

# Whaingaroa Aquaculture Settlement Q&A

- **Who decided Iwi should receive 20% of the value of all aquaculture development? Is it in a bill?**
  - Parliament decided that in passing the legislation the Labour Government took forward in 2004. The legislation stated that the Crown had an ongoing obligation to provide Iwi regionally with assets equivalent to 20% of all aquaculture space approved to be developed after 21 September 1992. Ministers said that aquaculture was the unfinished business of the Fisheries Settlement (Iwi receive 20% of the quota shares for any new stocks introduced into the QMS, hence the 20%). But it isn't legislated under the Fisheries Settlement legislation. It's in a separate Act – the Maori Aquaculture Commercial Claims Settlement Act 2004 (the Aquaculture Settlement Act)
- **Who gets these aquaculture settlements?**
  - The Act provides that Iwi in regions receive assets in different forms depending on when space is created for the 20% settlement in each period
    - The settlements go collectively to all Iwi with interests in the coastline of a particular region – the regions are based on regional council boundaries. For Northland that's Ngāti Whātua, Ngāpuhi, Te Rarawa, Te Aupōuri, Ngāti Kuri, Ngāi Takoto, Ngāti Kahu, Whaingaroa and Ngāti Wai.
    - The Iwi receive any aquaculture settlement assets through their Iwi Aquaculture Organisations (IAOs). Only Mandated Iwi Organisations under the Maori Fisheries Act can become IAOs. All Northland MIOs are also IAOs
    - The different forms of settlement assets are:
      - Cash only for space approved between September 1992 and 31 December 2004 - the pre-commencement space. There were Northland pre-commencement space obligations.
      - Authorisations\* for space only for space approved between 1 Jan 2005 and 30 September 2011 – the interim space. There was no space approved in this period in Northland.
      - Cash or authorisations for space\* or a combination for the space approved after 1 October 2011 – new space. This is a prospective settlement with Iwi getting assets early. There are Northland new space obligations.
  - \*Note the settlement does NOT provide approval of space at a site – if Iwi choose to take their settlement obligations in the form of space, they still have to apply to the regional council for approval of that space through the Resource Management Act (RMA) the same as everyone else – the settlement authorisation for space simply reserves an area that no one else can apply for – and gives a right for Iwi to use when it wishes to apply - there is no limitation on when Iwi use any settlement authorisation.
- **How does the New Space settlement work? Do we have to wait till after development to get it?**
  - No, for new space Iwi get it 'early' - it's based on economic forecasts of overall demand for aquaculture species and then forecasts for where space might be approved out to 2035 in each region. In Northland that is for oysters and mussels. That space has then been valued and Crown offers made.
- **But what's the relationship between the New Space Settlement assets and approval of space? If we accept these assets coming to the Rūnanga, does that mean we have to agree to aquaculture in our rohe moana? For the Crown to give us something it must be based on some planning - where is the development going to occur? What have set aside / approved?**
  - There is no direct relationship between the Settlement and approval of particular pieces of space – the Settlement is based on forecasts but is through a separate process under the

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Aquaculture Settlement Act and separate legislation to approval of space that happens under the RMA;

- There has been no planning done or areas set aside – that work occurs through the Northland Regional Council’s coastal plan under the RMA
  - Anyone wanting to get approval for aquaculture at a particular site must go through the normal processes under the RMA (and Environment Court if appeals go that level)
  - Signing a regional agreement or receiving settlement assets don’t in any way require Iwi to accept any aquaculture anywhere. If Iwi / hapū / marae oppose aquaculture development at particular sites then it’s up to them to fight any approval by the regional council through the RMA processes and UAE tests (with Ministry for Primary Industries) – the settlement assets will have NO effect on these processes.
- ***What’s the relationship between the New Space Settlement and our MACA claims?***
    - ***There is no direct relationship.***
    - The Settlement does not cut across any MACA claims. Nor will it limit any action you might subsequently take under MACA if you are recognised.
  - ***But what happens if all that space isn’t subsequently approved for aquaculture under the RMA?***
    - The New Space Settlements use forecasts but recognise that the forecast won’t be correct in all places at all times. So there is a 5 yearly reconciliation process. If at the time of a reconciliation it is found that less space was approved under the RMA than predicted for that region in the 5 year period, Iwi will have received more settlement assets than necessary but no action happens – that bonus rolls forward into the next 5 year period. If on the other hand, it is found that more space was approved under the RMA than predicted for that region in the 5-year period, Iwi will have received less settlement assets than necessary under the Aquaculture Settlement Act. In that circumstance the Crown’s obligations have increased and it will owe IAOs for 20% of the additional area. The Crown must then and agree with IAOs in what form those extra assets will be and then transfer them.
  - ***Is there a precedent for this and how this is to be allocated?***
    - For agreeing to receive aquaculture settlement assets –
      - Yes - in that the Runanga has already agreed to allocation and transfer of pre-commencement aquaculture settlement assets. The Runanga signed an agreement with the Crown for the Whangaroa Harbour obligations and received \$96,000 in 2013 for those settlement obligations.
    - For the basis of allocation – Yes and No –
      - No, because each allocation agreement that’s signed always says it is non-binding for other issues;
      - Yes, because if Iwi have used one formulation over allocation of assets, they often also choose that in subsequent but separate decisions
    - Do we have any such precedents?
      - Yes, the allocation of inshore fisheries settlement assets use the same default setting of coastline and all Iwi agreed their shares of coastline in Northland to allocate those fisheries assets. Those same shares are the basis for the agreement between IAOs and it’s what the Segment Coastline Allocation Entitlement Claims are based on.

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- ***Rather than just using coastline with harbours counted as just the distance across the harbour as the basis for shares, shouldn't this be based on all the coastline/ shoreline so going right round the inside of each harbours as that's where aquaculture happens?***
  - No for several reasons
    - The Aquaculture Settlement Act requires the coastline to be estimated using the same methodology as for the fisheries settlement – that goes across the mouth of the harbour – except where the harbour is named in Schedule 2 – Whangaroa harbour was one of those – and assets then go only to those who share the harbour
    - With new space settlement being based on a forecast, we don't know where aquaculture development might be approved
    - Increasingly, aquaculture is occurring outside of harbours and more into deepwater
    - There are already some applications offshore from the west coast (noting that those might not be approved)
    - While IAOs could agree a different coastline basis it would still need to meet the legislation. If you could get all IAOs to agree that allocation should be on a share of the overall coastline - including the shoreline of all the harbours, it would apply to the whole region and the Hokianga and Kaipara Harbours both have extensive shoreline.
- ***Who has to agree with this? Has the Runanga already agreed to this?***
  - No, it's the decision the board will be taking through agreeing to submit a Coastline Allocation Entitlement Claim for the Whaingaroa coastline and sending a letter to Ngati Kahu that states that Whaingaroa will NOT claim any aquaculture settlement assets arising from the rohe moana Ngati Kahu claimed for fisheries settlement purposes.
- ***Does this include Ngāti Kahu# if it's a regional agreement? / regional settlement assets?***
  - Yes, in terms of Iwi entitlement to any assets, it includes all Taitokerau Iwi. So it includes Ngāti Kahu, Whaingaroa and the other seven with interests in the Northland regional coastline.
  - But because Ngāti Kahu refused to participate in a regional agreement none was signed. But the Act has a default that requires the Crown to transfer assets and it transferred \$5,430,7011 to Te Ohu kaimoana in November 2015
  - However, the entitlement to each IAO continues and there is a mechanism in the Aquaculture Settlement Act to enable allocation to IAOs and that's what is being advanced
  - Allocation through Coastline Allocation Entitlement Claims for Segments that don't impinge on Ngati Kahu's rohe moana can get settlement assets in the hands of the remaining Northland IAOs.
- ***What happens if we don't proceed?***
  - For Whaingaroa, it will mean that you won't receive settlement assets, but like Ngāti Kahu, your entitlements will continue to be held at Te Ohu Kaimoana
  - If Whaingaroa choose not to submit a Coastline Allocation Entitlement Claim for your interests in Segment C, it will slow down other IAOs in Segment C (from Te Whatu to Mangawhai Heads – Ngāpuhi, Ngātiwai and Ngāti Whātua) because at a minimum a new Coastline Allocation Entitlement Claim will need to be prepared and taken back to their boards.

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- ***Have other Iwi approved the Coastline claims and provided letters?***
  - Most others have. Three IAOs – Whaingaroa, Te Rarawa and Ngai Takoto – are yet to approve making Coastline Allocation Entitlement Claims. The chair of Ngai Takoto has said the board will consider the paper at its meeting on 12<sup>th</sup> April. The CE of Te Rarawa has advised that, though the current board is in favour of the proposal, because an election process will soon be underway, the board has chosen not to consider submitting a Claim until the new board is appointed.