Office of the Minister of Fisheries and Aquaculture

Economic Growth and Infrastructure Committee

Aquaculture Reform Paper: Māori Commercial Aquaculture Claims Settlement: Final Recommendations

Proposal

1. On 30 August 2010 Cabinet invited the Minister of Fisheries and Aquaculture to report to Cabinet on a proposal to deliver the Māori Commercial Aquaculture Claims Settlement [CAB Min (10) 31/8 refers].

2. This paper:

   i. seeks agreement for new delivery mechanisms;

   ii. seeks agreement to incorporate amendments to the Aquaculture Legislation Amendment Bill (No 3) through a Supplementary Order Paper; and

   iii. identifies a holding provision to be inserted in the Aquaculture Legislation Amendment Bill (No 3) which will allow scope for further negotiations and agreement with iwi if Cabinet cannot agree to the new delivery mechanisms.

Executive Summary

3. The Māori Commercial Aquaculture Claims Settlement Act 2004 (the Settlement Act) provides for the full and final settlement of contemporary Māori claims to commercial aquaculture by providing for claims for new space to be settled by allocating authorisations for 20% of Aquaculture Management Areas to iwi. The Aquaculture Legislation Amendment Bill (No 3) (the Reform Bill) removes the requirement to establish Aquaculture Management Areas. Therefore a new mechanism is required to deliver the settlement. Cabinet has previously agreed that the settlement will not be renegotiated or stepped back from; it is an existing statutory obligation that must be delivered.

4. The Reform Bill currently includes provisions that mean that the settlement obligation of 20% of new aquaculture space could have to be delivered from private applicants' coastal permits. These provisions were included to expedite the introduction of the Reform Bill while engagement with iwi took place to identify a solution. Cabinet agreed in August 2010 [CAB Min (10) 31/8 refers] to engagement with iwi to develop new mechanisms for delivery of the settlement. Through the engagement process, iwi indicated that timely access to space is necessary for Māori to be successful in aquaculture, cash alone will not guarantee this.

5. After engagement with iwi I consider that the interim mechanism of providing 20% of private applicants' coastal permits is unlikely to deliver the desired outcomes of the settlement or assist in industry reaching the $1 billion goal by 2025. The solution proposed in this paper presents the best possible compromise between the preferences of iwi and the Crown.

6. I propose that Cabinet support the technical group's recommendation that the settlement is delivered through an agreement between the Crown and iwi within a region detailing how and when the settlement will be delivered (regional agreements). Regional agreements could include assets such as space, cash or a combination.

7. In order to ensure that space is available by the time regional agreements are reached, I recommend that the Crown gazette space representative of the forecast obligation in each region and create settlement authorisations over the gazetted space. Settlement authorisations will provide for the right of iwi to apply for coastal permits for aquaculture.

8. I propose to prioritise the negotiation of regional agreements in two stages according to the likelihood of growth in each region. If agreement is not reached within two years for priority regions (Northland, Waikato East (Coromandel), Tasman and Marlborough) and three years for the remaining regions the settlement will be discharged by transferring to Te Ohu Kai Moana Trustee Limited (the trustee) any existing settlement authorisations within the region and/or the balance paid in cash.

9. In my view retaining the current wording of the settlement provisions in the Reform Bill would not be an acceptable outcome. Taking 20% of new space covered by each coastal permit of a private applicant as the settlement redress would create disincentives for aquaculture investment which in turn may delay economic growth of the industry, undermining the objectives of the aquaculture reforms. Furthermore, this would be inconsistent with Cabinet's decision in August 2010 that, in line with Crown policy, private interests will not be used for settling Treaty of Waitangi grievances.

10. If the proposed settlement solutions in this paper are not agreed to, I seek agreement to include in the Reform Bill language which is sufficiently flexible to allow the Crown to deliver the settlement in the context of the new law. To avoid the risks identified in paragraph 9 above, we need to use the limited window of opportunity we have to amend the Bill through a Supplementary Order Paper during the committee of the whole House stage. The next opportunity to amend the Settlement Act to provide for delivery mechanism would be in 2012.

Background

Māori claim to aquaculture

11. In December 2002 the Waitangi Tribunal released its *Ahu Moana – the Aquaculture and Marine Farming Report* in response to concerns raised by claimant groups about aquaculture reform. The Tribunal found that Māori interests would be breached by the reforms.

The Māori Commercial Aquaculture Claims Settlement Act 2004

12. The Settlement Act provides for the full and final settlement of contemporary Māori claims to commercial aquaculture. It addresses claims to aquaculture space created between 21 September 1992 and 31 December 2004 (*pre-commencement* aquaculture space) and claims relating to aquaculture space created from 1 January 2005 (*new* space). It does so by providing Māori with an entitlement to 20% of aquaculture space created on or after 21 September 1992 and provides for the allocation and management of aquaculture settlement assets by the trustee. Only the new space obligation is impacted by the Reform Bill, therefore this paper deals with the new space obligation only.

The settlement mechanism in the current regulatory environment

13. Under current law, new aquaculture space can only be created by establishing Aquaculture Management Areas. Councils must identify a representative 20% of the new space and allocate authorisations for that area to the trustee. The space must be representative of the space within the Aquaculture Management Area and be economically viable. Authorisations provide iwi with the right to apply for coastal permits in the new aquaculture space and endure for the life of the Aquaculture Management Area. The consent process is subject to Resource Management Act 1991(RMA) requirements and there is no guarantee that a coastal permit will be granted.

The settlement mechanism delivered under the Reform Bill

14. In March, April and July 2010 Cabinet agreed [CAB Min (10) 9/2, CAB Min (10) 10/16 and CAB Min (10) 14/12 refer] to reform the aquaculture regime. The new regime will not include key elements that the Settlement Act depends on to deliver the obligations, namely Aquaculture Management Areas; therefore, a new approach for delivering the Crown's settlement obligation is required.

Cabinet decisions on the settlement

15. On 30 August 2010 Cabinet agreed [CAB Min (10) 31/8 refers]:

- that the Crown is financially responsible for the settlement;
- to discussions between the Crown (represented by the Minister of Fisheries and Aquaculture, the Attorney-General, and the Minister of Māori Affairs) and Iwi Leaders to focus on the issue that the settlement will not work well under the proposed regime, and how best to deliver the settlement; and
- that the discussions will be guided by parameters, including that the Crown will not renegotiate the settlement, i.e., the fundamental concepts of the settlement will not be stepped back from, including rights and values associated with 20% of new aquaculture space.

Engagement with iwi

16. As agreed by Cabinet, Ministers met with Iwi Leaders in October 2010 to discuss the issue of the reforms and the delivery of the settlement. The Ministers and Iwi Leaders established a group of technical advisers who have, over the last six months, developed new mechanisms for delivery of the settlement under the new aquaculture regime.

17. A series of seven regional hui was concluded on 3 February 2011. At these hui, iwi were asked to consider a range of options for delivery of the settlement and encouraged to provide written responses to a discussion document. Seventeen responses were received; the majority were from either Mandated Iwi Organisations or Iwi Aquaculture Organisations. Three primary themes emerged through the engagement process:

- **Principles**: Iwi want the integrity and value of the settlement to be maintained.
- **Space**: Iwi desire to engage directly in aquaculture and consider that they require direct access to space; cash alone will not enable them to realise their aspirations. Space delivered must retain the value of authorisations that would have been delivered under the current law.
- **Preservation:** Iwi consistently expressed concern that the 'good' space would be gone before they would be in a position to take up their entitlement.

Technical group report

18. The technical group considered comments made at the hui and the written responses to the discussion document in developing its final report to Ministers and Iwi Leaders. The Technical Group recommended that the settlement be delivered through regional agreements. Regional agreements could deliver cash or space (or a combination). As such, they provide a middle ground between the iwi preference for space and the Crown's preference to deliver the settlement through a cash payment. The technical group also recommended a process for delivery of the settlement in the absence of regional agreements. The ability of the Crown to meet its settlement obligation through the provision of space was a key component of the report. The technical group's report was supported by the Iwi Leaders Group.

Economic Growth

$1 billion goal for aquaculture

19. New Zealand's aquaculture industry set a target of $1 billion per annum in revenue by 2025. There are significant opportunities for the sustainable development of New Zealand's aquaculture industry. The government is committed, as part of its Economic Growth Agenda, to enabling that growth and supports the industry's $1 billion goal.

20. A recent report by Ernst & Young (*Aquaculture: Industry Growth Scenarios*, September 2009) concluded that the $1 billion goal is achievable provided there are opportunities for changes of use in existing aquaculture space and opportunities to create new space. The reforms and the new mechanism for delivering the settlement are both designed to support achievement of the $1 billion target.

The role of Māori in achieving the $1 billion goal

21. The $1 billion target is predicated on the full participation of Māori. Aquaculture New Zealand, which represents the industry, acknowledges that Māori are important participants in the aquaculture industry.

22. The Ernst & Young report noted that, '*Māori have a significant presence in the aquaculture industry and this is likely to increase over time.*' Due to the value of the settlement assets Māori will receive, the report noted, '*It is therefore likely that Māori will become an increasingly dominant stakeholder in the aquaculture industry in the future, and a probable investor in any expansion that takes place in the short to medium term.*'

23. To reach the $1 billion target the aquaculture industry developed a growth strategy and a ten point plan. The growth strategy noted that Māori are an integral part of the sector and that the settlement package (cash from the pre-commencement obligation and anticipated space through new space obligations) offers the opportunity for further development for iwi and industry as a whole. The ten point plan states that, '*The scale of potential iwi involvement in the future of the industry is such that the sector as a whole will not reach its full potential unless iwi prosper.*'

24. To illustrate the value that Māori can add to aquaculture, consider Eastern Sea Farms Limited, which is majority-owned by the Whakatōhea Māori Trust Board. In 2006 Eastern Sea Farms was granted a license for a 3,800-hectare marine farm to be established six kilometres off the coast of Ōpōtiki. The planned marine farm will be the largest aquaculture venture in New Zealand.

25. This venture will be a significant step in aquaculture development that could transform the district's economy. Ōpōtiki District Council estimates that aquaculture could:

- create more than 900 full-time jobs; and
- add more than $34 million a year to the district economy.

Risks of not delivering the Settlement

26. The settlement obligation was established in law in 2004. Cabinet has previously agreed that the settlement will not be renegotiated or stepped back from.

27. Should the Crown fail to effectively implement the settlement, this could result in protracted and costly litigation which would stymie the growth the reforms are designed to facilitate. There would likely be considerable backlash from Māori and a high risk of legal challenge in relation to failure of the Crown to deliver its obligations. Furthermore, there is a potential risk of creating a new Treaty grievance relating to the Crown not acting in good faith during the course of discussions with Iwi Leaders and advisers.

28. More importantly, iwi may claim that the aquaculture reforms have an impact on delivery of the settlement and constitutes a new breach of the Treaty. Failure to deliver a settlement may also result in iwi seeking to challenge individual applications for aquaculture permits, which would significantly delay industry growth.

29. As noted above, Māori involvement is essential to achieve the $1 billion goal. Any move away from good faith delivery of the settlement is likely to have a significant, negative impact on growth in the sector.

Proposed Solution to deliver the Settlement

30. I recommend that the settlement be delivered through regional agreements with iwi. A default mechanism will be required in the event that regional agreements are not reached for any regions. A diagram of the proposed solutions is attached as **appendix 1**.

Regional agreements

31. A regional agreement could include anything that can be negotiated with the Crown equivalent to the value of 20% of new space created. This could include cash, space (settlement authorisation or coastal permit), a combination, or anything else that can be agreed such as facilitation of iwi into a joint venture arrangement. Regional agreements could also include review clauses to allow for periodic checks and adjustments if actual growth were significantly different than forecast.

32. The Settlement Act currently provides for iwi entitlement on a regional basis. This recognises that the capacity for aquaculture development differs from region to region and accordingly, a one-size fits all delivery mechanism is not appropriate. The advantage of the regional agreements approach is that it allows the flexibility for the Crown and iwi to negotiate a settlement package most suitable for their aspirations for aquaculture and aquaculture development within their region.

Timeframe for regional agreements

33. I intend to approach negotiation with regions in two stages beginning with the regions with the greatest potential for immediate growth. The technical group has identified four priority regions where the growth of aquaculture space is likely to occur over the short to medium term (1 – 5 years). These regions are Northland, Waikato East (Coromandel), Marlborough and Tasman. These four priority regions will be in stage 1. Stage 2 comprises of the remainder of regions.

34. There is a need to incentivise iwi and the Crown to reach cost-effective regional agreements as soon as possible, so as to enable Māori participation in industry growth. For this reason I consider a reasonable timeframe for reaching regional agreements should be introduced. My aim would be to reach agreements for stage 1 within two years of the commencement of the new law, and stage 2 within three years. If an agreement has not been reached for a region by that time, the default provisions would apply (covered below).

35. However, the Crown must retain the flexibility to deliver the settlement through options other than cash, in the event that a regional agreement is not reached within the specified timeframes. I recommend, that the Minister of Fisheries and Aquaculture be given the discretion to extend the timeframe for reaching a regional agreement if, in the Minister's view, there would be merit in doing so. Exercise of the discretion would be constrained by specific considerations to determine whether a particular case warranted an extension of the timeframe. For example, the timeframe could be extended if a region had made significant progress toward a regional agreement but more time was needed to finalise the details, provided there was no undue impact on private applicants or aquaculture growth.

36. In some regions of New Zealand, such as West Coast and Taranaki, it is expected that there will be no or very little aquaculture development in the next 20 or so years and therefore no aquaculture settlement obligation will arise. In such cases it is unlikely to be a priority for iwi or the Crown to enter into regional agreement negotiations, and it may be difficult for prospective agreements to be reached. I propose that for such regions the two year timeframe to reach a regional agreement will start from the date of receipt of the first resource consent application for aquaculture in those regions after commencement of the new law. However, this will not prevent iwi and the Crown reaching a regional agreement at an earlier stage.

37. To facilitate an early start to negotiations I recommended that Cabinet agrees to delegate to the Minister of Fisheries and Aquaculture, Minister of Finance, the Attorney-General, the Minister of Conservation and the Minister of Māori Affairs the power to approve a negotiation strategy to settle the Crown's new space obligation.

No agreement reached – default

38. Where the Crown and iwi are unable to reach agreement within the timeframes, the Crown would deliver the obligation by transferring to the trustee (on behalf of the iwi of the region) any authorisations it has created for settlement purposes. This could be accompanied by a cash payment to redress any shortfall in value vis-à-vis a settlement authorisation issued in an Aquaculture Management Area under the current regime.

39. Where it is impracticable for the Crown to deliver any space already created for settlement purposes the settlement obligation would be discharged through a financial payment equivalent in value to the 20% obligation based on the forecast (see paragraphs 49 – 51). An example of a situation of where it may be impracticable for the Crown to deliver space is where there is a prohibition of aquaculture activities in an area after the space has been created for settlement purposes or where environmental factors have rendered the space unusable. A financial payment would be reviewed periodically (say, after five years, and every ten years after that) to ensure that the value of assets transferred reflects actual growth in the industry.

Alternative allocation tools should provide for the settlement where necessary

40. Where regional councils or the Crown use alternative allocation tools such as tendering in high demand areas, authorisations relating to a representative 20% of the space should be able to be set aside to deliver the settlement obligation. This reflects the iwi preference for space and ensures the Crown has the ability to deliver the settlement in a cost-effective manner. However, the provision of this asset will depend on whether the obligation has already been met in a region (such as through gazetted space based on forecasting, or other delivery options discussed above). I propose that regional councils be required to notify the Crown when they intend to establish a new aquaculture zone or adopt an alternative allocation tools for aquaculture, to enable the Crown to assess whether it will utilise this option.

Enabling the Proposed Solution

Setting aside space

41. Iwi have indicated that space will be sought through regional agreements; however it is likely that these will take time to conclude. In the time it takes to finalise a regional agreement with iwi, there is a risk that the remaining 'good' aquaculture space will already be allocated.

42. I consider it is critical that space be saved for settlement purposes from commencement of the new regime. I recommend that the Crown gazette space representative of the forecast obligation in each region. Within these gazetted spaces I recommend that settlement authorisations be created and be available to be included in regional agreements.

Settlement Authorisations

43. The settlement authorisations will, in line with the 2004 settlement delivery mechanism, provide iwi with the exclusive right to apply for a coastal permit. Any application made for a coastal permit will be made in accordance with the RMA and the relevant Regional Coastal plans. The settlement authorisation will retain its enduring quality as provided for in the 2004 settlement and subject to the provisions set out in the Settlement Act. Settlement authorisations differ from an authorisation granted to a person under Part 7A of the RMA.

44. Settlement authorisations will be held by the Crown until a regional agreement is concluded within a region or the default provision applies. Where space is required as part of a regional agreement the Crown will allocate settlement authorisations or iwi may negotiate for coastal permits as part of a regional agreement. In a default situation the Crown will use its best efforts to transfer any settlement authorisations.

45. I propose that a power be created to enable the Minister of Fisheries and Aquaculture to create settlement authorisations by setting aside space by placing a notice in the New Zealand Gazette. I also propose that prior to placing a gazette notice the Minister of Fisheries and Aquaculture will consult with the Minister of Conservation.

46. To ensure that space subject to settlement authorisations is available for settlement purposes, I propose that regional councils not accept applications for aquaculture activities in the gazetted area. Other non-aquaculture applications may still be accepted provided that their activities do not unduly impact on aquaculture activities that may take place. This provision would only apply to the space gazetted for settlement purposes and not the entire region.

47. Gazetting space will not unnecessarily hinder aquaculture development or any other development opportunity. Gazettes will be a temporary measure only. A gazette will be in place for up to two to three years, after which any space held for settlement purposes which is not required either for regional agreements or to discharge the Crown's obligation in the absence of a regional agreement, will be released.

48. There will not be a blanket prohibition on aquaculture activity across an entire region. Settlement authorisations will be created only for space representative of the forecast obligation within a region. This is in line with what the Crown is currently obligated to deliver under the settlement. The remaining area will be open to aquaculture or any other activity in accordance with the Resource Management Act and relevant Regional Coastal Plans.

Forecasting

49. Forecasting is currently underway to identify the 20% settlement obligation to within the stage 1 priority regions: Northland, Waikato East (Coromandel), Marlborough and Tasman | The forecasting information, together with spatial planning, will be used by the Ministry of Fisheries to identify appropriate space over which to create settlement authorisations which represent as accurately as possible the forecast obligation within each region.

50. The Crown will also use its best efforts to obtain input from iwi, as well as the relevant regional council and local industry in order to determine appropriate space for settlement authorisations. | A methodology will be developed to value the projected growth to determine the value of new space within each region. The valuation methodology will be developed based upon the methodology that was used for the pre-commencement space.

51. The Crown will use its best efforts to identify space which accurately provides for the obligation. Periodic reviews will be used to pick up where the actual new space growth differs from that forecast, and the Crown will use its best efforts to redress any discrepancies.

Iwi Preparedness

52. Those regions where iwi have completed pre-commencement space settlements and associated iwi allocation agreements are in a good position to commence negotiations with the Crown to agree new space settlements.

53. Last year South Island and Coromandel iwi concluded their pre-commencement space settlement with the Crown. These iwi reside within three of the four regions the Technical Group have identified as priority regions. Te Tau Ihu iwi of the Marlborough and Tasman regions have already begun discussing their settlement aspirations and how best to engage with the Crown in future negotiations. These discussions have also included Ngāi Tahu who has some interest in Marlborough, and sole interest in the rest of the South Island. Additionally, iwi of the Coromandel region are also prepared to engage with the Crown.

54. The Crown has also concluded some pre-commencement space settlements in Northland. Whilst there are some inter-iwi issues which may slow down negotiations in Northland, there was strong interest among Northland iwi at the engagement hui to work together on the aquaculture settlement and to build upon the Te Tai Tokerau aquaculture strategy developed by the iwi. As with the rest of the country, the trustee will assist to facilitate Northland iwi to prepare for negotiations.

Options not Recommended

20% of individual coastal permits

55. The settlement could be delivered on a consent-by-consent basis with iwi receiving a 20% slice of a coastal permit each time a permit is granted. However, this option creates significant risks to the success of iwi in aquaculture and overall industry growth:

- This option would result in iwi receiving small dispersed parcels of space which may be uneconomic and difficult to manage;
- Identification of the 20% parcel to be transferred is likely to give rise to disputes;
- Such parcels of space would be contiguous with existing marine farms, forcing relationships between marine farmers and iwi;
- The settlement would be drip-fed and would take time for settlement assets to accumulate to a useful scale; and
- It would require ongoing administration to deliver assets on a transaction-by-transaction basis.

56. The Reform Bill as currently drafted provides for delivery of the settlement by giving 20% of the space covered by each individual permit granted to iwi. There is also an option for iwi to enter into regional agreements with the Crown, however iwi cannot be forced to negotiate a regional agreement over the option to receive 20% of individual permits. These provisions were included as an interim measure with the intent that a more suitable mechanism would be developed through engagement with iwi.

Cash settlement

57. If the settlement were delivered by way of a cash payment, there is a risk that iwi would initiate litigation in relation to whether the Crown approached delivery of the settlement under the new regime in good faith.

58. Further, cash alone will not ensure iwi are able to contribute to the growth of the aquaculture industry. During the engagement process iwi conveyed that they have had difficulty accessing space on the market. Direct, timely access to space is critical to meeting their aspirations for aquaculture.

59. As noted in the Ernst & Young report, iwi involvement is key to assisting industry to reach its $1 billion target by 2025. However, there is no guarantee iwi would choose to invest a cash settlement in aquaculture.

60. A periodic cash settlement would carry on-going administrative cost (for example the need to undertake regular valuations of aquaculture space) and ongoing and uncertain fiscal liability for the Crown.

Holding Provision

61. If the proposed settlement solutions in this paper are not agreed to, the wording of the Reform Bill means that 20% of new space covered by coastal permits of private applicants will be used as the settlement redress. This would create disincentives for aquaculture investment which in turn may delay economic growth for the industry, undermining the objectives of the aquaculture reforms. Furthermore, this would be inconsistent with Cabinet's decision in August 2010 that, in line with Crown policy, private interests will not be used for settling Treaty of Waitangi grievances.

62. The Crown has an opportunity to provide for a new settlement delivery mechanism through a Supplementary Order Paper at the committee of the whole House stage. This paper proposes a suitable mechanism to deliver the settlement and I strongly recommend that the Reform Bill be amended to replace the existing provisions with the proposed solution.

63. If the Crown does not take this opportunity the Minister of Fisheries and Aquaculture will have to return to Cabinet seeking an amendment to the Settlement Act. This amendment is not likely to be introduced until next year. This will result in 20% of individual permits being taken for settlement purposes with no recourse of compensation for the private applicant.

64. In order to mitigate the risks identified in para 60 in the event that the proposed solution is not accepted I seek agreement from Cabinet to amend the Reform Bill to allow for language which:

i. prioritises regional agreements;

ii. removes the taking of 20% of a private application;

iii. provides that upon commencement, the Crown will use its best efforts to obtain coastal permits (for space equivalent to the forecast obligation) to ensure space can be negotiated for in good faith under regional agreements; and

iv. provides for a cash settlement where regional agreements cannot be reached within the specified time.

65. If Cabinet agrees to amend the Reform Bill to allow for the language in para 64, I propose to return to Cabinet in May 2012 to provide an update on how delivery of the settlement is progressing.

Other Issues

Interaction with the Marine and Coastal Area (Takutai Moana) Act 2011

66. There is a risk that the settlement authorisation proposal outlined in this paper may conflict with the process for recognising customary marine title (CMT) provided under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA). In particular, the settlement authorisation proposal has the potential to preclude a customary marine title applicant (applicant) from achieving customary marine title.

67. Specifically, where a settlement authorisation is granted over an area that becomes subject to a customary marine title application, and the group receiving the settlement authorisation differs from the applicant, the settlement authorisation could preclude the applicant from meeting the exclusivity and tikanga aspects of the test outlined in the MACA. This would ultimately prevent the applicant from achieving recognition of a customary marine title.

68. The reason for this is that settlement authorisations provide iwi with the exclusive right to apply for coastal permits in relation to the relevant area. Therefore, where an authorisation has been granted, it is difficult to see how a different group could claim to have exclusively used and occupied the same area in accordance with tikanga (as the customary marine title test requires). Even if the applicant belongs to the group that has obtained an authorisation over the relevant area, the authorisation may still affect an individual hapu's claim to a customary marine title.

69. I intend to mitigate this risk by including, in the Settlement Act, a provision that explicitly states that the presence of a settlement authorisation within a customary marine title application area, cannot be considered evidence against the relevant applicant's claim to customary marine title over the area.

Transfer of Iwi Aquaculture Organisation status

70. Amendments are currently being proposed in the Maori Purposes Bill that allows iwi to have the ability to move their fisheries assets (provided for under the Maori Fisheries Act 2004) to a mandated organisation. This amendment will allow iwi to manage all of their assets from both fisheries and historical Treaty settlements under one entity, if they choose to do so, without repercussion of invoking the sale provision of the Maori Fisheries Act. The amendment also allows the Mandated Iwi Organisation to transfer its status to another governance entity so that the assets can be managed under one entity.

71. I intend to follow suit and provide in legislation that if a Mandated Iwi Organisation moves its status to another governance entity then the Iwi Aquaculture Organisation status can move as well if the iwi requests it.

Consultation with other Departments

72. The following departments and agencies were consulted: the Ministry for the Environment, the Ministry of Economic Development, the Department of Conservation, Te Puni Kōkiri, the Treasury, the Ministry of Justice and the Office of Treaty Settlements. The Department of Prime Minister and Cabinet has been informed of the contents of this paper.

Human Rights

78. The proposals in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

79. I propose that legislative change required to give effect to Cabinet's decisions on this paper be progressed through a Supplementary Order Paper. I intend to direct officials to discuss the proposals in this paper with Iwi Leaders and representatives from the aquaculture industry.

Regulatory Impact Analysis

80. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

81. The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Fisheries and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria. Although the exact form of the final proposals was not consulted on, significant consultation with affected parties informed the analysis leading to the final proposals.

Publicity

82. After Cabinet has decided on how to deliver the settlement I intend to discuss those decisions with Iwi Leaders. I intend to release publicly this Cabinet paper and associated decisions, subject to any matters withheld under the Official Information Act 1982, when the Supplementary Order Paper is tabled.

Recommendations

83. The Minister of Fisheries and Aquaculture recommends that the Committee:

i. **Agrees** that the Maori Commercial Aquaculture Claims Settlement be delivered on a regional basis through regional agreements which may include cash, space, a combination, or anything else that can be agreed between the Crown and iwi to the value of 20% of new space within the region;

iii. **Notes** that a methodology will be developed to value the projected new space within each region based upon the methodology that was used for the pre-commencement space;

iv. **Notes** that regions will be prioritised into two stages for negotiation of regional agreements. Stage 1 – Northland, Waikato East (Coromandel), Tasman and Marlborough, stage 2 – remaining regions;

v. **Agrees** that if a regional agreement has not been entered into after two years for stage 1 or after three years for stage 2 from commencement of the Bill, the aquaculture settlement will be delivered through allocation to the trustee on behalf of iwi of the region of:

- any settlement authorisations obtained for settlement purposes, together with a cash payment to redress any shortfall in value; or, where this is impracticable
- a cash equivalent of the forecast new space within the region.

vi. **Agrees** that the Minister of Fisheries and Aquaculture may extend the timeframe for reaching a regional agreement if there is merit in doing so in accordance with the considerations specified in the strategy for negotiating regional agreements;

vii. **Agrees** that the two year timeframe to reach a regional agreement in those regions where no or little aquaculture development is anticipated will start from the date of receipt of the first resource consent application for aquaculture after commencement of the new law;

viii. **Agrees** to create a power to enable the Minister of Fisheries and Aquaculture to gazette space based on forecasted information for the purpose of delivering the settlement by placing a notice in the New Zealand Gazette;

ix. **Agrees** that the Minister of Fisheries and Aquaculture may create settlement authorisations as settlement redress within the gazetted space;

x. **Agrees** that consenting authorities cannot accept any applications for aquaculture activities for space subject to a gazette notice;

xi. **Agrees** that the Minister of Fisheries and Aquaculture consult the Minister of Conservation prior to gazetting space to support delivery of the aquaculture settlement;

xii. **Agrees** that where regional councils or the Crown create an aquaculture zone or use alternative allocation tools such as tendering in high demand areas they must notify the Crown and the Crown may require that authorisations relating to 20% representative space be set aside in order to deliver the settlement;

xiii. **Agrees** to delegate to the Minister of Fisheries and Aquaculture, Minister of Finance, the Attorney-General, the Minister of Conservation and the Minister of Māori Affairs the power to approve a negotiation strategy to settle the Crown's new space obligation;

xiv. **Agrees** to direct officials to report to the Minister of Fisheries and Aquaculture, Minister of Finance, the Attorney-General, the Minister of Conservation and the Minister of Māori Affairs as part of the negotiating strategy, and before seeking to access the contingency funding, on what costs may be considered appropriate in providing space and how to respond in situations where the costs of providing space might exceed that of a straight cash settlement.

Miscellaneous legislation amendments

xv. **Agrees** that the existence of a settlement authorisation within a Customary Marine Title application area cannot be considered evidence against the relevant applicant's claim to customary marine title over the area;

xvi. **Agrees** that if a Mandated Iwi Organisation transfers its status to an iwi governance entity then the Iwi Aquaculture Organisation can transfer at the request of the iwi;

xvii. **Agrees** to delegate authority to the Minister of Fisheries and Aquaculture to make decisions on matters of technical nature to implement these decisions;

Holding Provision – if Cabinet is unable to agree to the above recommendations (i-xi)

xviii. **Agrees** to include in the Aquaculture Legislation Amendment Bill (No 3) language which is sufficiently flexible to allow the Crown to deliver the settlement in the context of the new law including:

- prioritises regional agreements;
- removes the taking of 20% of a private application;
- provides that upon commencement, the Crown will use its best efforts to obtain coastal permits (for space equivalent to the forecast obligation) to ensure space can be negotiated for in good faith under regional agreements; and
- provides for a cash settlement where regional agreements cannot be reached within the specified time;

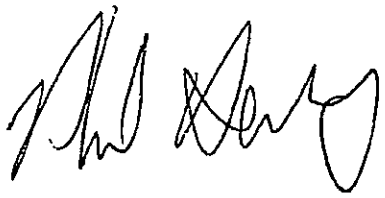
xix. **Notes** that the Minister of Fisheries and Aquaculture will report back to Cabinet in May 2012 on progress with the delivery of the settlement;

Drafting instructions

xx. **Invites** the Minister of Fisheries and Aquaculture to issue drafting instructions to the Parliamentary Counsel Office for inclusion in a Supplementary Order Paper to give effect to Cabinet's decisions;

xxi. **Agrees** that the Minister of Fisheries and Aquaculture be given power to act in relation to any technical matters that arise in drafting; and

xxii. **Authorises** the Minister of Fisheries and Aquaculture to table the Supplementary Order Paper during the Committee Stage of the Aquaculture Legislation Amendment Bill (No 3) to give effect to the policy decisions arising from this Cabinet paper, without the need to present the Supplementary Order Paper to the Cabinet Legislation Committee.



Hon Phil Heatley
Minister of Fisheries and Aquaculture

31/05/2011

Appendix 1

Proposed solution and enablers to deliver the settlement