AQUACULTURE LEGISLATIVE REFORMS 2011
GUIDANCE OVERVIEW

AN OVERVIEW

This information sheet provides an overview of the aquaculture legislative reforms that made changes to the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, the Fisheries Act 1996 (Fisheries Act), the Maori Commercial Aquaculture Claims Settlement Act 2004 (Settlement Act), and the Resource Management Act 1991 (RMA). The changes came into effect on 1 October 2011.

This overview is part of a series of information sheets and technical guidance documents explaining different aspects of the reform of marine-based aquaculture in New Zealand.

In this overview and in the guidance notes, the term 'regional council' includes both regional councils and unitary authorities.

A series of technical guidance notes describe various parts of the legislative reforms summarised in this overview in more detail, including:

- **GUIDANCE NOTE 1:** Aquaculture planning and consenting
- **GUIDANCE NOTE 2:** Managing demand in the coastal marine area
- **GUIDANCE NOTE 3:** Aquaculture regulation-making power
- **GUIDANCE NOTE 4:** Re-consenting aquaculture
- **GUIDANCE NOTE 5:** Mechanisms for managing allocation of coastal space (jointly produced by MPI and DOC)
- **GUIDANCE NOTE 6:** Delivering on the Māori Commercial Aquaculture Settlement

WHY IS THE GOVERNMENT INTERESTED IN AQUACULTURE?

As the world's population increases, so too does the demand for protein, including seafood. It is unlikely that wild-caught seafood will be able to meet that demand sustainably, and marine farming is on the rise. By 2020, aquaculture is expected to make up 58 percent of worldwide seafood production.

Here in New Zealand, aquaculture is already the fastest growing sector of our seafood industry. In 2010 aquaculture sales totalled $380 million and accounted for almost 20 percent of total seafood export earnings. The industry has set itself a goal of NZ$1 billion sales each year by 2025.

The Government is committed to unlocking this potential as part of its Economic Growth Agenda, to increase export earnings and create new jobs.

With its clean waters and strong environmental record, New Zealand is well placed to help meet global demands for high-quality seafood products farmed in an environmentally sustainable way. An essential part of this is making sure that the development of marine farming takes place within acceptable environmental limits and fits in with the way others want to use the coastal marine area.

CHANGES TO THE LAW

The legislative reforms came into effect on 1 October 2011. The aquaculture legislative reforms were designed to: reduce costs, delays and uncertainty; promote investment in aquaculture development; and enable integrated decision-making.

The following gives an overview of how the legislative reforms assist in achieving industry and the Government's objectives for aquaculture.

MOVING TO THE NEW REGIME

The legislative reforms removed the requirement for an aquaculture management area (AMA) – a spatial planning tool – to be in place before marine farming consent applications can be made. This means applying for a marine farm now follows the same process as seeking a resource consent for any other activity in the coastal marine area.

The legislative reforms amended the Transitional Act to bring existing marine farms and outstanding applications into the new legislative regime as smoothly as possible.

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EXISTING MARINE FARMS

Existing marine farms are no longer called 'deemed AMAs' and reverted to being farms with resource consents, with no loss of rights or certainty.

OUTSTANDING APPLICATIONS

Outstanding applications, in general, were allowed to proceed from 1 October 2011 when the legislative reforms came into effect. This included the last remaining pre-moratorium applications (applications notified before 28 November 2001), the 'frozen' applications (which were lodged but not notified before the moratorium in 2001), and applications made between 1 January 2005 and 9 May 2006.

All applications that could continue to be processed were deemed to be lodged on the date the legislative reforms came into effect, in the order in which they were originally received.

Frozen applications in areas where aquaculture is prohibited in a regional coastal plan, however, cannot proceed unless the prohibition is removed via a plan change. These applications will be cancelled on 31 December 2014 if a plan change has not been made by that time.

CHANGES TO TASMAN AND WAIKATO REGIONAL COASTAL PLANS

The legislative reforms changed the Tasman and Waikato regional coastal plans to allow applications to farm a wider range of species, including finfish, in existing aquaculture areas in both regions, and for small extensions to existing farms in Waikato.

The Waikato Regional Coastal Plan was changed to provide for a new 300-ha marine farming zone to the west of Coromandel township, within which applications to farm finfish can be made.

APPLICATION PROCESS

Changes were made to both the RMA and the Fisheries Act to streamline the planning and consenting processes and to enhance the characteristics of coastal permits for aquaculture.

The most significant change, already discussed, was the removal of the requirement that aquaculture activities take place only within AMAs. Other changes include:

- Coastal permits for aquaculture are to have a minimum term of 20 years (unless a shorter term is requested by the applicant or is required to manage effects). Permits lapse after three years if the consent is not used.
- Regional coastal plans are no longer able to authorise aquaculture activities in the coastal marine area as 'permitted activities'. This ensures that a resource consent application is made and triggers the decision-making process that tests for undue adverse effects on commercial, customary or recreational fishers (UAE test).
- The UAE test has been better integrated with the RMA consent processes.
- Aquaculture applicants are able to try to negotiate a 'pre-request aquaculture agreement' with the relevant commercial fishing quota holders before the UAE test is carried out. The advantage is that quota management system (QMS) stocks that have been subject to a pre-request aquaculture agreement are not allowed to be considered by the Ministry for Primary Industries for an aquaculture decision over the same area.
- Existing marine farm consent holders continue to be protected under the RMA and have priority over other applications when they apply for their consents to continue operating (including species changes if in the same space). Concurrent plan change requests and consent applications can be made where aquaculture is a prohibited activity, including with the Environmental Protection Authority.

More detail on these changes is available in *Guidance note 1: Aquaculture planning and consenting* and *Guidance note 4: Re-consenting aquaculture*.

MANAGING DEMAND IN THE COASTAL MARINE AREA

A number of methods are available to councils under Part 7A of the RMA to manage demand for space in the coastal marine area (CMA). The legislative reforms retain a number of the existing Part 7A provisions, and also provide additional methods for councils, and these are summarised under the headings below.

While the changes to Part 7A of the RMA have been driven by the aquaculture reforms, they can apply to any activity in the CMA – with the exception of the powers of the Minister responsible for Aquaculture.

'First in, first served' remains the default process for allocating space in the CMA and, with the removal of AMAs, now applies to allocations of space for aquaculture activities. Any departure from first in, first served requires specific provision in a regional coastal plan or the approval of an allocation method by the Minister of Conservation at the request of a regional council. Public tendering is the default alternative allocation method, unless a council requests another method.

UNCHANGED PROVISIONS IN PART 7A OF THE RMA

- Councils remain able to include provisions in their regional coastal plans and proposed regional coastal plans to address the effects of occupation in the CMA and to manage competition for space (section 165F).
- There are no changes to the provisions around the characteristics of authorisations, and public notice requirements and other provisions relating to running a public tendering process (sections 165R to 165ZA).

» The Minister of Conservation retains the power to direct that an allocation of authorisations proceed or not proceed in order to give effect to Government policy or to preserve the ability of the Crown to give effect to its historic Treaty settlement obligations (section 165K).

CHANGES TO PART 7A OF THE RMA

» Regional councils may ask the Minister of Conservation to approve an allocation method via Gazette notice – this applies to any activities in the CMA (section 165L).
» Regional councils may ask the Minister responsible for Aquaculture for a stay on new applications for consents to occupy space for specified aquaculture activities (section 165ZB).
» Regional councils may ask the Minister responsible for Aquaculture to direct that aquaculture applications be processed and heard together (section 165ZF).

THE MINISTER RESPONSIBLE FOR AQUACULTURE HAS POWER TO INTERVENE

The legislative reforms provide for regulation-making power in the RMA, giving the Minister responsible for Aquaculture the ability to recommend amendments to provisions in a regional coastal plan about the management of aquaculture activities (sections 360A to 360C).

MĀORI CLAIMS SETTLEMENT

The Settlement Act provides for the full and final settlement of contemporary Māori claims to commercial aquaculture. The Settlement Act was developed in parallel with the 2004 aquaculture law and provided for claims to be settled by allocating authorisations for 20 percent of AMAs to iwi.

The legislative reforms removed the requirement for AMAs to be established before new space can be applied for. A new delivery mechanism for the settlement was established.

FEATURES OF THE SETTLEMENT MECHANISM UNDER THE LEGISLATIVE REFORMS

» The Crown is responsible for delivering the settlement.
» The 20 percent obligation established in the Settlement Act remains unchanged.
» The settlement will be delivered on a regional basis, through agreements between the Crown and iwi.
» Through the regional agreement process deliverables for the settlement may include space, cash, or anything else that is agreed to.
» The agreed deliverables will be transferred to Te Ohu Kai Moana Trustee Limited for allocation to iwi.

ROLES AND RESPONSIBILITIES UNDER THE NEW REGIME

The following agencies and people have existing roles and responsibilities under the RMA and Fisheries Act 1996 and new roles and responsibilities under the legislative reforms.

MINISTER RESPONSIBLE FOR AQUACULTURE

» Provides Government leadership on aquaculture.
» Holds a power to recommend changes to regional coastal plans in relation to aquaculture management (sections 360A to 360C).
» Holds a power to direct that a council not receive aquaculture applications for up to one year (sections 165ZB to 165ZE), pending demand management provisions being put in place.
» Holds a power to direct that applications for the occupation of space for aquaculture activities be processed and heard together by councils (sections 165ZF to 165ZG).

MINISTRY FOR PRIMARY INDUSTRIES

» Continues to make aquaculture decisions under the Fisheries Act, including:
  – identifying areas where marine farmers must seek the agreement of affected commercial fishers before lodging an application for a coastal permit, and identifies the parties whose agreement is needed;
  – registering agreements between marine farm applicants and fishing interests in areas specified as having an undue adverse effect on commercial fishing; and
  – notifying councils of any agreements lodged with the Ministry for Primary Industries.
» Administers the fish farm registration system for all fish farms.
» Provides information to regional councils to help them assess the impact of a proposed aquaculture activity on fishing and fisheries resources.
» Works with regional councils to ensure that matters relevant to the aquaculture decision are addressed in the consent conditions.

AQUACULTURE UNIT IN THE MINISTRY FOR PRIMARY INDUSTRIES

» The Aquaculture Unit is the Government's main adviser on aquaculture and works with central and local government, iwi, industry and other stakeholders at both national and regional levels.
» Responsible for developing and implementing the Government's Aquaculture Strategy and Five-year Action Plan.
» To avoid any conflict of interest, the Aquaculture Unit is not involved in undue adverse effects (UAE) matters.

MINISTER OF CONSERVATION

» Has powers to approve alternative allocation tools in the CMA and continues to approve regional coastal plans.
» Retains the ability to recommend that a proposed allocation proceed or not proceed in order to preserve the Crown's ability to give effect to Government policy.

DEPARTMENT OF CONSERVATION

» Continues to be responsible for recommending whether the Minister of Conservation should approve a regional coastal plan, in accordance with the RMA.
» Continues to be responsible for recommending in certain circumstances, that the Minister of Conservation issue directions to councils on the allocation of space.
» Continues to be responsible for the New Zealand Coastal Policy Statement 2010, including review and monitoring its implementation.
» Has a new responsibility to advise the Minister of Conservation whether to exercise the power to Gazette an alternative allocation method.

REGIONAL COUNCILS AND UNITARY AUTHORITIES

» Retain primary responsibility for aquaculture planning and consenting including:
  – allocating coastal space;
  – administrating existing coastal permits, including all pre-RMA marine farming licences, leases and permits; and
  – assessing the impact of a proposed aquaculture activity on fishing and fisheries resources.

» Have three new powers under the legislative reforms:
  – can request from the Minister of Conservation the use of an alternative allocation tool;
  – can request from the Minister responsible for Aquaculture a suspension on the receipt of new applications to occupy space for aquaculture activities; and
  – can request from the Minister responsible for Aquaculture that aquaculture applications be processed and heard together.

WHERE TO FIND OUT MORE

Information on the aquaculture reforms is available on the Ministry for Primary Industries website.

This document is intended to give general technical guidance on aspects of marine-based aquaculture under the 2011 aquaculture legislative reforms.

It is not legal advice. For legal advice on any aspect of the legislation you should consult your lawyer.

The general disclaimer on the **Ministry for Primary Industries** website also applies to this document and should be read in conjunction with it.

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