Questions and Answers from the recent engagement hui on the proposed mechanisms to deliver new space settlement obligation.

	Question	Answer
1.	**What is aquaculture?**	Aquaculture is the raising of plants or animals in water. It can occur in coastal waters, rivers, lakes, or on land in constructed tanks and pools. The Resource Management Act 1991 (RMA) definition is: ***aquaculture activities***— *(a) means the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest if the breeding, hatching, cultivating, rearing, or ongrowing involves the occupation of a coastal marine area; and* *(b) includes the taking of harvestable spat if the taking involves the occupation of a coastal marine area; but* *(c) does not include an activity specified in paragraph (a) if the fish, aquatic life, or seaweed—* *(i) are not in the exclusive and continuous possession or control of the person undertaking the activity; or* (ii) *cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed* The Aquaculture Legislation Amendment Bill (No 3) (the Bill) proposes to make amendments to the definition as follows: ***aquaculture activities***— *(a) means* ***any activity described in section 12 done for the purposes of*** *the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest if the breeding, hatching, cultivating, rearing, or ongrowing involves the occupation of a coastal marine area; and* *(b) includes the taking of harvestable spat if the taking involves the occupation of a coastal marine area; but* *(c) does not include an activity specified in paragraph (a) if the fish, aquatic life, or seaweed—* *(i) are not in the exclusive and continuous possession or control of the person undertaking the activity; or* *(ii) cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed* ***(d) does not include an activity specified in paragraph (a) or (b) if the activity is carried out solely for the purpose of monitoring the environment***
2.	**What is the current Settlement?**	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. The Settlement Act provides 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. Any claims relating to aquaculture before September 1992, and/or omissions of the Crown, can be addressed through the Treaty of Waitangi historical claims settlement process. The Settlement Act provides that iwi in a region receive the equivalent of 20% of the aquaculture space created between 21 September 1992 and 31 December 2004 (pre-commencement space) and 20% of any space created from 1 January 2005 (new space).

	Question	Answer
3.	**What does 'new space' mean?**	Under the current law new space can only be created by establishing or extending Aquaculture Management Areas. Councils must identify 20% of new space in an Aquaculture Management Area and allocate authorisations for that area to the trustee (Takutai Trust). The new space must be representative of the space found within the Aquaculture Management Area and be economically viable. Authorisations provide iwi with the right to apply for resource consent in the new aquaculture space. The resource consent process is subject to RMA requirements and there is no guarantee that the resource consent will be granted. However, applications in an Aquaculture Management Area where planning for aquaculture has been undertaken will normally succeed more easily than in areas without such specific planning.
4.	**How is the new space obligation affected by the Bill?**	The Bill proposes to remove the requirement for aquaculture to be in Aquaculture Management Areas. Because Aquaculture Management Areas are the mechanism for delivering on the settlement in the current regime, a new mechanism needs to be identified for the new regime. When the Bill was introduced into Parliament in November 2010 it was critical that it included content confirming the Crown's commitment to meeting its obligations under the Settlement Act. To do this the Crown has included language in the Bill to clarify the intention of the settlement (discussed further below). Iwi leaders agreed to this as a way of acknowledging the obligations under the settlement while a government-led engagement process with iwi was carried out. That engagement process is now underway. The point of the engagement with iwi is to help inform decisions on delivering a space-based settlement mechanism under the new regime. This could include mechanisms such as joint ventures, agreements, and profit share. The current language in the Bill proposes that once an application for a permit to occupy coastal space for the purpose of aquaculture has been approved the Crown must either ensure that 20% of that space is transferred to iwi, subject to provisions set out in the Bill, or agree to an equivalent through a regional agreement. The relevant clause in the Bill is: **Part 3:** ***7A Crown's obligations in respect of new space*** *(1) The Crown is responsible for meeting its obligations to deliver the settlement to Maori.* *(2) The Crown's obligations must be complied with by way of either—* *(a) ensuring that 20% of new space in the coastal marine area is transferred to the trustee for the purpose of aquaculture activities; or* *(b) agreeing to an equivalent by way of a regional agreement.* *(3) The Crown must comply with subsection (2) as soon as practicable.* The Minister of Fisheries and Aquaculture has stated that it is not the Crown's preference for 20% of a private applicant's space to be pursued as a settlement option. However, for the purposes of maintaining the value of the settlement and discussions with iwi organisations all options needed to be on the table and fully discussed.

	Question	Answer
5.	**How will the settlement obligation be triggered in the future?**	The settlement obligation will be triggered when space first becomes subject to a coastal permit authorising aquaculture activities (refer to Clause 50 of the Bill). This means that further consents for the same area will not trigger the settlement obligation.
6.	**What is the process for obtaining a coastal permit for aquaculture?**	The RMA requires that marine farmers obtain all resource consents (coastal permits) required by the relevant regional coastal plan to carry out aquaculture activities (see question 1). Typically consents are needed to undertake activities such as the occupation of space, erecting structure(s), discharging into the coastal marine area and disturbing the seabed. Contact your regional council for the detail on the process for applying for new space. As part of the resource consent process proposed aquaculture sites must go through an Undue Adverse Effects test (refer to question 13).
7.	**If iwi were to receive 20% of a private applicant's farm, would a separate coastal permit be needed?**	If this option is chosen as the mechanism for delivery this detail will be developed. In general, for aquaculture space delivered under the settlement, iwi will need to hold a separate coastal permit. If the iwi and applicant agreed, a single consent, or a single application process, could be implemented.
8.	**Isn't there a settlement related to species?**	The Maori Fisheries Settlement provides that 20% of the quota shares for any new species that enters the Quota Management System are allocated to iwi via the Te Ohu Kai Moana Trust in accordance with the allocation rules set out in the Maori Fisheries Act. The settlement obligation for aquaculture relates to space and will be triggered when space first becomes subject to a coastal permit authorising aquaculture activities. If new species are farmed in existing space no new Settlement obligation will arise.
9.	**To have the opportunity to get the most benefit from the settlement, iwi would need to be able to discuss aquaculture proposals with applicants as early as possible. How will iwi be able to get early information about applications for coastal permits to undertake aquaculture activities?**	Under the current regime iwi would be informed by the regional council or private developer as any Aquaculture Management Area proposal requires the identification of a representative 20% of the space for the iwi of the region. This would require notice to the Takutai Trust or the iwi in the region directly. Currently under the RMA there are requirements for notification of resource consent applications (sections 95 to 95F). An application must be notified if the effects on the environment are considered to be more than minor. It can be expected that most aquaculture applications will be notified. Only where coastal planning has been developed, into which iwi have opportunities for input, will there be a possibility of non notified aquaculture applications. While some applications may not be notified, it is considered to be best practice for applicants to consult with tangata whenua when developing proposals that involve an area or resources of interest to tangata whenua.

	Question	Answer
10.	**What is the UAE?**	The Fisheries Act requires the Chief Executive of the Ministry of Fisheries and Aquaculture to make an 'aquaculture decision' on the expected effects of a proposed aquaculture activity on recreational, customary non-commercial and commercial fishing. The process for assessing those effects is the undue adverse effects on fishing (UAE) test. When undertaking the UAE test, the Ministry of Fisheries and Aquaculture may consult with iwi, and commercial and recreational fishers about the potential impacts of a proposal on fishing including customary non-commercial fishing. If the Ministry of Fisheries and Aquaculture finds there would be an undue adverse effect on recreational or customary non-commercial fishing arising from the aquaculture proposal, approval under the Fisheries Act is denied and aquaculture cannot be established. If the Ministry of Fisheries and Aquaculture finds there would be an undue adverse effect on commercial fishing for a QMS species, the marine farming applicant can enter into an aquaculture agreement to compensate the affected quota holders. Aquaculture will be able to proceed in the area if an aquaculture agreement is registered.

	Question	Answer
11.	**How are customary views/interests taken into account in aquaculture development?**	Customary views can be considered and taken into account by decision makers under the RMA (establishing aquaculture – general effects on the environment (including impacts on fisheries resources) and Fisheries Act – effects on other fishers including customary non-commercial communal fishers. **As outlined in the Resource Management Act 1991** **Section 6(e)** of the RMA provides for consideration of the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga to when making decisions on resource consent applications. **Section 7** Kaitiakitanga; **Section 8** Treaty; **Section 58 NZCPS** - protection of characteristics of coastal environment of special value to tangata whenua … In addition resource planning documents recognised by an iwi authority can provide a mechanism by which tangata whenua interests can be considered in council in decision-making. There are specific legislative requirements which place a duty on council staff to take into account these plans. In practice local authorities must balance a number of competing interests including hapū/iwi plans. The following examples from the RMA apply: **Section 61(2A)**… when preparing or changing a regional policy statement council must take into account any *relevant planning document*… **Section 62** Regional Councils must state the resource management issues of significance to the iwi authorities in the region **Section 66(2A)** … when preparing or changing a regional plan council must take into account any *relevant planning document recognised by an iwi authority…* **Section 104 (1)(c)** … when considering an applications for a resource consent … the consenting authority must have regard to any other matter the consent authority considers relevant… **Section 35A** … A local authority must keep and maintain … a record of... *planning documents recognised by each iwi authority* and lodged… **Section 72(2A) …** A territorial authority when preparing a district plan must take into account *any relevant planning document recognised by an iwi authority*… Individuals and groups, including iwi, can have input into regional coastal plans including how they deal with aquaculture. If an application for a coastal permit to undertake aquaculture activities is notified, Maori can make a submission. The Undue Adverse Effects (UAE) test could provide another avenue for Maori to provide their views on the impacts of aquaculture activity in their area of interest where that development might have an impact on fishing. In addition, the Ministry of Fisheries and Aquaculture work with a number of regional forums for fisheries and related issues in relation to customary and commercial fishing.

	Question	Answer
12.	**How can we ensure Iwi Fisheries Plans/Forum Fisheries Plans, and regional agreements are aligned and complementary to the Maori Commercial Aquaculture Settlement?**	The Ministry of Fisheries and Aquaculture is currently running various initiatives to identify and support Māori aspirations in relation to involvement in the fishing and aquaculture industry. These are: • Iwi Fisheries Plans and Forum Fisheries Plans (IFPs/FFPs): the vehicle by which tangata whenua will be given the opportunity to have input and participation into fisheries management decision-making processes; • National Aquaculture Strategy and Action Plan: identifies as an objective 'benefits to the industry derived from Maori involvement in aquaculture'; and • The Maori Commercial Aquaculture Settlement in respect of new space in the marine coastal area. IFPs/FFPs will include fisheries management objectives – statements of what the iwi want to achieve regarding the management of freshwater, shellfish, fin-fish, deepwater and Highly Migratory Species; and fisheries management strategies which describe the approach iwi will use to achieve each of their objectives. IFPs are being developed at an individual iwi level and will identify individual iwi fisheries objectives. IFPs will then inform FFPs which will identify collective inter-iwi objectives. IFPs and FFPs will integrate both the commercial and non-commercial interests of iwi for fisheries and may also do so for aquaculture. IFPs/FFPs are envisaged as holistic documents which can be used by iwi to inform various resource management processes. In relation to the aquaculture objectives identified in IFPs/FFPs, these may serve three purposes: • to inform the regional aquaculture settlements (together with regional forecasts); • to identify long term aspirations for Māori which will inform and input into the National Aquaculture Strategy and work programme; and • to inform and input into local government RMA planning/consenting processes. They will also provide a consistent reference point for the Ministry of Fisheries and Aquaculture in terms of identifying iwi aquaculture objectives for the purposes of the settlement and the National Aquaculture Strategy. The Ministry of Fisheries and Aquaculture will clearly communicate to iwi how the Ministry's obligations to Māori differ between fisheries and aquaculture, fisheries legislation and the RMA and the distinction between how fisheries objectives and aquaculture objectives will be used within the Ministry of Fisheries and Aquaculture and by other agencies and local councils.

	Question	Answer
13.	**Iwi/Māori are able to have input through Iwi Fisheries Plans/Forum Fisheries Plans; why don't they for the process for granting coastal permits?**	Iwi Fisheries Plans and Forum Fisheries Plans are the vehicle through which the Ministry meets its obligation under section 12 of the Fisheries Act to provide for the input and participation of iwi into sustainability decisions made by the Minister of Fisheries and Aquaculture. Coastal permits are granted through a process established in the RMA which has its own consultation/engagement process. The RMA sets out the requirements for notification of resource consent applications (sections 95 to 95F). An application must be notified if the effects on the environment are considered to be more than minor. While not all applications are notified, it is considered to be best practice for applicants to engagement with tangata whenua when developing proposals that involve an area or resources of interest to tangata whenua.
14.	**If an iwi organisation were to obtain a coastal permit for aquaculture would this trigger the 20% settlement obligation?**	Yes, if it involves gaining a coastal permit for new space.
15.	**What would happen to the settlement part of a permit if the consent were to lapse?**	The settlement obligation is triggered when the space first becomes subject to a coastal permit authorising aquaculture activities. If a permit holder does not give effect to the coastal permit or applies for and is not granted an extension the space authorised by the coastal permit will lapse after three years. However, under the current regime the settlement provides that if this was to happen to a settlement asset then the coastal permit will revert to being an authorisation which gives the iwi a right to apply for a further coastal permit. The new regime proposes to reduce the period for a coastal permit lapse for aquaculture from five to three years unless an alternative date is specified in the permit. This may not need to apply to settlement space.
16.	**What could be included in a regional agreement?**	Under a regional agreement with the Crown, iwi would be able to choose space or cash, or a combination, or any other type of arrangement that would best deliver on the settlement obligation taking their aspirations into account. Regional agreements may also provide for more creative deliverables, such as assistance to enter into joint ventures with established operators in the industry. Regional agreements are intended to provide flexibility and choice in whether and how iwi engage in aquaculture. Regional agreements could involve passive involvement through investment, direct involvement through owning and operating a marine farm, involvement in a peripheral industry, or other options.
17.	**How will the Crown ensure that what Māori receive equates to 20% of the value of new space?**	A valuation methodology will need to be established, and its application confirmed in regional agreements, to ensure that the value of the space or other deliverables (including cash) provided is 'equivalent' to the 20% obligation.

	Question	Answer
18.	**What assurance is there that iwi will get good quality space?**	No assurance can be given that the allotment of space will be the selected mechanism for fulfilling the Crown's settlement obligations under the proposed law. If space is the preferred settlement mechanism the technical group will need to consider the best mechanism to deliver a space-based settlement under the proposed new regime to ensure that iwi would receive representative space if they opt for equivalent space.
19.	**What does 'In the absence of regional agreements' mean?**	Where there is no regional agreement in place, the legislation must ensure that the settlement obligation can nevertheless be delivered.
20.	**Who will monitor the settlement obligation**	The Ministry of Fisheries and Aquaculture.
21.	**How much new space is likely to be created in the future?**	Many factors affect aquaculture development. The Ministry of Fisheries and Aquaculture will develop a forecasting methodology to help determine how much new aquaculture space could potentially be developed and for what purpose (finfish, mussels etc) to ensure that the Crown and iwi are able to make informed decisions.