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# BILLS DIGEST

Digest No. 1727

## Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Bill 2009 (2009 No 31-2)

<b>Date of Introduction:</b>	13 May 2009
<b>Portfolio:</b>	Fisheries
<b>Select Committee:</b>	Māori Affairs
<b>Date report presented:</b>	28 August 2009
<b>Published: 09 December 2009</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The Bill amends the Māori Commercial Aquaculture Claims Settlement Act 2004 (the Act) to give effect to a Deed of Settlement between the Crown and iwi of Te Wai Pounamu and Hauraki for an early settlement of pre-commencement space obligations in those regions. The Bill would also give effect to future agreements for early pre-commencement space settlements that the Crown may enter into with other iwi elsewhere<sup>1</sup>.

<sup>1</sup> Māori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Bill, 2009 No 31-2, As reported from the Māori Affairs Committee, Commentary, p. 1.

## Main change to the Bill

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### Regional Agreements

The Bill as introduced provided that the Crown may enter into an agreement (including by deed) (called a "regional agreement") in respect of one or more regions of regional councils, or of one or more harbours listed<sup>2</sup> in Schedule 2 of the Act with either:

- the iwi aquaculture organisations of all iwi whose area of interest includes a region or harbour covered by the agreement (*New Section 29(2)(a)*); or
- for any iwi whose area of interest includes a region or harbour covered by the agreement that do not have iwi aquaculture organisations, the recognised iwi organisations of those iwi (*New Section 29(2)(b)*)

if the Crown and those parties all agree that the Crown's obligation under Section 22(1) of the Act will be satisfied in respect of those regions and harbours on the terms set out in the agreement.

(Section 22(1) reads: "The Crown must ensure that the trustee is provided with space in the coastal marine area for the purpose of aquaculture activities equivalent to 20% of pre-commencement space".)

The Bill as introduced further provided that a regional agreement must include:

- the trustee as a party to the agreement in order to confirm that the agreement has been entered into by all iwi aquaculture organisations for each region and harbour covered by the agreement (*New Section 29(3)(a)*); or
- a provision that the agreement is conditional on the trustee confirming that the agreement has been entered into by all iwi aquaculture organisations for each region and harbour covered by the agreement (*New Section 29(3)(b)*).

The Bill as introduced also provided that:

- for the avoidance of doubt, a regional agreement is enforceable as a contract in accordance with its terms;
- Section 22(3)(c) of the Act (which obliges the Crown to pay to the trustee on or after 1 January 2013 amounts equivalent, in part or in full, to the value of the pre-commencement space) does not prevent the Crown from making a payment to the trustee under a regional agreement before 1 January 2013;
- no court or tribunal has jurisdiction to inquire into the quantification or the adequacy of the benefits to be provided by or under a regional agreement. However this provision does not exclude the jurisdiction of a court or tribunal in respect of the interpretation or enforcement of a regional agreement.

The Select Committee has recommended that New Section 29A(3) be reworded to provide as follows:

*"(3) A regional agreement must include:*

*"(a) the trustee as a party to the agreement in order to confirm that the agreement has been entered into by the parties specified in subsection (2); or*

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<sup>2</sup> The harbours are: in the North Island: Parengarenga, Houhora, Rangaunu, Mangonui, Whangaroa, Upper Bay of Islands—Te Puna Inlet, Upper Bay of Islands—Waikare Inlet, Whangaruru, Whangarei, Mangawhai, Whitianga, Tairua, Tauranga—Katikati entrance, Tauranga—Mt Maunganui entrance, Ohiwa, Aotea and Kawhia—Kawhia, Aotea and Kawhia—Aotea, Raglan, Port Waikato, Manukau, Kaipara, and Hokianga. In the South Island (the Marlborough Sounds), the harbours are: Admiralty Bay, Croisilles Harbour, Port Gore, Port Underwood, and Queen Charlotte Sounds.

*"(b) a provision that the agreement is conditional on the trustee confirming that the agreement has been entered into by those parties" (Part 2, Clause 8, inserting New Section 29A into the Act, amending subsections (3)(a) and (b)).*

*Comment*

The Select Committee explained the reasons for its recommendation: " ... We recommend amending clause 8 of the bill to improve the workability of new section 29A, which describes a regional agreement.

"We recommend that new section 29A(2)(b) be amended to clarify that a recognised iwi organisation could be a party to a regional agreement not only if its iwi did not have an iwi aquaculture organisation but also if its area of interest included a region or harbour covered by the agreement.

"We also recommend that new section 29A(3) be amended to clarify that it would apply not only to the iwi aquaculture organisations referred to in new section 29A(2) but also to recognised iwi organisations referred to in that section"<sup>3</sup>.

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<sup>3</sup> Maori Commercial Aquaculture Claims Settlement (regional Agreements) Amendment Bill, 2009 No 31-2, As reported from the Maori Affairs Committee, Commentary, p. 2.