Councils have the powers to do this.
69. Te Ohu Kaimoana supports and endorses SeaFIC's comments regarding Aquaculture decisions for IPPC requests.

Changes to allow for experimental aquaculture

70. Te Ohu Kaimoana welcomes these proposals for experimental aquaculture. These changes are critical if we are to get out of the current Catch 22 situation that means applicants need to do a plan change to be able to undertake research in order to determine whether an aquaculture venture is sufficiently to be able to

apply for a plan change.

71. Te Ohu Kaimoana also recognises that as any proposal to undertake short term research is trying to determine viability of such aquaculture that not all the usual processes and outcomes are necessary. The proposals in the Bill provide an assessment of the effects on the environment and a test of the effects on other fishers. It does not provide that Iwi gain the 20% new space for this new area. We accept this as a practical measure and consider that with suitable research across regions Iwi will benefit from this activity over time.
72. The Bill provides for the granting of consents for experimental aquaculture outside AMAs. It is not clear however that experimental aquaculture is able to be undertaken inside existing AMAs.
73. As Te Ohu Kaimoana understands it, experimental aquaculture can occur within an existing AMA if it is consistent with the rules for the AMA. Of course, if it is consistent with the rules then it is a non-issue because experimental aquaculture will already be occurring.
74. However, if the proposed experimental aquaculture is not consistent with the rules then a plan change is needed. This does not seem a sensible solution if the water space in the AMA is suitable for the type of research proposed. That would put any applicant back in the Catch 22 situation described above and their obvious recourse would be to apply for areas outside the AMA since there are much lower thresholds proposed in the Bill. It is likely however that the community would rather have experimentation in areas already approved for aquaculture than opening up new areas.
75. It seems to Te Ohu Kaimoana that it would be sensible to have the ability to undertake experimental aquaculture within AMAs provided the area is suitable for the type of research and adequate controls are placed on any such activity. Those controls should also include limitation on the use of space to ensure sufficient buffer zones to allow compatibility with other aquaculturists' activities ie cause no adverse effects on other approved aquaculture activity.
76. We note that the Bill proposes that any permit for experimental aquaculture should be for the minimum period needed for the research with a maximum period of 5 years for any site. We agree with that policy position to ensure that research is not used as a guise for operational aquaculture. We also understand that is the reason why the Bill also contains provisions that no application may be made to extend the period of the permit and that there is no ability to grant a permit if the site was used in the last 6 months.
77. While both of these are to be applauded as the general rule, Te Ohu Kaimoana considers that the statute should also provide some very tight rules that could be used as an exception to allow a small extension at that site in circumstances where to get robust results, further research is needed for another 1 or 2 years. We would not want such exceptions to become the default but can envisage situations where the conditions for part of the trial – weather, current, biosecurity etc - were substantially different to that expected when the research was designed and an additional year or two is needed. Allowing this exception would give sounder results from the research by having continuity at the site than the other choices the Bill provisions would allow – either an application for a site alongside the original that would overlap or a break in time and restarting at the original site. As noted above Iwi do not gain their 20% new space entitlement

with experimental aquaculture. As a safeguard to ensure that any extension is only available where it is really needed, it is proposed that the statute provide that any such application must receive the agreement of Te Ohu Kaimoana (as trustee) and the iwi involved in the region.

78. Te Ohu Kaimoana also understands that the provisions in the Bill that limit the maximum size for experimental aquaculture to 2 hectares aim to minimise impacts on other users of the marine environment as well as minimise the area of additional space that is not treated as new space with a 20% provision to iwi.
79. We note that this space is to be treated as effective research space with any space taken up by anchors lines, warps and anchors that re outside this area not counted as within the experimental area. We do not have sufficient knowledge of the possible types of research to be able to comment as to whether this will be sufficient.
80. However we would be concerned if this limit stopped effective research within existing AMAs because the buffer zones would extend beyond the 2 ha limit. We would prefer to see a general requirement to minimise the area but with a maximum of 5 hectare that allows for buffer zones and also anchor ropes etc for inshore locations and an ability to set what is the minimum needed for research in deepwater locations allowing for general movement in the variety of weather conditions.
81. Te Ohu Kaimoana endorses the comments from SeaFIC regarding the need for fishers to be informed of the assessment of undue adverse effects of experimental aquaculture on fishing – both of the initial evaluation and notification of the decision. Te Ohu Kaimoana recommends that in addition to the groups suggested by SeaFIC, the Chief Executive of Ministry of Fisheries should also notify Te Ohu Kaimoana on behalf of the iwi settlement quota owners in each region.

Additional comments on particular clauses in the Bill

Part 1 – Amendments to Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

Clause 4 - Leases and licences deemed to be coastal permits

82. It is submitted that the drafting of clause 4(4) of the bill should be revised. The stated intent of the clause is, among other things, to clarify the period available for councils to review the conditions of deemed permits.
83. It appears that cl.4(4) could be read as giving councils the power to review and amend conditions at any time, as the “and” between cl.4(4)(a) and cl.4(4)(b) is capable of being read as meaning either that *both* the conditions of subclauses (a) and (b) (i.e. that it is within the relevant time period *and* the council considers it necessary to review conditions) must be satisfied before the power to review conditions can be exercised, or that it can be exercised when *either one* of those conditions are met.
84. An ongoing council power to review and amend conditions of deemed coastal permits would obviously have serious implications and create great uncertainty

for the holders of such permits. There are other options open to Councils under the Act eg s 128 if there is a need for review. These have some discipline compared with what is suggested in the Bill.

85. It does not appear that the creation of such a power is intended, so it is recommended that the drafting of cl.4(4) be tightened in order to clearly prevent that possibility. Similar changes should then also be made to Clauses 5 and 6.

Part 2 – Amendments to Fisheries Act 1996

Clause 26 – New subpart 5 of Part 9A inserted

86. As noted above we support voluntary agreements to resolve issues between fishers and marine farmers and to protect and enhance both the aquaculture settlement and the fisheries settlement. We support creating incentives for voluntary agreements.
87. We also endorse the comments and suggestions by SeaFIC regarding notification so as to enable any appeals or reaching of voluntary agreements

Part 4 – Amendments to Resource Management Act 1991

Clause 32 – Interpretation

88. We support this clause to define experimental aquaculture. We seek further clarification of “techniques” in 2(d), as this is a broad term which can have multiple meanings. We would not want to see minor changes in diet for species being proposed as research. Once it is clear that there is a diet that can have an economically viable operation, any further refinement should be part of operational activities.

Clause 69 – Transitional coastal occupation charges

89. We reject the proposal that this bill regarding aquaculture should be used to amend the framework for applying coastal occupation charges. Its inclusion implies that there should be coastal occupation charges for aquaculture while being silent on all other activities that occupy the coastal marine area. Te Ohu Kaimoana opposes any charging regime until we see that it can be applied in a fair and equitable manner to all activities associated with commercial interests in the CMA, including suitable transitional arrangements.
90. In addition the proposals in the Bill link the imposition of charges with the New Zealand Coastal Policy Statement (NZCPS). The NZCPS is high-level policy and we consider will provide insufficient guidance to consent authorities to implement and enforce a coastal occupation charging regime.

Conclusion

91. Te Ohu Kaimoana recommends that the Select Committee proceed with this legislation and support the additional processes we propose to allow recognition of voluntary agreements on:

- Representative space
- (Reservation) aquaculture agreements and
- Early aquaculture agreements

as well as the changes suggested to include Te Ohu Kaimoana in the processes for invited private plan changes and experimental aquaculture.

92. Staff of Te Ohu Kaimoana are available to assist the Select Committee and its officials in developing the details of any such changes should the Select Committee wish.

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Proposed amendments to Maori Commercial Aquaculture Claims Settlement Act 2004 to enable stakeholders to identify settlement space by agreement.

Insert at the beginning of section 9(3) *“Except as otherwise provided in an agreement entered into under section 9A”*.

Insert at the beginning of section 9(6) *“Except as otherwise provided in an agreement entered into under section 9A”*.

Insert at the beginning of section 9(8) *“Subject to subsection (8A)”*. Insert after the words *“an application”* *“or part of an application”* Insert after *“150(B)(2)”* *“or section 165BC”*.

Insert new subsection 9(8A) to read as follows:

(8A) If space for which an authorisation to be allocated to the trustee is the subject of:

- (a) an application to which section 150B(2) or section 165BC of the Resource Management Act 1991 applies; and*
- (b) an agreement under section 9A which makes provision for a joint application,*

then subsection (8) does not apply.

Section 9(9), delete *“10 and 11”*, replace with *“9A to 11”*.

Insert a new section 9A to read as follows:

9A Agreed Settlement Space

- (1) This section applies if new space within a regional coastal plan is subject to an application to which section 150B(2) or 165BC of the Resource Management Act 1991 applies.*
- (2) Prior to issuing the public notice referred to in section (9)(1), the regional council must invite the trustee and the holder of an application referred to in subsection (1) to attempt to reach an agreement which will identify the 20% of the new space for allocation to the trustee.*
- (3) The 20% of new space identified by agreement between the trustee and the holder of an application referred to in subsection (1) may, but is not required to, comply with sections 9(3), 9(6), 10 or 11.*
- (4) The trustee must ensure that any agreement entered into pursuant to this section has the support of the iwi concerned.*
- (5) Any agreement reached pursuant to this section must be recorded in writing and the written agreement delivered to the regional council within six months of the regional council issuing the invitation referred to in subsection (2) above.*

(6) If the regional council receives an agreement under this section then the public notice issued under section 9(1) must:

(a) be issued within one month of receipt of that agreement; and

(b) identify the 20% of new space identified in the agreement as the new space for allocation to the trustee.

(7) Where a regional council has issued a public notice under section 9(1) pursuant to an agreement under this section no person will have a right of appeal pursuant to section 12.

Insert in section 11(1) after "section 9" "*except where an agreement has been entered into under section 9A,*".

Insert at the beginning of section 12(1) "*Except where an agreement has been entered into under section 9A*"

Māori Commercial Aquaculture Claims Settlement Act 2004

9 Allocation of authorisations to trustee

- (1) Before a regional coastal plan or a change to a regional coastal plan that provides for aquaculture activities in new space becomes operative, the regional council must, by public notice, identify 20% of the new space for allocation to the trustee.
- (2) However, a regional council may, for the purposes of subsection (1), identify new space that comprises or includes new space in the region concerned in an aquaculture management area established under section 165C(1)(b) of the Resource Management Act 1991.
- (3) Except as otherwise provided in an agreement entered into under section 9A the new space identified under subsection (1) must be representative of all the new space being established in the region by the regional coastal plan or the change to the regional coastal plan.
- (4) The regional council must allocate to the trustee authorisations for the new space identified under subsection (1) as soon as practicable after the date on which the new space becomes available for applications for coastal permits or allocation of authorisations.
- (5) For the purposes of this section, new space that is subject to an application to which section 150B(2) of the Resource Management Act 1991 applies must be treated as available for allocation of authorisations on the operative date of the regional coastal plan concerned.
- (6) Except as otherwise provided in an agreement entered into under section 9A if new space in an aquaculture management area includes space that is subject to a reservation relating to commercial fishing, the representative space allocated to the trustee must include 20% of the new space that is subject to the reservation and that is representative of all the new space subject to a reservation.
- (7) In identifying whether space is representative for the purposes of this section, a regional council must have regard to—
 - (a) the overall productive capacity of the new space available for applications for coastal permits or the allocation of authorisations; and
 - (b) the provisions of the plan that relate to the new space available for applications for coastal permits or the allocation of authorisations.
- (8) Subject to subsection (8A) an application, or part of an application, to which section 150B(2) or section 165BC of the Resource Management Act 1991 applies is cancelled on and from the operative date of the plan to the extent that the space to which it applies has been identified as the subject of an authorisation to be allocated to the trustee under subsection (1) or has been identified as part of an aquaculture management area established under section 165C(1)(b) of the Resource Management Act 1991.

- (8A) If space for which an authorisation to be allocated to the trustee is the subject of:
- (a) an application to which section 150B(2) or section 165BC of the Resource Management Act 1991 applies; and
 - (b) an agreement under section 9A which makes provision for a joint application,

then subsection (8) does not apply.

- (9) This section applies subject to sections 9A to 11.

9A Agreed Settlement Space

- (1) This section applies if new space within a regional coastal plan is subject to an application to which section 150B(2) or 165BC of the Resource Management Act 1991 applies.
- (2) Prior to issuing the public notice referred to in section (9)(1), the regional council must invite the trustee and the holder of an application referred to in subsection (1) to attempt to reach an agreement which will identify the 20% of the new space for allocation to the trustee.
- (3) The 20% of new space identified by agreement between the trustee and the holder of an application referred to in subsection (1) may, but is not required to, comply with sections 9(3), 9(6), 10 or 11.
- (4) The trustee must ensure, prior to entering into an agreement pursuant to this section, that that agreement has the support of the iwi concerned.
- (5) Any agreement reached pursuant to this section must be recorded in writing and the written agreement delivered to the regional council within six months of the regional council issuing the invitation referred to in subsection (2) above.
- (6) If the regional council receives an agreement under this section then the public notice issued under section 9(1) must:
 - (a) be issued within one month of receipt of that agreement; and
 - (b) identify the 20% of new space identified in the agreement as the new space for allocation to the trustee.
- (7) Where a regional council has issued a public notice under section 9(1) pursuant to an agreement under this section no person will have a right of appeal pursuant to section 12.

10 Space to be allocated must be of economic size

- (1) The new space identified under section 9 must be of an economic size.

- (2) However, if it is not possible for a regional council to comply with subsection (1), the regional council must identify new space that is of an economic size even though the new space is not representative.
- (3) However, if it is not possible for a regional council to comply with subsection (2), the regional council must identify new space that comprises a single area.
- (4) New space identified under subsection (2) or subsection (3) must not have less than average productive capacity compared with the new space it was originally intended to be representative of.

11 Allocation of authorisations to trustee in relation to staged developments and harbours

- (1) For the purposes of section 9, except where an agreement has been entered into under section 9A, if the new space available for applications for coastal permits or allocation of authorisations in an aquaculture management area includes space in a staged development or a harbour, then—
 - (a) to comply with section 9(1), the public notice given by the regional council must identify 20% of the new space separately for each stage of the staged development or harbour; and
 - (b) to comply with section 9(3), that space must be representative of the new space available at each stage of the staged development or harbour; and
 - (c) to comply with section 9(4), the regional council must allocate to the trustee authorisations for that space.
- (2) The identification of space in a staged development under section 9(1) is to be treated as an interim identification and any necessary adjustments may be made at the time that authorisations for the space for that stage are made available for applications for coastal permits or allocation of authorisations.
- (3) If the space to which a staged development applies is not made available for the allocation of authorisations or applications for coastal permits, the regional council must not allocate authorisations for that space to the trustee.
- (4) In this section,—

harbour means a harbour listed in Schedule 2

staged development means provision in a regional coastal plan or the Resource Management Act 1991 for space in an aquaculture management area to become available for application for coastal permits or allocation of authorisations on a date later than the operative date of the regional coastal plan.

12 Appeal to Environment Court against regional council's decision

- (1) Except where an agreement has been entered into under section 9A the following persons may appeal to the Environment Court against a decision of a regional council under any of sections 9, 10, or 11:
 - (a) an iwi aquaculture organisation:

- (b) a recognised iwi organisation:
 - (c) any other person who has an interest in aquaculture activities in the region concerned greater than the public generally.
- (2) An appeal under this section must be filed within 15 working days after the public notice is given under section 9(1).
- (3) The Environment Court may confirm, amend, or cancel the decision of the regional council appealed against.