



## This information sheet provides a brief overview of the *Māori Commercial Aquaculture Claims Settlement Act 2004*.

### ■ MĀORI COMMERCIAL AQUACULTURE CLAIMS SETTLEMENT ACT 2004

The *Māori Commercial Aquaculture Claims Settlement Act 2004* ("the Settlement Act") came into effect on 1 January, 2005, and provides full and final settlement of Māori commercial aquaculture interests since 21 September 1992. The Settlement Act established the Māori Commercial Aquaculture Settlement Trust. This trust operates under the name of the Takutai Trust, which is responsible for receiving and allocating aquaculture settlements to iwi, subject to a number of requirements.

Under the new aquaculture legislation, iwi of a region will receive via the Takutai Trust:

- 20 percent of all aquaculture space newly created after 1 January 2005
- The equivalent of 20 percent of existing aquaculture space ("pre-commencement space") that was created between 21 September 1992 and 31 December 2004 under the 'old' aquaculture legislation.

The determination of the amount of space to be allocated and the allocation of space itself will be made on a region-by-region basis, except where specified in the harbours identified in the Second Schedule of the Settlement Act.

Any claims for aquaculture space allocated before 21 September 1992 are being addressed through the Treaty of Waitangi claims process.

As assets are received, the Trustee will record them in the iwi aquaculture register, noting whether they are harbour or coastal settlement assets. The Trustee is then responsible for the allocation of the space among each region's coastal iwi, in accordance with criteria set out in the Settlement Act.

For more information about Te Ohu Kaimoana and the Takutai Trust, see [www.teohu.maori.nz](http://www.teohu.maori.nz) and our information sheet "Roles and Responsibilities in Aquaculture".

### ■ NEW SPACE

As new space is created, through either the creation of new Aquaculture Management Areas (AMAs) or the extension of existing AMAs (under the new provisions of the RMA that were enacted on 1<sup>st</sup> January 2005), then the regional council must identify 20 percent of that new space for the allocation of authorisations to the Trustee. Any space that is identified for allocation should be representative of:

1. Each farming type that is covered by rules in the AMA
2. The overall productive capacity of the newly created space.

The space should also be of an economic size. Where all of these criteria cannot be met, then the space does not need to be representative, but should be of economic size where possible. If that cannot be achieved, then the space should all be provided in one area. In all cases, it must not have less than average productive capacity.

A council may specifically create an AMA to provide space for iwi. If this option is used, then the councils can use the iwi-specific AMA to meet its settlement obligations as other AMAs are created. This option would provide iwi with more continuous space than is likely to be provided by 20 percent in each new AMA.



## ■ PRE-COMMENCEMENT SPACE

The Crown is required to provide iwi with the equivalent of 20 percent of any aquaculture space that was created on or after 21 September 1992 and up to 31 December 2004. This also includes space that is still being created by applications that were lodged prior to 31 December 2004, and are still being processed under the old legislation, but excludes applications that had not yet been notified as at 28 November 2001, and have yet to be determined.

The Ministry of Fisheries website ([www.fish.govt.nz](http://www.fish.govt.nz)) contains a regularly updated register of pre-commencement space for each region and harbour.

The Crown has three methods to provide the required 20 percent equivalent:

### 1. To provide up to 20 percent of any new AMA space

The Crown may instruct councils, through an Order in Council, to provide the Trustee with up to 20 percent of any new AMA space that is created by a council-initiated plan change or a private plan change. This space can not be taken from AMAs created by council-invited private plan changes.

This allocation of space is in addition to the provision of 20 percent of all newly created space to the Trustee, meaning that for council initiated plan changes and private plan changes, up to 40 percent of the space could potentially be allocated to the Trustee.

### 2. To purchase existing space

The Crown can buy the required additional aquaculture space on a willing buyer / seller basis and allocate this to the Trustee. This allocation does not include any structures or improvements associated with the purchase space. However, the Crown may provide the Trustee a first right of refusal to purchase any structures or improvements. This method applies from 1 January 2008.

### 3. To pay the financial equivalent

Where the necessary space has not been provided to the Trustee, the Crown can pay the financial equivalent from 1<sup>st</sup> January 2013.

The Crown must use its best endeavours to achieve a full and final settlement of pre-commencement space by 31 December 2014. The Settlement Act does not require the Crown to favour any one method of settlement above another.

The Ministry of Fisheries is required to review the Crown's progress towards providing iwi with pre-commencement space from 1 January 2008. This will involve consultation with iwi and the development of a plan detailing how progress will be made.

## ■ ALLOCATION OF ASSETS TO IWI

For any region, any new space allocated to iwi, or marine farms purchased for iwi, or financial compensation paid, will be passed to the Trustee. The Trustee is responsible for the allocation of these assets to the region's iwi in accordance with the Settlement Act. This means:

- Settlement assets can only be allocated to iwi whose territory abuts the coastline of the region in which the assets are situated
- Each iwi must have established an Iwi Aquaculture Organisation (IAO). An IAO must be a mandated iwi organisation under the Māori Fisheries Act 2004, which has also been authorised by its iwi members to receive aquaculture assets under the Settlement Act
- Assets will be allocated on a region or harbour basis, based around regional and unitary council boundaries. The exception to this are the west and east coasts of the Waikato and Manawatu-Wanganui regions, which will each be treated as separate regions for the purpose of asset allocation

## ■ ALLOCATION OF SPACE TO IWI

Iwi Aquaculture Organisations are responsible for aquaculture settlement assets allocated to that iwi. They must act for the benefit of all members of the iwi, and are responsible for establishing commercial entities to manage these settlement assets.

## ■ CRITERIA FOR AGREEMENT

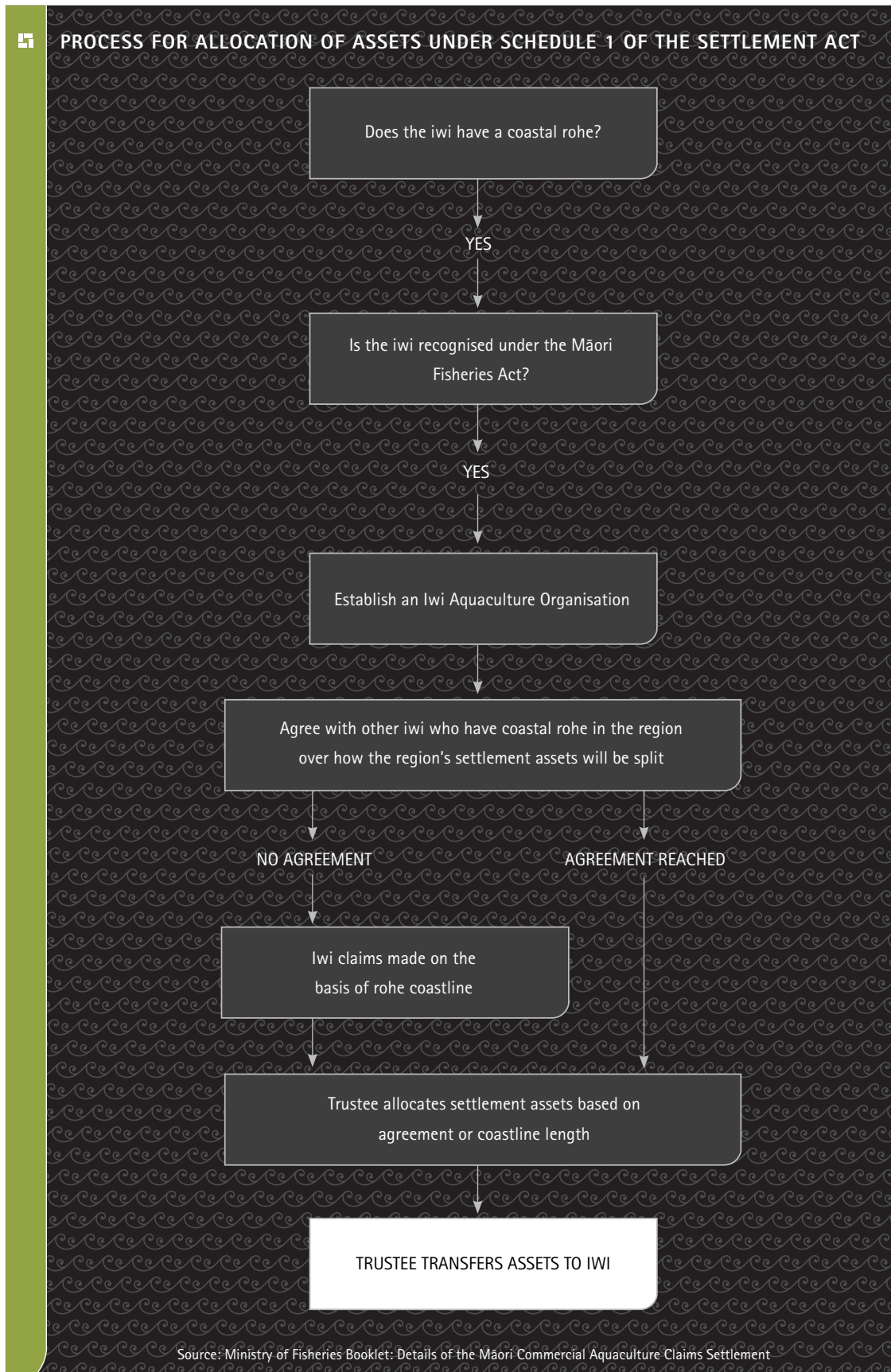
Once a region's iwi have established their necessary organisation(s), they have 12 months to reach written agreement over how their region's aquaculture settlement assets will be proportionally divided.

If they can not agree within this timeframe, the Trustee will determine what proportion of the settlement each iwi will receive, based on iwi claims to coastline length (or harbour agreements).

Once decisions on proportional share have been made, Iwi Aquaculture Organisations then have to agree on how the settlement assets themselves will be allocated. The Trustee will then transfer the assets to the Iwi Aquaculture Organisations.

Schedule 1 of the Settlement Act sets out a process for the allocation of assets.

This can be simply laid out as:





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## FRESHWATER AND LAND-BASED AQUACULTURE

The commercial aquaculture settlement only relates to commercial marine farming in coastal waters out to 12 nautical miles. The settlement does not relate to freshwater aquaculture, land-based aquaculture (fresh or saltwater), or aquaculture beyond councils' coastal jurisdiction (12 nautical miles).

For more comprehensive information about the *Māori Commercial Aquaculture Claims Settlement Act 2004*, see:

- The Ministry of Fisheries pamphlet *Settling Māori Commercial Aquaculture Claims*
- The Ministry of Fisheries booklet *Details of the Māori Commercial Aquaculture Claims Settlement*

These are both available on the Ministry of Fisheries website [www.fish.govt.nz](http://www.fish.govt.nz).

You can also find out more at: <http://www.mfe.govt.nz/publications/rma/aquaculture-info-maori-claims-jan05/>

You can find an online version of the Settlement Act at: <http://rangi.knowledge-basket.co.nz/gpacts/public/text/2004/an/107.html>

To find out more about the resource consent procedures, see our information sheet "Planning for Aquaculture" or the Ministry for the Environment's *An Everyday Guide to the Resource Management Act 1991* booklet series or CD. These are available online at: <http://www.mfe.govt.nz/publications/rma/>



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