



**Te Ohu Kaimoana's response to Fisheries New Zealand's proposal to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004**

Te Ohu  
**Kaimoana**  


20 February 2020



Fisheries New Zealand  
PO Box 2526  
**WELLINGTON 6104**

Via email: [info@mpi.govt.nz](mailto:info@mpi.govt.nz)

Tēnā koe,

**RE: CONSULTATION: PROPOSAL TO IMPROVE THE ALLOCATION AND TRANSFER PROCESS PROVIDED IN THE MAORI COMMERCIAL AQUACULTURE CLAIMS SETTLEMENT ACT 2004**

1. Te Ohu Kaimoana welcomes the opportunity to respond to the Fisheries New Zealand's discussion document: Proposal to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004.

***Te Ohu Kaimoana***

2. Te Ohu Kaimoana is a representative organisation that was established through the passage of the Maori Fisheries Act 2004. Our role is to protect and enhance Iwi and Maori interests in the marine environment, particularly in relation to customary and commercial fisheries as well as aquaculture.
3. Te Ohu Kaimoana works on behalf of 58 Mandated Iwi Organisations (**MIOs**), who in turn represent all Māori throughout Aotearoa. Some MIOs are also Iwi Aquaculture Organisation (**IAOs**), meaning that they have an interest in the aquaculture settlement framework established through the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **Settlement Act**). We work on priorities agreed by Iwi to protect and enhance both the Fisheries and Aquaculture Treaty Settlements.
4. We do not intend our response to conflict with or override any response provided independently by Iwi, through their MIOs and/or Asset Holding Companies.

***Position***

5. Te Ohu Kaimoana supports Option 3, which proposes amending the Settlement Act to provide Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture assets in a broader set of circumstances than the current regime allows for.
6. During the targeted meetings at which Fisheries New Zealand presented on the discussion document, there was wide support from Iwi for Option 3 as it will provide an appropriate solution to the circumstances currently preventing allocation of aquaculture settlement assets to Iwi in the Bay of Plenty and Northland regions, as well as similar situations that could occur in the future. Specifically, it is seen that Option 3 will:
  - ensure aquaculture settlement assets are delivered into the hands of those IAOs that wish to claim the assets it is agreed they are entitled to within an appropriate timeframe;
  - protect the interests of those Iwi that choose not to claim the aquaculture settlement assets they are entitled to within that timeframe; and
  - assist the Crown to fulfil its settlement obligations.

PO Box 3277, Level 4,  
Woolstore Professional Centre  
158 The Terrace  
Wellington, New Zealand

P: +64 4 931 9500  
E: [ika@teohu.maori.nz](mailto:ika@teohu.maori.nz)

[www.teohu.maori.nz](http://www.teohu.maori.nz)

7. We note, however, that our support for Option 3 is conditional on the basis that the intended effect of the proposed legislative amendments to the Settlement Act as submitted by Te Ohu Kaimoana to Minister Nash in June 2018 (shown in the **Appendix**) are adopted.

***The discussion document***

8. The allocation and transfer of aquaculture settlement assets can currently only occur in accordance with an agreement of the IAOs of all relevant Iwi in a region or, failing such agreement, a determination of the Māori Land Court. Where an IAO declines to participate in negotiations or dispute resolution processes about how regional aquaculture settlement assets should be allocated, or an Iwi is incapable of participating in those discussions because they have not yet formed an IAO, it means that neighbouring Iwi are unable to progress allocation discussions and face indefinite delays in receiving their share of regional aquaculture settlement assets.
9. We note that the discussion paper incorrectly states at several points that this issue arises only where a relevant Iwi does not have an IAO, mandated Iwi organisation or recognised Iwi organisation. See, for example, p.6 “All relevant Iwi **must** be represented by an IAO (or mandated Iwi organisations or recognised Iwi organisations) before they can enter into a written agreement to allocate aquaculture settlement assets, or participate in a dispute resolution process...” Section 45(3) of the Settlement Act makes it clear that Te Ohu Kaimoana “must not” determine settlement assets allocation entitlements in relation to a region until all Iwi entitled to make a claim for assets in the region have had IAOs recognised.
10. In June 2018, Te Ohu Kaimoana submitted a proposal to Minister Nash requesting that he amend the Settlement Act to provide Te Ohu Kaimoana with a discretionary power to allocate and transfer assets to those IAOs that wish to claim the assets it is agreed they are entitled to in circumstances where it is not possible to have all Iwi in a region sign a formal allocation agreement. Our proposal noted that the discretion sought would be used in situations where two or more Iwi in a region are able to reach agreement on a partial allocation that would be no greater than their maximum entitlements under the default coastline methodology. It further noted that Te Ohu Kaimoana would continue to hold in trust those assets not subject to agreement.
11. The Discussion Paper presented the following three options for aquaculture reform:
  - Option 1: Status quo;
  - Option 2: Providing additional resources towards facilitating regional agreements; and
  - Option 3: Providing a new discretionary power.
12. We caution that both Option 1 and 2 are unsatisfactory. Neither of these options will result in aquaculture settlement assets being delivered into the hands of those IAOs that wish to claim the assets they are entitled to.
13. Maintaining the status quo will result in the status quo – which is a situation in which Te Ohu Kaimoana continues to hold on to settlement assets for an indeterminate period, and Iwi relationships continue to be frustrated by an inability to find a solution that meets the needs of all interested parties.
14. The suggestion of providing additional resources towards facilitating regional agreements is equally unhelpful. Te Ohu Kaimoana continues to hold regional settlement assets on behalf of the Iwi of two regions, as the Settlement Act does not currently allow for assets to be allocated in the particular way that the Iwi in those two regions agree they want their assets to be allocated. The issue is not that the Iwi are yet to reach an agreement on how to allocate the relevant settlement assets. The issue is that the Settlement Act is too rigid and does not sufficiently provide for Iwi to reach creative solutions on how to allocate assets amongst themselves.

15. Option 3 aligns most closely with the proposal we submitted in June 2018 and it is therefore our preferred option. We note that the Discussion Paper does not provide examples of the amendments that will be made to the Settlement Act. Our support of Option 3 is conditional on the basis that the intended effect of the proposed legislative amendments to the Settlement Act as submitted by Te Ohu Kaimoana to Minister Nash in June 2018 (shown in the **Appendix**) are fully adopted.
16. If our proposed amendments are adopted and implemented as part of Option 3, then this will improve the allocation and transfer process by better enabling the allocation and transfer of regional aquaculture settlement assets to Iwi and will therefore enable the Crown to fulfil its aquaculture settlement obligations to Iwi.

**Criteria**

17. Fisheries New Zealand used the following criteria to conduct an initial assessment of each of the proposed options:
  - i. Consistent with the Treaty of Waitangi and its principles:
    - a. Ensuring the Crown is working in partnership with iwi to deliver its settlement obligations;
    - b. Ensuring iwi can participate in aquaculture activities; and
    - c. Ensuring the active protection of the rights and interests of iwi in aquaculture.
  - ii. Aligns with the fundamental provisions of the Settlement Act:
    - a. Ensuring the Crown is meeting its obligation to provide iwi, through IAOs, with aquaculture settlement assets equivalent to 20% of all space created for aquaculture development;
    - b. Ensuring allocation within each region based on a collective agreement amongst the iwi in the region; and
    - c. Ensuring intervention improves the allocation and transfer of assets.
  - iii. Cost effectiveness:
    - a. Ensuring that intervention will achieve the objective with minimal costs to the Crown, iwi and the industry
  - iv. Equity:
    - a. Ensuring every iwi has equal ability to access their aquaculture settlement assets and ensuring that any intervention will benefit all iwi.
  - v. Impact on Māori -Crown relations
    - a. What effect will intervention have on Māori – Crown relations.

**Compatibility of the criteria against Option 3**

18. We set out below our assessment of Option 3 against the criteria adopted by Fisheries New Zealand.

*Consistent with the Treaty of Waitangi and its principles*

19. Option 3 provides scope for both Iwi and the Crown to act in good faith and partnership to get aquaculture settlement assets into the hands of Iwi and therefore achieve the intended purposes of the Settlement Act, which include facilitating the involvement of Māori in the aquaculture industry. Because of its unique approach in dealing with a dispute within a region, Option 3 provides active protection for all Iwi as it is flexible enough to ensure all IAOs are able to utilise their assets to the fullest extent practicable, while protecting minority rights should some Iwi choose not to claim their share of regional aquaculture settlement assets at the same time as other Iwi.
20. The fact that the discretionary powers that would be provided by this option are based on those included in the Maori Fisheries Act 2004, which have been successfully utilised to promote the timely transfer of fisheries settlement assets into the hands of Iwi, supports this view.

*Aligns with the fundamental provisions of the Settlement Act*

21. Iwi consider that until settlement assets are in their hands, the Crown has not fulfilled its settlement obligations. Realistically, Option 3 is the only option that will ensure that regional aquaculture settlement assets make it into the hands of Iwi in a timely manner and is therefore the only option that will ensure the Crown meets its obligations.
22. Our proposal assists Iwi that wish to participate and can reach agreement and protects the rights of Iwi who do not want to participate in the same timeframe. In our June 2018 proposal, we noted that an explicit constraint on Te Ohu Kaimoana's ability to utilise the discretion would be that we could only allocate the proportion of assets in a region that relates to the length of coastline of the relevant Iwi that we are satisfied is unlikely to be disputed, with the balance held in trust until a final agreement or other resolution is concluded (see our proposed section 49B).

*Cost effectiveness*

23. Progressing the necessary legislative amendment will result in some resourcing costs for the government, although Fisheries New Zealand notes that these costs should be able to be met within existing baselines.
24. Option 3 will not result in any additional financial costs for Iwi, and will mean several Iwi are in a better financial position as they are able to acquire and use their aquaculture settlement assets as suits their aspirations. Option 3 will not result in additional costs to Te Ohu Kaimoana but will mean that the costs expended will be more effective because it will result in solutions that suit the needs of the Iwi in the region. This option will also prevent or minimise lost opportunity costs to Iwi arising from delays in their receipt of aquaculture settlement assets.

*Equity*

25. Option 3 provides each individual Iwi with equal ability to access their aquaculture settlement assets. It is flexible enough to ensure all IAOs can acquire and develop their assets as they wish, while protecting minority rights should some Iwi choose not to claim their share of regional aquaculture settlement assets immediately.

*Impact on Māori-Crown relations*

26. Option 3 provides a rare opportunity to reshape the settlement process in a way that does not force Iwi into positions of conflict with one another. It allows Iwi who agree to an allocation (whether full or partial) to realise their settlement assets and enables those Iwi that remain unwilling or unable to participate in allocation processes to maintain their position without affecting the aspirations of their Iwi neighbours.
27. Our June 2018 proposal was developed in consultation with Iwi, particularly those from the Bay of Plenty and Northland regions. We consider that, if the Crown does not progress Option 3, this could have potentially negative effects on Māori-Crown relations. Iwi are keen to see Option 3 progressed and commend the changes set out in the **Appendix** as a meaningful way to ensure regional aquaculture settlement assets are able to make it into the hands of Iwi, thus fulfilling the Crown's obligations to them.

**Implementation**

28. The discussion document notes that "Te Ohu Kaimoana will be required to develop and maintain policy on when and how the new discretion would be exercised". We would also be required to report to relevant Iwi and the Crown each time the new discretionary power is used.
29. Consistent with the funding agreement that exists between Te Ohu Kaimoana and the Ministry for Primary Industries, Te Ohu Kaimoana provides the Ministry for Primary Industries with regular reports on the activities it undertakes in servicing the Māori Commercial Aquaculture Settlement Trust. Te Ohu Kaimoana

will effect these requirements through our annual reporting process with the Ministry for Primary Industries, and directly with Iwi.

**Issues with the discussion document**

30. We note the discussion document does not include the closing date for submissions – see p.2 “Submissions must be received by us no later than **5:00pm on late February 2020**”. Similarly, the discussion document does not include an email address for lodging submissions or link to the online submission form (p.2 “Submissions can be made here using the online submission template: [insert hyperlink here] ... Please email your submission to [insert submission email here]”).
31. We are aware the submission closing date, email address and link to the online form are clear on the relevant Fisheries New Zealand webpage. However, we are frustrated amendments were not made to correct the discussion document, particularly as we alerted officials to these omissions in early December.

**Conclusion**

32. Te Ohu Kaimoana supports Option 3, conditional on the proposed legislative amendments to the Settlement Act as set out in the **Appendix** being adopted.
33. During the targeted meetings at which Fisheries New Zealand presented on the discussion document, there was wide support from Iwi for Option 3 as it will provide an appropriate solution to the circumstances currently preventing allocation of aquaculture settlement assets to Iwi in the Bay of Plenty and Northland regions, as well as similar situations that could occur in the future. Specifically, it is seen that Option 3 will:
  - ensure aquaculture settlement assets are delivered into the hands of those IAOs that wish to claim the assets it is agreed they are entitled to within an appropriate timeframe;
  - protect the interests of those Iwi that choose not to claim the aquaculture settlement assets they are entitled to; and
  - assist the Crown to fulfil its settlement obligations.
34. Please feel free to contact Stevie-Rae Hart ([stevie-rae.hart@teohu.maori.nz](mailto:stevie-rae.hart@teohu.maori.nz)) if you would like to discuss anything raised in this response.

Ngā manaakitanga,



Dion Tuuta  
**TE MĀTĀRAE**

## Appendix – proposed amendments

### Te Ohu Kaimoana’s proposed amendments

As noted above, we consider the below proposed amendments must be adopted for Option 3 to achieve its intended effect.

NB: to assist understanding of the proposed amendments, this Appendix sets out the existing Settlement Act with all proposed amendments inserted and highlighted.

#### 44 Determinations and allocations generally

- (1) The trustee must make its determinations as to settlement assets allocation entitlements and its allocation of settlement assets separately on the basis of the region of each regional council and each harbour listed in Schedule 2.
- (2) However, if a written agreement referred to in section 45(4) covers more than 1 region or harbour, the trustee may make its determinations as to settlement assets allocation entitlements and its allocation of settlement assets collectively on the basis of the regions and harbours covered by the agreement.
- (3) For a region or harbour, the trustee must make either—
  - (a) a single determination for all of the settlement assets of the region or harbour; or
  - (b) 1 or more determinations for the settlement assets of the region or harbour covered by a regional agreement and a single determination for all the other settlement assets of the region or harbour.
- (4) The trustee may amend a determination to give effect to a written agreement referred to in section 45(4) to the extent that the agreement relates to settlement assets under a regional agreement that was entered into after the written agreement and, if it does so, the amendment becomes a determination of settlement assets allocation entitlements.

#### 45 Allocation of assets to iwi of region

- (1) For the purposes of this section and sections 46 to 51, —
  - (a) in the case of the Waikato and Manawatu–Wanganui regions, the east coast and west coast of each region are to be treated as separate regions:
  - (b) in any case where the boundaries of a region change after settlement assets are created but before they are allocated, the settlement assets must be allocated on the basis of the boundaries of the region as at the time the settlement assets were created.
- (2) Settlement assets must be allocated—
  - (a) only to iwi whose territory abuts the coastline of the region in which the assets are situated; and
  - (b) in accordance with settlement assets allocation entitlements determined and registered under section 31.
- (3) The trustee must not determine settlement assets allocation entitlements in relation to a region until all iwi entitled to make a claim for assets in the region have had iwi aquaculture organisations recognised by the trustee, **except in circumstances where the trustee exercises a discretion under s 49B.**
- (4) During the period specified in subsection (4A), the trustee may determine settlement assets allocation entitlements only on the basis of a written agreement of all the iwi aquaculture organisations for the region.
- (4A) The period is 12 months after—
  - (a) the trustee has recognised iwi aquaculture organisations for all the iwi of the region; and
  - (b) the first of the settlement assets for the region has been allocated to the trustee.

(5) Before determining the settlement assets allocation entitlements on the basis of a written agreement referred to in subsection (4), the trustee must be satisfied that all iwi aquaculture organisations for the region are parties to the agreement.

#### **46 Criteria for agreement**

In reaching an agreement for the purposes of sections 48 and 49, the iwi aquaculture organisations must have regard to—

- (a) whether all iwi will be treated equitably based on the value and quality of the settlement assets to be transferred to them; and
- (b) the desirability of allocating settlement assets that are of an economic size.

#### **47 Basis of allocation of settlement assets**

(1) The trustee must determine settlement assets allocation entitlements in accordance with this section and Schedule 1 if,—

- (a) by the end of the 12-month period specified in section 45(4A), the iwi aquaculture organisations have not made a written agreement; and
- (b) at any time after the end of the 12-month period specified in section 45(4A), an iwi aquaculture organisation notifies the trustee in writing that it does not intend to enter into a written agreement.

(2) When allocating coastal settlement assets, the trustee must allocate to each iwi the same proportion of settlement assets for the regional coastline that the iwi coastline bears to the total regional coastline as described in a settlement assets allocation entitlement determined in accordance with section 31 and Schedule 1.

(3) The trustee must allocate to an iwi whose territory abuts a harbour specified in Schedule 2 settlement assets in the harbour.

(4) If more than 1 iwi has its territory abutting a harbour specified in Schedule 2, the iwi aquaculture organisations of those iwi must take all reasonable steps—

- (a) to consult each other:
- (b) to agree on the proportion of the harbour settlement assets for the harbour that must be attributed to each iwi and used subsequently by the iwi aquaculture organisation of each iwi in submitting claims for settlement assets allocation entitlements for that harbour.

(5) If, after negotiating in good faith, the iwi aquaculture organisations cannot reach agreement under subsection (4), they may enter into the dispute resolution process provided for in sections 52 to 55.

#### **48 Allocation of settlement assets**

(1) This section applies when all settlement assets allocation entitlements in relation to a regional coastline or harbour have been determined.

(2) A settlement asset may be allocated only in accordance with—

- (a) an agreement of the iwi aquaculture organisations of all the relevant iwi; or
- (b) an exercise of the trustee's discretion to allocate under section 49B; or
- (c) failing that agreement, a determination made under sections 52 to 55;

(3) After the allocation of a settlement asset under subsection (2), the trustee must transfer the settlement assets to the iwi aquaculture organisations concerned in accordance with the agreement, determination or exercise of discretion, as the case may be.



(4) However, subsection (3) does not prevent the trustee from transferring a settlement asset in accordance with section 50.

#### **49 Partial allocation of settlement assets**

(1) An iwi aquaculture organisation may request the trustee to make a partial allocation of settlement assets if:

(a) the iwi's allocation entitlement for the settlement assets has been determined, but the entitlement of 1 or more other iwi to the settlement assets is yet to be determined; or

(b) the iwi's allocation entitlement to a portion, but not all of the settlement assets, has been determined; or

(c) the trustee has earlier made an allocation and transfer under s49B(1) and subsequently the relevant IAOs have reached agreement on allocation of the residual assets.

(2) The trustee may make a partial allocation of settlement assets only in accordance with—

(a) an agreement of the iwi aquaculture organisations of all the relevant iwi; or

(b) failing that agreement, a determination under sections 52 to 55; or

(c) an exercise of the trustee's discretion provided for in section 49A.

(3) If the trustee makes a partial allocation of settlement assets under this section, the trustee—

(a) must transfer settlement assets to any iwi aquaculture organisation whose entitlement to the assets has been determined or in respect of which the trustee's discretion has been exercised in accordance with section 49A and who has requested in writing that the trustee do so; but

(b) must not transfer settlement assets in respect of which the conditions set out in (a) have not been met.

(4) However, subsection (3) does not prevent the trustee from transferring a settlement asset in accordance with section 50.

(5) A partial allocation under subsection (2) will specify which iwi are "relevant iwi" with respect to the settlement assets.

#### **49A Circumstances in which the trustee has a discretion to allocate and transfer**

The discretion provided to the trustee in section 49B may only be exercised if:

(a) 12 months has passed since the expiry of the period specified in section 45(4A); or

(b) 24 months has passed since the expiry of the first of the settlement assets for the region have been allocated to the trustee (where the period specified in section 45(4A) cannot commence because the trustee has not recognised iwi aquaculture organisations one or more iwi of the region)

and an iwi aquaculture organisation does not hold the registered settlement assets allocation entitlements required by section 45(2)(b), the determination required by section 48(2)(b) or section 49(2)(b) or an agreement of the iwi aquaculture organisations of all the relevant iwi in respect of the allocation of settlement assets.

#### **49B Discretion to allocate and transfer**

(1) Where section 49A applies, and notwithstanding anything to the contrary in sections 44 to 49, the trustee may allocate and transfer, in accordance with sections 48(3), any settlement assets to that iwi aquaculture organisation.

(2) However, a transfer of settlement assets under subsection (1) may only be made in proportion to the length of coastline of the relevant iwi that the trustee is satisfied is unlikely to be disputed.

#### **49C Limitations applying if iwi aquaculture organisation receives settlement assets under section 49A**

(1) If settlement assets in the form of authorisations or coastal permits are transferred to an iwi aquaculture organisation under section 49B, the iwi aquaculture organisation, or a new organisation recognised in place of that organisation under section 33(2), must—

(a) not sell, exchange, or otherwise transfer those assets until it holds registered settlement assets allocation entitlements for the relevant assets; and

(b) where another iwi aquaculture organisation becomes entitled to any portion of those assets as a result of holding a registered settlement assets allocation entitlement, transfer the relevant portion of those assets to that iwi aquaculture organisation without consideration or compensation within 12 months of being notified of that entitlement.

(2) This section applies in addition to, and does not limit, the provisions of section 50.

#### **49D Notification of decision to allocate and transfer assets under s 49B**

(1) Following a decision by the trustee to allocate and transfer assets in accordance with section 49B, the trustee must notify the iwi aquaculture organisations of the relevant iwi in writing of—

(a) the nature of the decision that has been made;

(b) if requested by an iwi aquaculture organisation, the principal reasons for the decision; and

(c) the right to dispute the decision provided for in section 49E.

#### **49E Implementation of decision**

(1) Subject to (2), a decision made under section 49B may not be implemented by the trustee unless:

(a) 30 working days have passed since notice of the decision was given under section 49D; and

(b) no iwi aquaculture organisation of a relevant iwi has initiated the dispute resolution process provided for in sections 53 to 55.

(2) Notwithstanding (1), the trustee may implement a decision under section 49B at any time:

(a) to the extent that does not deprive any iwi aquaculture organisation that disputes the decision of the benefit of, or any remedy available under, the dispute resolution process provided for in sections 53 to 55; or

(b) If, within the period referred to in subsection (1)(b), the iwi aquaculture organisation of all relevant iwi advise the trustee in writing that they do not intend to invoke the dispute resolution process.

(3) A waiver notified in accordance with subsection (2)(b) is binding on the iwi aquaculture organisation that issues it.

.....

### **Dispute Resolution**

#### **52 Application**

(1) Sections 53 to 55 apply to disputes between the following parties over the following matters—

(a) between the trustee and an iwi over whether an organisation should be recognised or continue to be recognised by the trustee as an iwi aquaculture organisation:

(b) between iwi aquaculture organisations over information to be used to support a claim under Schedule 1:

(c) between the trustee and 1 or more iwi aquaculture organisations over a determination of settlement assets allocation entitlements under section 45(4) or of a coastline or harbour settlement assets allocation entitlement under Schedule 1:

(ca) between the trustee and 1 or more iwi aquaculture organisations over an exercise of discretion section 49B:

(d) between iwi aquaculture organisations over the proportional allocation of entitlements to be attributed to iwi in relation to a harbour listed in Schedule 2:

(e) between iwi aquaculture organisations over the allocation of settlement assets under section 48 or section 49:

(f) between an adult member of an iwi and the iwi over whether, in relation to a matter within the scope of this Act, a decision, act, or omission of the iwi's aquaculture organisation complies or is consistent with this Act or the constitutional documents or policies of the iwi aquaculture organisation.

(2) A dispute under subsection (1)(ca) above must be notified to the trustee and the iwi aquaculture organisations of all relevant iwi within the period referred to in section 49E(1)(a).