



Te Puni Kōkiri
REALISING MĀORI POTENTIAL

Māori me te Whanaketanga Ahumoana

Māori and Aquaculture Development



REALISING MĀORI POTENTIAL



The framework above identifies three key enablers that are fundamental to Māori achieving Te Ira Tangata (improved life quality) and realising their potential. All our written information has been organised within these three key enablers or Te Ira Tangata.

1	<i>Mātauranga – Building of knowledge and skills.</i>
2	<i>Whakamana – Strengthening of leadership and decision-making. This area recognises that Māori success relies on their capacity to lead, influence and make positive choices for themselves and others. It acknowledges that the capability and opportunity for Māori to make decisions for themselves, to act in self-determining ways and to actively influence decisions that affect their lives, is integral to individual/collective wellbeing.</i>
3	<i>Rawa – Development and use of resources.</i>
4	<i>Te Ira Tangata – The quality of life to realise potential.</i>

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INTRODUCTION

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This information booklet was commissioned by the Ministry for the Environment and produced in partnership between the Ministry for the Environment and Te Puni Kōkiri. This booklet was written by Keir Volkerling who has had a long involvement with natural resources issues involving iwi.

Aquaculture development is of relevance to Māori for a number of reasons:

- New legislation for aquaculture development is being implemented
- An allocation of aquaculture assets will be made to iwi
- Many iwi are being allocated fishing assets, which are complementary to aquaculture assets
- Aquaculture, if appropriately developed, can be consistent with kaitiakitanga

This paper discusses how tangata whenua can:

- Engage with the planning processes for aquaculture development;
- Develop relationships with the aquaculture industry; and
- Implement arrangements for the allocation of aquaculture assets

The aim is to provide tangata whenua with sufficient information and access to the relevant tools to enable effective participation in the planning and development processes.



MĀORI AND AQUACULTURE DEVELOPMENT

1.0 PURPOSE OF THIS PAPER

- 1.1 In 2004 a number of legislative changes affecting aquaculture were enacted. These have special relevance to Māori because:
- 1) Māori have a significant interest in the aquaculture industry.¹
 - 2) There is a potential for aquaculture development to impact on customary harvest of kaimoana.
 - 3) Many iwi are involved in the fishing industry, and aquaculture development will diversify their operations.
 - 4) An allocation of an equivalent of 20 percent of aquaculture space created since 1992 is possible for many of those same iwi.
- 1.2 While aquaculture development has the potential to contribute positively to tangata whenua, inappropriate development can compromise values and resources important to coastal whānau, hapū and iwi.
- 1.3 This paper addresses aquaculture development for Māori in three ways:
- 1) Any new aquaculture space must be created through changes to regional coastal plans. Tangata whenua need to understand what this means in practice, and how they can become engaged with the process.
 - 2) In order to benefit from the 20 percent allocation of aquaculture space there are requirements for iwi to meet. There are options for iwi as to how they can manage these assets.
 - 3) For many Māori, development of aquaculture space will only be possible through partnerships with industry. There are potential benefits and problems from such arrangements that need to be considered.
- 1.4 This paper aims to provide tools for tangata whenua to enable their own aquaculture development within their own kaitiakitanga, and for effectively influencing regional planning to take their values into account.
- 1.5 The aquaculture reforms and their implementation involve many technical issues relevant to the Resource Management Act 1991 ("the RMA") and other statutes. This paper is written for those with some familiarity with RMA implementation, or those with access to advice on those issues.

¹ Estimated as up to 50 percent of the industry



2.0 AQUACULTURE AND KAITIAKITANGA

- 2.1 Kaitiakitanga has definitions in the RMA and other legislation. For many tangata whenua, the practice of kaitiakitanga implies far more than is contained in these short definitions²
- 2.2 In practice many tangata whenua responses to the RMA have been in terms of protection of resources and values critical to them. Kaitiakitanga is also concerned with use of resources for the sustenance of whānau and hapū. These concepts are generally consistent with the RMA defined sustainability.
- 2.3 Aquaculture can be developed so that it represents sustainable management of resources in terms of the RMA, and at the same time implements traditional kaitiakitanga.

3.0 THE AQUACULTURE REFORMS – PLANNING

- 3.1 The aquaculture industry went through a boom period during the 1990s, and demand for suitable coastal space increased fivefold. Existing provisions of the RMA did not provide adequate response to the pressures which arose. Marine farmers, local communities, and the government all wanted change.
- 3.2 In response, the government placed a moratorium on aquaculture development while it reviewed the legislation governing it, and provided councils with time to plan for it.
- 3.3 Prior to the reforms, there was a dual permitting system for establishing a marine farm in the coastal marine area. This required firstly getting a RMA coastal permit from the regional council³ and then secondly, a marine farming or spat catching permit from the Ministry of Fisheries.⁴
- 3.4 Since the RMA responds on a first come – first served basis, allocation problems arose. In prime aquaculture areas, such as the Marlborough Sounds, there was competition for space with no adequate mechanism for deciding between applicants. The moratorium on applications initially halted the process, and the aquaculture reforms were in part intended to address the allocation issue.
- 3.5 Aquaculture activities can now only take place in zones called Aquaculture Management Areas (“AMAs”). Existing marine farms at the time the new legislation was enacted that

² A description of kaitiakitanga is in Appendix One

³ Aquaculture can be developed on land. Planning and resource consent requirements are far simpler for such developments, and most of the key issues dealt with in this paper are not relevant to land based enterprises. See Appendix Four for details.

⁴ Prior to the reforms there were also a number of existing marine farms that were authorised by leases or licences issued under the Marine Farming Act 1971.

were granted under the old regime under other Acts were deemed to have RMA coastal permits. Provided the regional coastal plan or proposed regional coastal plan did not prohibit aquaculture in the area they were located in, the areas those existing farms covered are deemed to be AMAs. Any new AMAs must be established through a plan change to the regional coastal plan.

3.6 There are three different ways in which new AMAs can be created:

- 1) Regional councils⁵ can initiate and cover the costs of a plan change. Once created by this process, space for aquaculture will be allocated using a method such as public tender.
- 2) Members of the public can apply for a private plan change. Most of the costs for this will be borne by the applicant. Once created, the space is offered for allocation in the same way as for a council initiated plan change. The applicant has no special rights of preference to be allocated space and authorised to apply for a resource consent. Given the likely high costs associated with a plan change, and the lack of guarantee of the applicant being allocated the space created, it is anticipated that this method will not be used often.
- 3) The regional council can issue invitations to request a plan change, through a public notice. Anyone can respond to these requests. These invited private plan changes (IPPCs) are also funded by the applicant. Once an IPPC has successfully developed an AMA, the applicant is given authorisation to apply for a resource consent in 80 percent of the AMA.⁶ This is likely to be the most common method of AMA development.

3.7 The regional council may also identify areas which are excluded from AMA development. Although this is not included within the coastal plan, it is done through a public consultation process⁷. No plan changes can be applied for within an excluded area.

3.8 Regardless of whether regional councils intend to notify AMAs themselves or not, some councils may need to develop plan changes to direct how aquaculture will be managed under the new legislation. Northland Regional Council is the first to develop such a plan change, and others will follow.⁸

4.0 THE AQUACULTURE REFORMS – ALLOCATION TO IWI

4.1 Aquaculture development has special relevance to Māori because of the allocation of aquaculture space to coastal iwi (this means iwi who have estuaries, coastal access or harbours within their rohe). Details of how that allocation is to be implemented are considered in more

⁵ In this paper references to Regional councils include Unitary Councils

⁶ The 20 percent balance is available for allocation to iwi.

⁷ It must follow the RMA First Schedule requirements

⁸ See 5.2 in this paper for progress of regional councils in developing AMA plan changes.



depth later in this paper⁹. Specific aspects of the implementation are relevant to other matters, such as coastal plan content, and are discussed further in this paper.

- 4.2 The equivalent of 20 percent of all aquaculture space created between 21 September 1992 and 31 December 2004 under the previous legislation¹⁰ must be allocated to those coastal iwi recognised in the Māori Fisheries Act 2004 ("the MFA"), subject to some conditions. Any new space created after the aquaculture reforms will automatically have 20 percent allocated to iwi.
- 4.3 To be eligible for allocation, iwi must be Mandated Iwi Organisations in terms of the MFA, and must have a clause in their constitutions authorising them to act as an Iwi Aquaculture Organisation in relation to receiving aquaculture assets. Iwi within a region must also agree to how the settlement assets will be allocated amongst themselves.
- 4.4 The allocation is initially made to the Takutai Aquaculture Trust (The Māori Commercial Aquaculture Settlement Trust). Te Ohu Kai Moana ("TOKM") is the trustee for this trust. The Takutai Trust will allocate assets to iwi once they have satisfied certain conditions.
- 4.5 The aquaculture assets being allocated are the rights to apply for a resource consent in the allocated 20 percent of new aquaculture space (this is referred to as the "authorisation" to apply for a consent); or to hold the resource consent for the use of 20 percent of existing space that has been purchased by the Crown and allocated to the Trustee¹¹. Where the Crown has purchased space (and the resource consent), what is allocated does not include the capital assets – lines, anchors, buoys etc. The allocation is determined on a regional¹² or harbour basis – ie those coastal iwi within the regional council boundary or a specific harbour will be allocated a negotiated or determined share of the 20 percent allocation.
- 4.6 Within certain specified harbours, the allocation is to those iwi which have coastlines within the harbour. The harbours referred to are those in the legislation, and does not include all harbours in the country.¹³

5.0 REGIONAL COUNCIL PLANNING

- 5.1 There is a range of responses from regional councils nationally to the aquaculture reforms in terms of coastal planning. There are regions where no plan changes are currently proposed. These are regions that are not suited to aquaculture development, have no

9 For details, see 13.0 in this paper

10 This refers to processing applications prior to the reforms. This includes space currently being created by permit applications for marine farms that were notified by councils before the aquaculture moratorium came into effect on 28 November 2001

11 See 13.4 for more explanation

12 Regional council regions

13 The harbours listed in the Māori Commercial Aquaculture Claims Settlement Act are in Appendix Two

available space left, or have had no expressions of interest from industry. That could change in future when new technologies or shortage of available space elsewhere makes them more desirable, at which time plan changes will become relevant. These regions are Gisborne, Taranaki, Hawke's Bay, greater Wellington, Nelson, Tasman, West Coast, Otago and Southland.

- 5.2 Some regional councils have begun processes identifying areas where aquaculture may and may not be appropriate:¹⁴
- Northland undertook a constraints mapping exercise prior to the reforms. The council has decided not to exclude areas, but will now use the maps for guidance for IPPC applicants.
 - Auckland also developed constraints maps earlier, and intends to use them in determining excluded areas.
 - Waikato will determine exclusion areas.
 - Bay of Plenty has developed Use and Value Maps, and intends to use them to determine appropriate locations for AMAs and excluded areas.
 - Taranaki has produced aquaculture constraints maps.
 - Canterbury has consulted on excluded areas, and intends to notify them soon.
 - Otago will produce constraints maps.
- 5.3 It is unlikely that many councils will initiate AMA plan changes themselves. The most likely method of AMA development to be adopted by councils is the IPPC process.

6.0 PLAN CHANGES UNDER THE RESOURCE MANAGEMENT ACT 1991 (RMA)

- 6.1 Most tangata whenua involvement with the RMA has been through responses – usually opposition – to resource consent applications. Experience in formal plan development processes is usually more limited.
- 6.2 The initial plan change required for aquaculture development that most regional councils are considering is not to establish AMAs, but to establish a policy framework to guide consequent plan changes to establish them. This is a different type of plan change from those usually developed. Plan changes are usually for the management of specific resources, or to create zones, or to amend existing details of plans. Subsequently resource consents can be applied for in terms of the new planning instrument. In the case of aquaculture, it is likely that the first plan change will set the terms for being able to assess

¹⁴ This information was current in September 2006. Up to date information can be obtained directly from the relevant regional councils.



and determine later plan changes to create AMAs. While the initial plan changes need to provide for the management of marine resources that can be impacted by aquaculture development, they also must give guidance on the process issues involved with plan changes, in particular how councils will manage the selection of competing applications for IPPCs.

- 6.3 A complicating factor is that not all processes relevant to aquaculture must be conducted under the RMA. Some functions, such as selection of the successful IPPC bids, can be directed from the regional coastal plan (an RMA document), but carried out under the Local Government Act 2002 ("the LGA"). How these two pieces of legislation should interact is unclear in many ways, and largely untested. This places further challenges on understanding the nature of a plan change, and responding to its details.
- 6.4 The 2005 amendments to the RMA raised the requirements for submissions. In the past it has been possible to write very brief initial submissions, and then to prepare more extensive submissions for the hearing, as long as there were no new issues raised in the more extensive submissions. Now councils can require written briefs of evidence, including those for expert witnesses, to be provided no later than five working days prior to the hearing. This may place higher demands on those preparing for a hearing, as submitters may need to be more prepared sooner than was required previously.
- 6.5 This requirement can follow through to the Environment Court. The Court may now, whether or not the parties consent, accept evidence that was prepared at a hearing, and direct how the evidence is to be given to the Court. This places new and higher demands on those preparing submissions and evidence at the original hearing. In the past a fresh start was possible at the Environment Court. Now, at the stage of preparation for the original hearing, it must be borne in mind that the evidence presented may need to be used at an appeal. This places further demands on the professionalism of preparation and presentation. The Environment Court is also now required to consider the council's decision in determining any appeal. This also means that there is a greater need for any submissions made to be clear and concise to assist the councils to make informed decisions.
- 6.6 The usual course of actions for a council-initiated plan change are:
1. Council conducts a public consultation process on a proposed plan change. *[This must be carried out in terms of the First Schedule to the RMA]*
 2. Council publicly notifies a proposed plan change.
 3. Written submissions are received by the council. *[The detail of what is notified in the plan change will influence what follows. It is possible that the notified change is one that can be fully supported. In that case a submission in support can be written. It is important in this case to submit, because if there are later challenges to a position, being*

a submitter ensures an ability to participate in any subsequent appeals. If the notified plan change cannot be supported, a submission in opposition can be prepared].

4. The council notifies a summary of submissions. At this stage, anyone can make a submission supporting or opposing any of the submissions that have been received by the council.
5. The submissions are heard by a hearing committee established by the council. The committee can consist of councillors or external commissioners, or a mix of the two. External, or independent, commissioners are often used where specialist expertise is needed, or there are difficult political issues. A hearing is likely to take a week or more. *[While appearing and making oral submissions is optional, it is desirable. It gives the opportunity to explain the response in the written submission. If possible, attending the whole of the hearing is advisable for the submitters so that other evidence can be heard, and the mood and reaction of the hearing committee understood].*
6. The committee's decision will then be made public, and adopted by the council. Appeals to the decision can be lodged in the Environment Court. *[The extent to which the issues which have been promoted by tangata whenua have been provided for, and the points of law that can support their position, will determine whether an appeal is warranted. Whatever the outcome of the hearing committee's decision, an appeal by some parties is almost inevitable].*
7. If the decision is appealed, a court directed mediation usually follows. This is a less formal and less demanding process than appearing in the Environment Court, but it requires expertise in planning, RMA law, and a range of technical issues relevant to the plan change. Agreements reached in this process are made binding by the Court. *[This process can take a week or more, and requires time and resources. Failure to participate will make it unlikely for tangata whenua issues to be resolved at this stage].*
8. If there are outstanding issues to be resolved, an Environment Court appearance can follow. *[This is more formal, demanding and expensive than mediation. A commitment of time and resources is necessary if there is a decision to participate. This can involve a considerable amount for legal fees, expert witnesses, and so on].*

6.7 Each of these stages requires time, expertise, and financial and other resources. Tangata whenua need to make well informed and considered decisions about engaging in these processes.

[Note: The processes above apply to any plan change. For a private plan change or an IPPC, the applicant is responsible for the public consultation process and the preparation of the plan change, and any supporting documentation. The council will then take over the role, and be responsible for notification of the plan change, submissions and the hearing. In the case of a regional council's plan change, the council will pay the costs. For the development and processing of a private plan change or an IPPC, the proposer of the plan change will pay. This may be as much as \$500,000].



7.0 PLANNING INSTRUMENTS UNDER THE RMA

- 7.1 Regional coastal plans ("RCPs") are developed under the RMA. They are mandatory, every region must have one. They can have both regulatory provisions and best practice guidelines. Regional coastal plans also have the following attributes:
- They must be consistent with the RMA, and in particular with Part Two of the RMA which sets out the purposes and principles of the Act. Part Two recognises social, cultural and economic components of the environment. Taonga tuku iho, kaitiakitanga, and the Treaty have recognition.
 - The plans fit within a hierarchy of planning instruments, and must give effect to those above them in the hierarchy. The RCP must give effect to the regional policy statement and the NZ Coastal Policy Statement.
 - Where National Environmental Standards have been set, a plan cannot contravene them. However, a plan can include more stringent requirements.
 - The RMA allows land-based activities as permitted activities unless there is a good reason for them to be regulated or prohibited. However, in the Coastal Marine Area ("the CMA"), the opposite applies. All activities in the CMA must have a resource consent unless specifically allowed by a rule in the plan. Such activities generally have to justify why they need to take place in the CMA.
 - The RMA is an "effects based" statute. RMA plans should indicate which effects of activities are acceptable, rather than which activities should be allowed. For instance, rather than stating that no aquaculture activities should be allowed near the breeding areas of Maui dolphins, it is more appropriate to state that no aquaculture should have effects that impact negatively on Maui dolphins habitat. Similarly, effects on customary kaimoana beds, or on wāhi tapu, can be managed in this way.
 - While planning instruments can simply restate parts of the RMA, their aim should be to add value to the RMA by clearly setting out how the resources of the region will be managed and guide decision making.
 - Methods in an RMA plan can use processes outside the RMA, such as under the LGA. Also, the plans can refer to documents not developed under the RMA. (This is a new amendment to the RMA, and how it should be implemented is as yet untested).
 - The RMA originally required plans to be structured in terms of issues, objectives, policies, methods and anticipated environmental results. These requirements were reduced in 2005 to only require objectives, policies and rules to be included in a RMA plan. Future implementation of plan changes will demonstrate how these changes will be translated into practice.
- 7.2 While plans and plan changes are usually initiated by councils (other than private plan changes), their final versions are often determined by the public submission process and if appealed, the Environment Court. Councils and others may have political agendas for advancing plan content, but in the end it will be judged in environmental terms. As a result of the 2005 amendments to the RMA, however, the council's decision on any plan or

plan change must be released within two years after it was publicly notified. The Minister of Conservation approves all new regional coastal plans and changes to regional coastal plans, before they become operative.

- 7.3 Plans must be reviewed no later than ten years from the date they become operative. This gives some certainty to councils, developers and the community. However, if the plan is deficient, and this is often the case with respect to tangata whenua values, it can present a long term problem. For this reason effective input into the plan development is vital for tangata whenua.
- 7.4 When preparing a plan or a plan change, iwi planning documents (completed by a recognised iwi authority) which have been lodged with the council must be taken into account. Future IPPCs must also take such kaitiaki planning into account. "Taking into account" requires the council to fully consider the relevant tangata whenua plans, and have clear reasons for their responses as to how they have taken them into account in their decision making. The development of iwi plans provides an opportunity to help set the agenda for plan change details. These may change, or disappear, during the statutory processes. But it ensures that the issues are debated, and have a better opportunity for inclusion.

8.0 AQUACULTURE PLANNING – GENERAL ISSUES

- 8.1 There are potential economic gains, and potential increases in available kaimoana, which can make aquaculture development attractive to tangata whenua. There are also potential negative impacts including those on customary kaimoana gathering and on wāhi tapu and other sites. Kaitiakitanga properly exercised will ensure that the tension between these two factors is well managed. The challenge is to ensure kaitiakitanga is effective in regional coastal planning.
- 8.2 Many of the details of the plan changes will be technical in terms of the RMA. While these need scrutiny by tangata whenua, priority should be given to two aspects:
- 1) Have customary kaimoana resources, sites of significance to Māori, and Māori values been sufficiently protected.
 - 2) Do the processes for selecting successful IPPCs applicants provide fair and equitable access for Māori.

9.0 THE INVITED PRIVATE PLAN CHANGE PROCESS (IPPC)

- 9.1 Before starting an IPPC process the council may identify excluded areas in which the council will not accept requests for private plan changes. Whether or not areas have been excluded, the first step for IPPCs is the council inviting applications for plan change by way of a public notice. The council has a lot of discretion as to how and what will be in that invitation. While it will be possible to try to influence the decisions, to challenge them



would require a High Court action, with huge cost and uncertain outcome. It would be limited to points of law in the process by which their invitation was made, which may be unlikely to produce different results¹⁵. Essentially, councils have discretion. Maintaining communication and relationships between tangata whenua and the council will be essential to enhance opportunities.

9.2 When the applications for IPPCs are received, council can reject inadequate ones in terms of the First Schedule of the RMA¹⁶.

9.3 It is the next stage which is the most critical. If there are more proposals for IPPCs for a space than the area can accommodate, then the regional council will need to select the application to go forward.

9.4 What is required by the RMA is a "fair and reasonable" process. There are two factors which create a tension when seeking resolution to this.

9.4.1 The regional council could require full preparation of plan change details with the initial proposal. This would enable them to select the best option in terms of strict criteria

- This would provide a high level of certainty of process for all involved in terms of what degree of information is required.
- However, the results might be neither fair nor reasonable, and the consequence might be little or no aquaculture development. Full plan preparation, which might cost several hundred thousand dollars, might have no certainty of success. In fact, if there were more contenders for a space than space available, at least some must expend costs for no return.
- Less certainty of success coupled with investing resources upfront in this process could be a disincentive to make an IPPC application.
- Also, a full proposal for plan change should include community consultation. Those seeking space would then be in a position of having to reveal potentially commercially sensitive information to competitors.

9.4.2 The regional council could implement a two stage process, with less comprehensive information in an initial proposed plan change as a first stage, so that preferred applicants could be selected to go on to preparation of a full plan change proposal. The number of preferred applicants could be matched to the available space, so

¹⁵ By revisiting a decision with new attention to process details, a different decision may ensue. However, it is possible that with improved process, the initial decision could still be confirmed.

¹⁶ The RMA provides for vexatious and frivolous applications to be rejected. Other conditions may not be met, such as not being lodged before a deadline, or not providing the required fees, in which case rejection can follow.

that all in the second stage would have an opportunity for success, in the normal context of the statutory planning process.¹⁷

- The range of information, and the detail of information, required at this earlier stage, would be far less costly to prepare. While there still could be applicants who fail to go forward to develop full proposals, and hence their initial investment would be lost, that could be an acceptable risk if the amount of money involved was significantly lower.
- However, unless carefully designed, the selection process and decisions made in its terms would be open to successful legal challenge. The difficulty is to determine what nature and extent of preliminary information is sufficient to determine appropriate applicants to be selected, without it either being too expensive to prepare, or being insufficiently rigorous in determining a selection.
- The RMA may not prohibit such an approach, but neither does it specifically provide for it. It therefore needs to be carefully determined if a two stage approach developed is effective, fair and reasonable, and legitimate in terms of the RMA, otherwise this approach could be subject to legal challenge.
- The RMA provides little assistance in this process. The aquaculture legislation is new and there are therefore no examples or precedents to follow.

9.5 While these are technical issues to be determined under the RMA or the LGA, they are critical in the exercise of kaitiakitanga. If Māori are to be able to enter the industry, or to increase their existing stake, this process is the essential gateway. If it is not correctly structured, it is possible that no aquaculture development will occur; or only those with access to significant venture capital sources would be able to consider investment. For many whānau, hapū or iwi, this may not be a realistic option.

10.0 TANGATA WHENUA RELATIONSHIPS

10.1 There are incentives for tangata whenua groups to work together to facilitate development of aquaculture. This can be relevant for whānau and hapū within an iwi, for iwi within a region, and for iwi nationally.

10.2 Aquaculture development usually involves relatively small areas. Even the most extensive marine farms are smaller in area than most forestry blocks¹⁸. The location of an aquaculture venture is often within the rohe of a single hapū. Whether the hapū itself wants to develop the venture, or the impacts of the development are relevant to a hapū,

¹⁷ As described in 6.6 of this paper

¹⁸ With the exception of the large offshore marine farms, however these farms involve new technology and are yet to prove they can successfully grow product and be economically viable.



local reactions and local knowledge is vital, and need to effectively inform the planning and development.

10.3 There are many aspects of aquaculture development which encourage hapū to work with iwi:

- Because the RMA planning takes place at a regional level, iwi are likely to be involved in the process. They will be able to include the concerns of a number of hapū in the general iwi response.
- Expertise in RMA issues may be well developed at the iwi level. Hapū experience and expertise in the RMA more often relates to resource consent applications, and the demands of the planning process may be hard for the hapū on its own to meet.
- If a hapū aquaculture development is proposed, the costs of a plan change for an IPPC can be considerable, and beyond the means of hapū, so iwi assistance may be sought.
- The 20 percent allocation is made to iwi. While this can be made available to hapū by iwi, there is no direct allocation to hapū.

10.4 There are advantages for iwi within a region to have a collective approach to aquaculture development:

- How the 20 percent space is allocated must be addressed by all iwi in a region or specified harbour¹⁹ and the final outcome of the asset will be resolved by those iwi who own a share of that asset.
- While individual iwi within a region will have specific planning issues that need to be taken into account in the RCP, a lot of common ground is likely. This can include how Māori values are provided for, how the IPPC selection process is designed, and so on.
- While some iwi have expertise and experience in addressing RMA planning, there are many which do not. Further, the RMA aquaculture reform implementation is complex and untested. Pooling iwi resources regionally should be cost effective.
- Iwi in a region can present a collective position to a planning proposal, while ensuring individual iwi and hapū can add their specific issues to individual submissions. This is potentially more effective than separate and possibly inconsistent submissions. However, iwi will need to work carefully to ensure that the process is inclusive.
- Iwi regionally can strategically plan for their collective aquaculture development. An economy of scale and effective coordination can be achieved.

10.5 Iwi nationally can gain from networking and developing collective stances. Māori experience in aquaculture development varies greatly across the country.

- In some areas, Māori owned aquaculture businesses have been established for many years.

¹⁹ See 13.6 of this paper.

- Some iwi have developed competence in RMA planning
- Other areas have had considerable experience of litigation of aquaculture issues.

11.0 TANGATA WHENUA AND THE AQUACULTURE INDUSTRY

11.1 In developing aquaculture ventures, whether at the planning or implementation stage, tangata whenua are likely to need to form partnerships with those already in the industry.

11.2 There are a number of industry initiatives that tangata whenua need to be aware of and consider engaging in to facilitate aquaculture development:

a) NZ Aquaculture Ltd

- For some years species groups (such as the NZ Mussel Industry Council or the NZ Salmon Farmers Association) have separately represented the aquaculture sector. A national aquaculture body has now been formed, with an appointment for an Iwi/Māori representative on their Board²⁰.
- NZ Aquaculture Limited are proposing to have a Māori Relationship Manager, responsible for providing support for the development and implementation of a comprehensive industry-led information and communications strategy for Māori.
- At a local level, Regional Aquaculture Organisations are proposed to promote aquaculture and to develop opportunities. Māori will have the opportunity to participate in these bodies.

b) NZ Aquaculture Sector Strategy

- This strategy was developed by the industry, and released in July 2006²¹. It aims to promote and develop sustainable aquaculture, including supporting Māori success in aquaculture.
- The strategy includes high level goals, which tangata whenua within a region can focus into their own context, and develop specific strategies to direct their aquaculture enterprises.

c) The Northland Aquaculture Consortium

- This organisation was formed to encourage cooperation within the industry when aquaculture space becomes available through RCP plan changes. Some Taitokerau iwi are involved with the consortium, and others are likely to join.
- A similar structure could be developed in other areas. If tangata whenua considered it in their interest that such a body is formed, they could initiate the process.

d) Determination and management of new space

- As any new aquaculture space will have 20 percent allocated to iwi, iwi have an incentive to work proactively with plan change applicants, whether industry or

²⁰ Currently held by Harry Mikaere.

²¹ The strategy is available at [http://nzmic.co.nz/Assets/Content/Publications/sector percent20strategy percent20final percent20low percent20resolution.pdf](http://nzmic.co.nz/Assets/Content/Publications/sector%20strategy%20final%20low%20resolution.pdf)



council, to determine how that space is defined and managed. This is further examined in 13.3 in this paper.

11.3 While partnerships with industry are often beneficial, and in some cases essential, tangata whenua need to be sure that their objectives and those of their partner's are consistent with each other. The tangata whenua need for partnership may be for access to capital and expertise; the industry may seek tangata whenua support in planning and resource consent processes, and to enable access to the 20 percent space allocation. These different objectives may be compatible, but need to be carefully articulated and understood prior to binding agreements being made.

11.4 Industry partners may want to develop an aquaculture venture for a number of reasons, including ensuring a continuity of supply for existing contracts or processing businesses, diversifying to spread risks of investment, and entry to a region as preliminary to further development. Tangata whenua may have aims to provide employment for their people, to complement existing fishing enterprises, or as an expression of their own mana moana. Again, these different objectives need not conflict, but they need to be set out clearly by each party to an agreement. If there are changes (such as in the exchange rate, or the world price for product) the industry partner may want to delay or reduce an operation if an economic benchmark is not met. Tangata whenua may accept lower returns if, for instance, employment is sustained. Conversely, an industry partner may be willing to speculate venture capital, where the tangata whenua may be more conservative in putting beneficiary assets at risk.

11.5 Where there is experience, positive and negative, that should be recorded, and could contribute to best practice guidelines for industry / tangata whenua partnerships.

12.0 THE NORTHLAND REGIONAL COUNCIL ("THE NRC") PLAN CHANGE

12.1 NRC has initiated the plan change process, and is at the time of writing the only case study that exists. Many other regional councils are observing what happens to NRC to inform their own plan change processes. The national inter-departmental Implementation Team has provided a high level of assistance to the NRC for its plan change, as it will effectively provide an example from which future coastal planning for aquaculture can benefit.

12.2 NRC has held workshops with stakeholder groups to work through the details of their draft plan change. These have been attended by representatives of: iwi and hapū; community groups; industry; TOKM; government departments, including Implementation Team members; district councils in Northland; and other regional councils. A smaller task group has worked on details of the plan change.

12.3 A hui was held for iwi and hapū in Taitokerau to clarify the nature of the plan change, and the context for aquaculture development. The issues addressed were largely those included in this paper, but focussed specifically on the Northland situation.

12.4 These processes have ensured that a dialogue has been established between the stakeholder groups, and that the NRC was able to make changes to its draft plan change in response to the various inputs. This should lead to less contention at the hearing stage, simplify the decision making of the hearing committee, and minimise the likelihood of appeals to the Environment Court following a decision.

12.5 NRC notified the plan change²² to its regional coastal plan on 26 October 2006, and submissions have been received. As noted above, this is not a plan change to establish AMAs, but is to strengthen the policy framework before inviting private plan changes.

12.6 The extent to which tangata whenua issues are eventually included in the NRC plan change can be monitored over time. This will provide guidance for tangata whenua and regional coastal planners elsewhere.

13.0 THE 20 PERCENT ALLOCATION

13.1 There are three distinct categories of aquaculture space:

- 1) New space is space created by applications lodged after the commencement of the new aquaculture legislation (i.e. from 1 January 2005), as well as space that is created by some applications made prior to the reforms. 20 percent of this new space will be allocated to iwi.²³
- 2) Pre-commencement space is existing space in marine farms created between 21 September 1992 and 31 December 2004. The amount of this space varies across regions.²⁴ The equivalent of 20 percent of this space is to be allocated to iwi.
- 3) Pre 1992 space is space in any marine farms created prior to 21 September 1992 and is not included in the allocation.

13.2 Any space that is allocated to iwi must be "representative" space – i.e not the best, or the worst. How this is to be achieved in practice will need to be carefully considered.

13.3 New space

- 1) All new space created within AMAs must have 20 percent allocated to iwi.

²² Information on the NRC plan change can be found at www.nrc.govt.nz

²³ There are some applications which were lodged but not publicly notified prior to the commencement of the aquaculture moratorium. These applications are known as the section 150B(2) "frozen applications", named after the section of the RMA that defines them. These applications will only be processed if an AMA is established over them in an operative regional coastal plan, at which time they will be considered "new space" and will be subject to the 20 percent allocation to iwi.

²⁴ Details region by region are in Appendix Three



- 2) It appears that AMAs will most likely be created as a result of IPPCs. Automatically 20 percent of this space will be allocated to iwi.
- 3) It is in the interest of iwi to be proactive in determining details of this allocation space, and how the rights to it will be managed in practice. The 20 percent rights provide an entry point and a bargaining chip for iwi. This may be realised by means including joint ventures, a separate iwi venture in the 20 percent applied for, adjustment of the scale of the application to better provide an effective 20 percent, or working jointly on the plan change process.
- 4) NRC have proposed that private plan change applicants should include the scope and extent of assessment of representative space in their proposals. If this is developed in partnership with the relevant iwi, and agreements in principle confirmed at an early stage, the defining of "representativeness" could be simplified.

13.4 Pre-commencement space There are three separate options available to the Crown to provide for settlement for pre-commencement space by the end of 2014:

- 1) A further (up to) 20 percent of new space within council initiated AMAs can be allocated to the Trustee (i.e. meaning up to 40 percent could be allocated to iwi in council initiated AMAs). The Crown has gazetted the required Order in Council that instructs councils to allocate this space.
- 2) From 1 January 2008 the Crown may purchase existing aquaculture space (existing marine farms). Providing space through this option is dependent on market availability.
- 3) If the necessary space has not been provided by 1 January 2013 the Crown may provide a financial equivalent.

As noted in 4.5 of this paper, the allocation is for space, and if it is new space then it includes authorisation to apply for resource consent for that space; or if existing space, then the resource consent is included. Allocation of existing space does not include the capital development of a farm (lines, buoys, stock, etc).

The Māori Commercial Aquaculture Settlement Claims Act 2004 ("the MCASCA") requires the Minister of Fisheries to review and assess the Crown's compliance with the settlement of pre-commencement space. The planning for this review must be started by 31 December 2007. Consultation with relevant iwi is required.

13.5 The role of Takutai Trust

- 1) Te Ohu Kai Moana Ltd ("TOKM") is the corporate trustee of the Takutai Trust. When space (or a financial equivalent) is available for allocation, the Takutai Trust will receive assets on behalf of the relevant iwi, and hold and maintain those assets pending allocation.
- 2) If the iwi have reached compliance in terms of their constitutions and inter iwi agreements as to the allocation of the aquaculture assets, the Takutai Trust will

immediately transfer the assets to the iwi.

- 3) If iwi within a region or certain harbour are not at the stage of full compliance, Takutai could initiate the consent process and development on behalf of the iwi. However, that would only be undertaken with the full consent of the iwi, and their engagement in the initiatives.
- 4) While the governance of the Takutai Trust lies with TOKM, it is in some important ways a separate entity. Funding for Takutai is through a government contract to hold the rights in trust, to develop iwi capacity for allocation, and to transfer the rights. TOKM funding is not expended on these functions.

13.6 Iwi management of the assets

- 1) There are two types of aquaculture assets to allocate. Within harbours as defined in the MCACSA, iwi with coastlines²⁵ bordering those harbours share the assets.
- 2) The default mechanism in the legislation for allocation of aquaculture assets outside defined harbours within a region is that each iwi share is proportional to their coastline in the region.
- 3) If the default option is used, there would be a number of ways to structure the holding of the rights. For instance, a company with iwi shareholding proportional to their coastlines could be created.
- 4) Iwi may choose a different method of allocation. One that has been considered in some regions is that any allocation off an iwi's coastline is allocated to that iwi.
- 5) Determining which method is most appropriate in a region will depend on a number of factors. These include the amount of existing and potential space involved; the number of iwi in a region, and the practicality of a collective entity; the extent to which individual and collective iwi have existing fishing and aquaculture ventures, and their aspirations for future aquaculture development; and the extent to which expertise and investment funding is available to individual and collective iwi.

13.7 Unlike holding of quota for commercial fish species, an authorisation for application for a resource consent does not provide the potential of immediate income. Considerable investment and expertise must be applied before any returns can be expected. Iwi need to be realistic and well advised as to how their asset can be realised in practice.

14.0 CONCLUSIONS

- Aquaculture development presents many challenges for Māori.
- Māori need to ensure both their own aquaculture developments and the RCPs give effect to kaitiakitanga.

²⁵ Coastlines in this context are those that are determined pursuant to the Māori Fisheries Act 2004



- The aquaculture reforms are new legislation, and implementation has only begun.
- Regional planning needs to fully take into account the relevant Māori values and must manage impacts on cultural resources.
- The challenges in developing appropriate RCPs include issues of resource allocation, for which there are few guidelines.
- There are potential advantages from whānau, hapū and iwi working effectively together to both respond to the aquaculture proposals of others, and to develop ventures of their own.
- Both regionally and nationally, iwi can benefit from working collectively.
- Relationships and agreements between tangata whenua and industry will frequently be necessary, but need to be carefully managed.
- NRC is developing the first AMA related plan change in anticipation of inviting private plan changes to establish AMAs, and will provide an important example for the rest of the country to learn from.
- There are a range of options for iwi to manage the allocation of settlement space to iwi, and the appropriate regional solutions need to be sought by iwi.

15.0 CHECKLIST FOR ACTIONS

- a) Iwi should consider developing their own aquaculture planning documents or expanding their existing iwi planning documents to include aquaculture:
 - These must be taken into account by councils when preparing plan changes.
 - Opportunities and constraints can be identified consistent with local kaitiakitanga.
 - New species and methodologies can be considered and recommended for developments.
 - Specific policies, locations and procedures can be proposed.

- b) Iwi can prepare for aquaculture development by determining methods for the allocation of aquaculture assets within a region. Many options exist, for instance:
 - A simple coastline based proportion of the regional asset can be allocated to individual iwi.
 - A company can be created to hold and manage the aquaculture assets, with shareholding proportional to coastline entitlement.
 - Each iwi could be allocated the full 20 percent rights for space allocated off their own coastlines.

- c) For those regions where excluded areas are being proposed prior to inviting private plan changes:
 - Tangata whenua can determine their own preferences and reasons for specific areas to be excluded; or develop arguments to challenge proposals for excluded areas where the areas to be excluded are not considered to be appropriate.
 - Tangata whenua have opportunity for input during the formal consultation for excluded area proposals.

- d) When plan changes for AMA development are being prepared within a region:
- Councils may hold preliminary meetings to determine the level of interest and the details of need. Tangata whenua should ensure they are included in relevant discussions.
 - There must be consultation both prior to and following notification of a proposed plan change with any iwi authorities. There is also opportunity to lodge a submission to a notified plan change. Tangata whenua should be prepared for input to these processes, and seek advice when necessary.
 - Progress of councils which are early to develop aquaculture plan changes (such as NRC) can be monitored. Tangata whenua across regions can assist each other from their direct experience.
- e) For many tangata whenua, aquaculture development will only be possible through partnerships and joint ventures.
- Tangata whenua should consider working cooperatively with industry to ensure the process for the development of space for AMAs avoids unnecessary conflict and competition.
 - There are opportunities through NZ Aquaculture Ltd to facilitate relationships between tangata whenua and industry.
 - Formal business relationships between tangata whenua and industry can be beneficial to both parties, but need to be carefully developed.
 - Partnerships with science and research agencies may be critical for tangata whenua. Development of specific aquaculture ventures may be dependent on research, particularly for new species or methods.



APPENDICES

APPENDIX ONE – KAITIAKITANGA

The following is from *He Maara Mātaitai – Ngangaru Ana* of the Aquaculture Steering Group.

Kaitiakitanga is already acknowledged in legislation and is defined as follows:

“...the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources, and includes the ethic of stewardship” (section 2, Resource Management Act 1991); and

“...the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori” (section 2, Fisheries Act 1992)

Concern has often been expressed however that present legal definitions do not fully express what kaitiakitanga is about, and that any attempt to define it in anything other than te reo Māori will always be insufficient.

The Aquaculture Steering Group offers the following ideas in order to generate discussion on the concept of kaitiakitanga and what it means for the aquaculture reform.

Kaitiakitanga contains many elements that can be described as:

- mahi tapu – god given and handed down through our tipuna
- founded in whakapapa - the relationship between everything and
- everybody in the natural world – there is no distinction between people and their environment
- exercised on behalf of, and for the benefit of all who are related through whakapapa
- a set of inalienable responsibilities, duties and obligations that are not able to be delegated or abrogated
- a web of obligations: to the taonga, to the atua and to ourselves and our uri. Kaitiaki have a responsibility to provide for everyone and ensure everyone benefits
- independent of “ownership” in a European sense. As on land, kaitiaki responsibilities are independent of others who hold “ownership” or use rights under the law. For example, although as kaitiaki, iwi/hapū may “own” only a percentage of the total marine farming

space in a region under existing law, they still hold kaitiaki responsibilities over the whole area in accordance with tikanga

- seamless and all encompassing – making no distinction between moana and whenua
- given effect at whānau and hapū level
- expressed in ways that are appropriate to the place and to the circumstances, according to tikanga
- wider and more complex than existing legal definitions
- given practical effect by:
 - exercising control over access to resources,
 - sharing the benefits of the use of those resources
- enabled through rangatiratanga, which includes the authority that is needed to control access to and use of resources, and to determine how the benefits will be shared. This means that it can be expressed in part through the concepts of “ownership”, “property”, “title” or “stewardship” - however it is much wider than any of these.

Kaitiakitanga has been exercised since before the Treaty. Article II of the Treaty guaranteed that iwi/hapū would retain the authority they needed – that is, rangatiratanga – to continue to exercise kaitiakitanga.

While the Crown gained the right to govern and to make laws (including for the purpose of resource conservation) under Article I of the Treaty, the Crown must heed the guarantees it made under Article II when designing and implementing its policies and laws.



APPENDIX TWO - HARBOURS

Māori Commercial Aquaculture Claims Settlement Act 2004

Schedule 2 - Harbours and harbour entrance points

Harbours	Entrance	Longitude	Latitude
North Island			
Parengarenga	North	172°59.355'	34°31.343'
	South	172°59.417'	34°31.846'
Houhora	North	173°09.348'	34°49.544'
	South	173°09.264'	34°49.641'
Rangaunu	North	173°15.772'	34°53.061'
	South	173°17.153'	34°51.843'
Mangonui	North	173°31.480'	34°58.927'
	South	173°31.680'	34°58.798'
Whangaroa	North	173°45.418'	35°0.127'
	South	173°46.011'	35°0.413'
Upper Bay of Islands—Te Puna Inlet	North	174°04.088'	35°11.740'
	South	174°04.244'	35°12.779'
Upper Bay of Islands—Waikare Inlet	North	174°04.665'	35°14.709'
	South	174°06.704'	35°15.135'
Whangaruru	North	174°22.531'	35°22.755'
	South	174°22.167'	35°24.886'
Whangarei	North	174°31.791'	35°51.841'
	South	174°30.057'	35°50.585'
Mangawhai	North	174°27.790'	35°53.984'
	South	174°27.674'	35°54.479'
Whitianga	North	175°44.852'	36°47.563'
	South	175°46.086'	36°49.305'
Tairua	North	175°52.061'	37°0.413'
	South	175°51.798'	37°0.527'
Tauranga—Katikati entrance	North	175°59.492'	37°28.002'
	South	175°59.745'	37°28.455'
Tauranga—Mt Maunganui entrance	North	176°09.646'	37°38.252'
	South	176°10.086'	37°38.246'
Ohiwa	North	177°08.751'	37°59.276'
	South	177°09.629'	37°59.377'
Aotea and Kawhia—Kawhia	North	174°46.862'	38°05.191'
	South	174°46.460'	38°05.391'
Aotea and Kawhia—Aotea	North	174°47.829'	38°01.084'
	South	174°47.981'	38°01.189'

Harbours	Entrance	Longitude	Latitude
Raglan	North	174°50.465'	37°48.089'
	South	174°50.497'	37°48.318'
Port Waikato	North	174°42.540'	37°22.049'
	South	174°42.312'	37°22.460'
Manukau	North	174°31.848'	37°02.052'
	South	174°32.507'	37°02.950'
Kaipara	North	174°09.438'	36°23.270'
	South	174°11.705'	36°25.989'
Hokianga	North	173°21.416'	35°31.511'
	South	173°21.822'	36°32.553'
Marlborough Sounds			
Croisilles Harbour	North	173°40.262'	41°02.322'
	South	173°35.629'	41°03.211'
Pelorus Sound	North (Clay Point)	174°01.398'	40°54.737'
	South (Alligator Head)	174°09.531'	40°58.180'
Queen Charlotte Sound (northern entrance)	North (Cape Jackson)	174°18.896'	40°59.742'
	South (Cape Koamaru)	174°22.957'	41°05.389'
Queen Charlotte South (East and West Head entrance)	North (East Head)	174°19.358'	41°12.748'
	South (West Head)	174°18.913'	41°12.918'



APPENDIX THREE - PRE COMMENCEMENT SPACE

Summary of Aquaculture Settlement Register (administered by the Ministry of Fisheries)
Interim Settlement Assets at 18 May 2007

Regional Authority	Harbour Name	Area (ha)	20 percent Allocation (ha)
Coastal Settlement Assets			
Auckland Regional Council		21.00	4.20
Bay of Plenty Regional Council		4.00	0.80
Chatham Island Council		8.00	1.60
Canterbury Regional Council		171.61	34.32
Hawke's Bay Regional Council		2,465.00	493.00
Marlborough Regional Council		96.71	19.34
Northland Regional Council		2.50	0.50
Southland Regional Council		188.38	37.68
Tasman District Council		5,292.15	1,058.43
Wellington Regional Council		3.09	0.62
Waikato Regional Council		730.20	146.04
West Coast Regional Council		45.60	9.12
<i>Harbour Settlement Assets</i>	<i>North Island</i>		
Bay of Plenty Regional Council	Ohiwa	2.02	0.40
Northland Regional Council	Parengarenga	56.80	11.36
Northland Regional Council	Houhora	34.99	7.00
Northland Regional Council	Rangaunu	22.16	4.43
Northland Regional Council	Whangaroa	8.00	1.60
Northland Regional Council	Te Puna Inlet (BOI)	3.80	0.76
Northland Regional Council	Waikare Inlet (BOI)	11.61	2.32
Northland Regional Council	Kaipara	20.79	4.16

Regional Authority	Harbour Name	Area (ha)	20 percent Allocation (ha)
Waikato Regional Council	Aotea Et Kawhia - Kawhia	2.82	0.56
	<i>Marlborough Sounds</i>		
Marlborough District Council	Pelorus Sound	1,097.66	219.53
Marlborough District Council	Queen Charlotte Sound (northern ent)	9.30	1.86
Marlborough District Council	Queen Charlotte South (E & W ent)	64.92	12.98
Marlborough District Council	Croisilles Harbour	83.44	16.69
	<i>Additions s.59(1)</i>		
Marlborough District Council	Admiralty Bay	72.25	14.45
Marlborough District Council	Port Gore	58.19	11.64
Marlborough District Council	Port Underwood	67.63	13.53
Total		10,644.61	2,128.92

[Note: This is a provisional register. Space created by applications made prior to the reforms could increase the amount for allocation, whether pre-commencement space or new space, depending on whether the application was notified or not.]



APPENDIX FOUR – LAND BASED AQUACULTURE

This paper specifically addresses the challenges of development of aquaculture in the Coastal Marine Area. Land based development is subject to very different conditions.

Land based aquaculture has some advantages:

- Consent for land based aquaculture is far easier and cheaper than for aquaculture in the Coastal Marine Area.
- There are no allocation issues if the enterprise is developed on private land.
- Security is easier to maintain.
- Access is not weather dependent.

There are some disadvantages:

- Not all species have proven land based methodologies developed.
- Creating an artificial equivalent of a natural environment has high costs and many uncertainties.
- Food and energy inputs can be far higher than in the marine environment. Often higher constant staffing levels must be maintained.
- Dangers from disease are increased.
- Products may differ from those from a marine environment, and can have lower financial returns.

If seawater is required for a land based enterprise, coastal permits for taking and discharging would be needed. Other consents may be needed, depending on the location and the zoning of the relevant district plan.

APPENDIX FIVE – ABBREVIATIONS

AMA	Aquaculture Management Area
CMA	Coastal Marine Area
IPPC	Invited Private Plan Change
LGA	Local Government Act 2002
MCACSA	Māori Commercial Aquaculture Claims Settlement Act 2004
MFA	Māori Fisheries Act 2004
NRC	Northland Regional Council
RCP	Regional Coastal Plan
RMA	Resource Management Act 1991
TOKM	Te Ohu Kai Moana Trustee Ltd



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