



Maori Commercial Aquaculture Claims Settlement Amendment Act 2011

Public Act 2011 No 69
Date of assent 12 September 2011
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011.

2 Commencement

- (1) Section 7(2) and (3) come into force on the day on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 October 2011.

3 Principal Act amended

This Act amends the Maori Commercial Aquaculture Claims Settlement Act 2004.

4 Interpretation

- (1) Section 4 is amended by repealing the definition of **aquaculture management area**.
- (2) Section 4 is amended by inserting the following definitions in their appropriate alphabetical order:
“**anticipated new space** means the amount of space in the coastal marine area that the Minister anticipates will become

new space after the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011

“**aquaculture settlement area** means space in the coastal marine area declared in a *Gazette* notice under section 12 to be an aquaculture settlement area

“**authorisation** has the same meaning as in section 165C of the Resource Management Act 1991

“**iwi** has the same meaning as in the Maori Fisheries Act 2004

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**region** means the region of a regional council or the district of a unitary authority under the Local Government Act 2002”.

- (3) Section 4 is amended by repealing the definition of **new space** and substituting the following definition:

“**new space**—

“(a) means space that, after the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011, first becomes subject to a coastal permit to occupy the space for the purpose of aquaculture activities that has commenced under section 116A of the Resource Management Act 1991; and

“(b) does not include—

“(i) space that is pre-commencement space as defined in section 20; or

“(ii) space in respect of which a regional council is or was required to comply with sections 44B to 44D and, if necessary, section 44E of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or

“(iii) any space that has been transferred to the trustee as a settlement asset before the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011”.

- (4) Sections 23, 24, 27, 28, 56, 58, and 59 are consequentially amended by omitting “Minister of Fisheries” in each place where it appears and substituting in each case “Minister”.

5 Meaning of settlement assets

- (1) Section 5(1)(a) is amended by inserting “or the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004” after “this Act”.
- (2) Section 5(1) is amended by inserting the following paragraph after paragraph (a):
 - “(aa) includes any authorisations provided to the trustee by a regional council in accordance with an Order in Council under section 165K, or a notice in the *Gazette* under section 165N, of the Resource Management Act 1991, for the purpose of giving effect to the Crown’s obligations under this Act; and”.

6 New section 6A inserted

The following section is inserted after section 6:

“6A Relationship of Act to Marine and Coastal Area (Takutai Moana) Act 2011

- “(1) Nothing done under or for the purposes of this Act is to be treated as a matter that may be taken into account in determining, under subpart 3 of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011, whether customary marine title exists in a specified area of the common marine and coastal area.
- “(2) Without limiting subsection (1), the provision of authorisations under section 13 is not to be used—
 - “(a) as evidence that an applicant group did not hold a specified area of the common marine and coastal area in accordance with tikanga for the purposes of section 58(1)(a) of the Marine and Coastal Area (Takutai Moana) Act 2011; or
 - “(b) as evidence of a substantial interruption of the exclusive use and occupation of a specified area of the common marine and coastal area for the purposes of section 58(1)(b) of the Marine and Coastal Area (Takutai Moana) Act 2011.”

7 New heading and sections 7 to 16A substituted

- (1) The heading above section 7 and sections 7 to 16 are repealed and the following heading and sections substituted:

“Provision and transfer of settlement assets to trustee that are representative of 20% of new space

“7 Purpose of sections 8 to 18

The purpose of sections 8 to 18 is to require the Crown to provide for, and transfer to the trustee, settlement assets that are representative of 20% of the new space.

“8 Crown’s obligations apply on regional basis

The Crown’s obligations under sections 9 to 18 apply and must be satisfied on the basis that they apply separately to each region.

“9 Crown’s obligations in respect of new space

- “(1) The Crown must ensure that the trustee is provided with settlement assets that are representative of 20% of the new space by way of 1 or more of the following:

- “(a) the provision of authorisations to apply to occupy space in the coastal marine area for the purpose of aquaculture activities and any payment required by section 13(4):
- “(b) the payment of a financial equivalent of that space:
- “(c) entering into 1 or more regional agreements under section 10.

- “(2) The settlement assets provided under subsection (1)(a) must be representative of 20% of the anticipated new space.

“10 Regional agreements relating to new space

- “(1) The Crown may enter into 1 or more agreements (including by deed) in respect of 1 or more regions if the Crown and the parties referred to in section 29A(2) all agree that the Crown’s obligations under section 9 will be satisfied in respect of the regions on the terms set out in the agreement or the agreements.

- “(2) Section 29A(3), (4), (6), and (7) apply to an agreement entered into under this section.

“(3) An agreement under this section may provide for settlement of the Crown’s obligations on any basis acceptable to the Crown and the other parties.

“**11 Settlement in negotiation period**

“(1) The Crown must use its best endeavours to negotiate and enter into regional agreements under section 10 that provide for the Crown to meet its obligations under section 9.

“(2) The Crown must do so within the following periods:

“(a) within 2 years after the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011 for the following:

“(i) the Northland region:

“(ii) the east coast of the Waikato region, which is to be treated as a separate region:

“(iii) the Tasman region:

“(iv) the Marlborough region:

“(b) for all other regions, whichever is the later of the following:

“(i) within 3 years after the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011; or

“(ii) within 2 years after the receipt of the first resource consent application for the purpose of aquaculture activities after the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011 (not being an application to which section 165ZH of the Resource Management Act 1991 applies).

“(3) The Minister may, by notice in the *Gazette*, extend a period specified in subsection (2).

“(4) The Minister may not give a notice under subsection (3) unless the Minister—

“(a) has consulted the trustee and the iwi aquaculture organisations, mandated iwi organisations, or recognised iwi organisations with whom the regional agreement under section 10 is being negotiated; and

“(b) is satisfied that reasonable steps have been taken to negotiate an agreement and that the proposed extension is

likely to enable a regional agreement under section 10 in respect of the initial settlement period to be entered into.

- “(5) If, at the conclusion of the relevant period specified in subsection (2) (or any extension), there is no regional agreement under section 10 that relates to settlement in a region, the Crown must—
- “(a) arrange, in accordance with section 14, for authorisations in any relevant aquaculture settlement areas in the region to be provided to the trustee in accordance with section 9(1)(a); but
 - “(b) if insufficient authorisations are available to be provided to the trustee to meet the Crown’s obligations as set out in section 9, pay the difference to the trustee in accordance with section 9(1)(b).

“12 **Gazetting space for settlement purposes**

- “(1) For the purposes of preserving space to be used for meeting the Crown’s obligations under section 9, the Minister may, by notice in the *Gazette*, declare space in the coastal marine area to be an aquaculture settlement area that is required to meet the obligations.
- “(2) The Minister—
- “(a) may, by notice in the *Gazette*, add to or remove space from an aquaculture settlement area; and
 - “(b) must, if the Crown’s obligations are settled in respect of a region, remove, by notice in the *Gazette*, the space from an aquaculture settlement area that is not required to meet the obligations.
- “(3) Section 165E of the Resource Management Act 1991 applies in respect of applications for coastal permits made in an aquaculture settlement area.
- “(4) In determining whether an aquaculture settlement area will be representative for the purposes of meeting the Crown’s obligations under section 9, the Minister must take into account—
- “(a) the suitability of the space for aquaculture activities; and
 - “(b) the overall productive capacity of the anticipated new space available for aquaculture activities in each region.

“(5) To avoid doubt, the Minister may exercise his or her powers under this section before the preparation of a plan under section 14.

“**13 Allocation of authorisations in aquaculture settlement area**

“(1) This section applies if the Crown is required, either under a regional agreement under section 10 or by section 11(5), to provide authorisations for space in an aquaculture settlement area to the trustee.

“(2) The Minister must direct the regional council in whose region the relevant aquaculture settlement area is located to provide authorisations for aquaculture activities in the space to the trustee (whether or not the regional coastal plan would otherwise require a different allocation).

“(3) A regional council must comply with a direction made under subsection (2).

“(4) As soon as practicable after giving a direction under subsection (2), the Minister must,—

“(a) if an assessment under section 14(4)(d)(iv) shows a difference in value under that provision, consult the trustee about whether a payment of the difference is required; and

“(b) if the Minister decides that such a payment should be made, make the payment to the trustee.

“(5) Clause 3(1)(b) of Schedule 1 does not apply to the provision of authorisations under this section.

“(6) To avoid doubt, section 165R of the Resource Management Act 1991 applies in relation to the provision of authorisations under this section.

“**14 Preparation of plan**

“(1) The Minister must, by 31 December 2012, have started preparing a plan that—

“(a) provides an assessment of the progress made by the Crown in complying with section 9; and

- “(b) to the extent that the Crown has not complied with section 9, provides how the Crown is going to comply with that provision; and
 - “(c) establishes processes and methods for determining the value of the settlement assets to be delivered under section 9.
- “(2) In preparing the plan, the Minister must consult—
- “(a) the trustee; and
 - “(b) all iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations—
 - “(i) whose area of interest includes a part of the coastal marine area; and
 - “(ii) in relation to which the Crown has not, by 31 December 2012, satisfied its obligations under this Act.
- “(3) As soon as practicable after completing the plan, the Minister must provide copies to the relevant regional council, the trustee, and the relevant iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations.
- “(4) Without limiting subsection (1)(c), the processes and methods must—
- “(a) avoid increasing the demand for coastal permits, which would increase the value of space; and
 - “(b) reduce the risk of collusion; and
 - “(c) be cost effective for the Crown; and
 - “(d) enable an assessment to be made of the following:
 - “(i) the amount of anticipated new space in the region; and
 - “(ii) the value that would be representative of each of the types of aquaculture expected to be developed in the anticipated new space in the region; and
 - “(iii) the overall productive capacity of the anticipated new space available for aquaculture activities in each region; and
 - “(iv) the difference in value between—
 - “(A) the costs of obtaining, pursuant to an authorisation granted under this Act, a resource consent under the Resource Man-

agement Act 1991 that could commence under section 116A of that Act; and

- “(B) the costs of obtaining the resource consent pursuant to an authorisation had the authorisation been granted in relation to an aquaculture management area as at 1 January 2005.

“15 Review of plan

- “(1) The Minister must begin a review of the plan prepared under section 14—
- “(a) by 31 December 2017; and
 - “(b) after that date, at intervals of not more than 5 years.
- “(2) However, the Minister must begin a review of the plan prepared under section 14 at any time that it appears that the amount of anticipated new space is likely to change significantly.

“16 Response to review of plan

- “(1) If the plan prepared under section 14 or a review of the plan prepared under section 15 shows that the Crown needs to take action in order to meet its obligations under section 9, the Crown may do so under section 9(1)(a), (b), or (c), as appropriate.
- “(2) Before taking action under subsection (1), the Crown must consult—
- “(a) the trustee; and
 - “(b) the relevant iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations of affected iwi.

“16A When authorisations allocated to trustee lapse

- “(1) Section 165T of the Resource Management Act 1991 does not apply to settlement assets.
- “(2) However, a settlement asset that is an authorisation does lapse if—

- “(a) a resource consent application for aquaculture activities has been declined in respect of the space that is subject to the authorisation; or
 - “(b) a resource consent has been cancelled under section 116A(3) or (7) of the Resource Management Act 1991.
- “(3) If an authorisation that is a settlement asset is transferred and (as a result of the transfer) it ceases to be a settlement asset, the authorisation lapses 2 years after the date on which the holder gives a notice of transfer of the authorisation to the regional council under section 165S of the Resource Management Act 1991.”
- (2) On and from the commencement of this subsection until the commencement of subsection (1), the Minister may by notice in the *Gazette* declare space in the coastal marine area to be an aquaculture settlement area as if section 12, as inserted by subsection (1), were in force.
 - (3) However, no notice in the *Gazette* under subsection (2) comes into force until—
 - (a) the commencement of subsection (1); or
 - (b) any later date that is specified in the notice.

8 Expiry, lapsing, or cancellation of coastal permit to occupy space for aquaculture activities

Section 17(2) is amended by omitting “section 9” and substituting “section 44 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004”.

9 Crown’s obligations

Section 22(3) is amended by repealing paragraph (a).

10 Section 25 repealed

- (1) Section 25 is repealed.
- (2) The Maori Commercial Aquaculture Claims Settlement (Additional Allocation of Space) Order 2006 (SR 2006/86) is consequentially revoked.

11 Section 26 repealed

Section 26 is repealed.

12 Recognition of iwi aquaculture organisations

Section 33 is amended by adding the following subsections as subsections (2) to (5):

- “(2) The trustee must recognise a new iwi aquaculture organisation and record its recognition in the iwi aquaculture register in place of another iwi aquaculture organisation (an **existing iwi aquaculture organisation**) if—
- “(a) the new iwi aquaculture organisation is entitled to be recognised under subsection (1); and
 - “(b) before becoming a mandated iwi organisation under the Māori Fisheries Act 2004, the existing iwi aquaculture organisation notified the members of the iwi of the proposed replacement and of the effect of that replacement in terms of subsections (3) and (4).
- “(3) On and from the time when the new iwi aquaculture organisation is recognised in place of the existing iwi aquaculture organisation under subsection (2), all rights and interests of the existing iwi aquaculture organisation under this Act become the rights and interests of the new iwi aquaculture organisation.
- “(4) Without limiting subsection (3),—
- “(a) any regional agreement entered into under section 10 by the existing iwi aquaculture organisation is to be treated as having been entered into by the new iwi aquaculture organisation; and
 - “(b) any entitlement, claim, agreement, or written statement in respect of the allocation of settlement assets made or entered into by the existing iwi aquaculture organisation is to be treated as having been made or entered into by the new iwi aquaculture organisation; and
 - “(c) any settlement assets held by the existing iwi aquaculture organisation become the settlement assets of the new iwi aquaculture organisation; and
 - “(d) any settlement assets held by an enterprise under section 32(3) for the existing iwi aquaculture organisation are to be held for the new iwi aquaculture organisation.
- “(5) To avoid doubt, section 50 does not apply to settlement assets that become the settlement assets of the new iwi aquaculture organisation by subsections (3) and (4).”

13 Purpose of trust

- (1) Section 35(d) is amended by adding “; and”.
- (2) Section 35 is amended by adding the following paragraph:
 - “(e) perform any functions that are necessary or desirable to facilitate consultation between the Crown and iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations for the purposes of sections 8 to 18.”

14 Duties of trustee

- (1) Section 38 is amended by inserting the following subsection after subsection (2A):
 - “(2B) The trustee, in performing its functions under section 35(e), must consult the iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations of those iwi that it considers, on reasonable grounds, have an interest in the relevant region.”
- (2) Section 38(3) is amended by omitting “subsection (2A)” and substituting “subsections (2A) and (2B)”.

15 Allocation of assets to iwi of region

- (1) Section 45 is amended by repealing subsection (1) and substituting the following subsection:
 - “(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) Section 45(4) is amended by omitting “12 months after the trustee has recognised iwi aquaculture organisations for all the iwi of a region” and substituting “period specified in subsection (4A)”.
- (3) Section 45 is amended by inserting the following subsection after subsection (4):

- “(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.”

16 Basis of allocation of settlement assets

Section 47 is amended by repealing subsection (1) and substituting the following subsection:

- “(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.”

17 Transfer of authorisations or coastal permits

Section 50 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) However, subsection (1) does not apply to a transfer of settlement assets by the iwi aquaculture organisation or trustee if the settlement assets are transferred to a company under the Companies Act 1993 that is wholly owned by—
- “(a) the iwi aquaculture organisation; or
 - “(b) the iwi aquaculture organisation and other iwi aquaculture organisations in the region, but only if the transfer is approved by the iwi aquaculture organisation before the settlement assets are transferred.”
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Legislative history

16 August 2011	Divided from Aquaculture Legislation Amendment Bill (No 3) (Bill 239–2) by committee of the whole House, and third reading
12 September 2011	Royal assent

This Act is administered by the Ministry of Agriculture and Forestry.
