

Maori Commercial Aquaculture Claims Amendment Bill – Third Reading

This legislative statement supports the third reading of the Maori Commercial Aquaculture Claims Settlement Amendment Bill 2021.

Objective

The objective of the Maori Commercial Aquaculture Claims Settlement Amendment (MCACSA) Bill is to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004 (the Settlement Act) to better enable the allocation and transfer of aquaculture settlement assets to iwi.

The Bill will:

- ensure iwi can access their settlement assets within an appropriate timeframe,
- improve the delivery of the Crown's aquaculture settlement obligations,
- protect the interests of iwi who do not wish to claim their aquaculture settlement assets, and
- support iwi aquaculture aspirations, as well as further support the growth of the aquaculture industry.

Background

New Zealand's aquaculture industry contributes significantly to regional development and the national economy, generating \$600 million in revenue in 2018 and employing 3,000 people, largely based in the regions. Māori have a significant presence in the aquaculture industry, which will increase over time as iwi acquire and develop their interests in the industry and realise their aquaculture settlement assets.

The Settlement Act provides for the full and final settlement of all Māori commercial aquaculture claims since September 1992 and provides for the allocation and management of aquaculture settlement assets. The Act establishes the Crown's obligations to provide iwi, through Iwi Aquaculture Organisations, with aquaculture settlement assets equivalent in value to 20 percent of the value of all space created for aquaculture development. These settlement assets may be in the form of authorisation to develop aquaculture space, its cash equivalent, or a combination of both.

The Settlement Act currently delivers aquaculture settlement assets by having the Crown enter into regional settlement agreements with all relevant iwi in a region. Although the fundamental provisions of the Settlement Act are sound and performing well, there is an opportunity to improve the allocation and transfer process for aquaculture settlement assets.

Currently, iwi in the Northland and Bay of Plenty regions are facing indefinite delays in receiving their aquaculture settlement assets from the trustee, Te Ohu Kai Moana Limited (Te Ohu Kaimoana) as it has not been possible to get unanimous agreement by all iwi in those regions on how assets should be allocated amongst them.

In Northland, there are nine Iwi Aquaculture Organisation's who are unable to access their aquaculture settlement assets. This is due to one Iwi Aquaculture Organisation in the region who is unwilling to participate in regional negotiations and the dispute resolution process due to their objection to the Settlement Act as a matter of principle.

In the Bay of Plenty, 11 Iwi Aquaculture Organisation's and one Recognised Iwi Organisation are facing indefinite delays as one iwi does not have the required governance arrangement in place to participate in either regional negotiations or the dispute resolution process.

The dispute resolution process provided in the Settlement Act has been unable to address the issues in Northland and Bay of Plenty and there is a risk that similar issues will arise in future regional settlement processes. If changes are not made, settlement assets for iwi in those regions will remain held in trust by Te Ohu Kaimoana indefinitely, causing further frustration for those iwi who will be unable to realise their aquaculture aspirations and contribute to the broader aquaculture industry.

Key features of the Bill

Limited discretionary power to allocate assets to iwi

The Bill amends the Settlement Act to provide Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture settlement assets to iwi when Te Ohu Kaimoana is satisfied that the dispute resolution process provided in the Settlement Act (which includes reference to the Māori Land Court) has been unable to resolve the issue or could not be used in the situation, and either:

- it is clear that all iwi in a region (through their iwi aquaculture organisations and any recognised iwi organisation of a relevant iwi that does not have an iwi aquaculture organisation) are unable to reach agreement, in accordance with the provisions of the Settlement Act, about how regional aquaculture settlement assets should be allocated among them, or
- Te Ohu Kaimoana is satisfied that it is unable to make a determination on aquaculture settlement allocation entitlements for a region because it has not been able to recognise iwi aquaculture organisations for one or more iwi in that region.

The Bill further limits the discretionary power by requiring a period of at least 24 months to have passed, from when the first settlement assets for the region were transferred to Te Ohu Kaimoana, before the discretion can be exercised. This is intended to allow sufficient time before the discretion is exercised for all iwi in a region to come to an agreement, which would allow Te Ohu Kaimoana to allocate and transfer aquaculture settlement assets for the region to iwi.

Limited use of discretionary power to partially allocate assets to iwi

The Bill also sets out the requirements for a partial allocation of assets to iwi, requiring Te Ohu Kaimoana:

- to ensure that two or more iwi aquaculture organisations (or any recognised iwi organisation of a relevant iwi that does not have an iwi aquaculture organisation) can formally agree on the partial allocation of settlement assets, up to their collective maximum entitlement, and
- be satisfied that the partial allocation is unlikely to be disputed by other iwi. Te Ohu Kaimoana would continue to hold in trust those assets not subject to the agreement.

Requirement to notify iwi of intent to exercise the limited discretionary power

The Bill sets out the requirement that, before it implements a determination to exercise the limited discretionary powers, Te Ohu Kaimoana must notify relevant iwi of its determination.

Te Ohu Kaimoana must not implement its determination unless 30 working days have passed since its determination was notified, and no relevant iwi has disputed the determination by initiating the dispute resolution process provided in the Settlement Act.