

Security Classification - In Confidence

Office of the Minister for the Environment
Office of the Minister of Fisheries

Chair
Cabinet Environment, Energy and Climate Committee

National Environmental Standard for Marine Aquaculture – policy approval and agreement to draft regulations

Proposal

1. We seek policy approval for a National Environmental Standard for Marine Aquaculture issued under the Resource Management Act 1991 relating to:
 - a. The replacement consenting process for existing marine farms.
 - b. On-farm biosecurity management for all marine farms.
2. We also seek agreement to instruct the Parliamentary Counsel Office to draft the regulations.

Executive Summary

3. Marine aquaculture contributes significantly to regional development. Over the next seven years, consents for 689 marine farms (60%) expire, with 602 (52%) expiring at the end of 2024. Marine aquaculture is managed under the Resource Management Act 1991 (RMA). The rules for considering replacement consent applications are inconsistent between regions in respect of activity status, notification provisions and other considerations, creating regulatory uncertainty. There is also potential for inconsistency in the robustness of environmental impact assessments required for replacement consent applications. Regulatory inconsistency and uncertainty are concerning for councils and the industry.
4. We propose establishing a National Environmental Standard for Marine Aquaculture under the RMA (the proposed standard). The regulations in the proposed standard would ensure best practice environmental assessments are applied when determining replacement consent applications. The proposed standard would increase regulatory consistency and certainty, ensure environmental effects are appropriately managed, and as an indirect benefit, increase confidence to invest in the industry.
5. The proposed standard would also introduce nationally consistent requirements for biosecurity management, for existing and new marine farms.
6. Government agencies have worked with a reference group of aquaculture stakeholders to develop the proposed standard. A cost benefit analysis of the proposal indicates that the benefits outweigh the costs, driven primarily by increased regulatory certainty and improved biosecurity management.

7. The public and iwi authorities were consulted on the proposed standard in 2017 under the previous Government. In early 2018, after consulting the Minister of Conservation, we directed agencies to continue work on the proposal. The proposal has been updated both in response to matters raised in consultation and to align with this Government's priorities. This included refining and adding matters of discretion to make environmental protections more robust.
8. Iwi with aquaculture interests would share the benefits of increased certainty and biosecurity management. All iwi would benefit from a pre-application engagement process to ensure tangata whenua values in the coastal environment are considered during the replacement consenting process.
9. Under the RMA, recommending a national environmental standard is the responsibility of the Minister for the Environment. As the Minister for the Environment I am satisfied that the relevant statutory requirements, set out in sections 32, 44(1) and 46A of the RMA, have been met to date (notably an adequate consultation process, consideration of submissions and consistency with the purpose of the RMA). Before recommending the final regulations to the Cabinet Legislation Committee, I will ensure the remaining statutory requirements are met (including consideration of an evaluation report which confirms the provisions of the proposal are the most appropriate way to achieve the purpose of the RMA).

Background

10. Since 1970, marine aquaculture has grown to be a significant component of New Zealand's primary sector, employing around 3,000 people. These jobs are particularly important in regional New Zealand including Northland, Coromandel, Bay of Plenty, Marlborough, Tasman and Southland.
11. In 2018, aquaculture generated \$600.8 million in revenue. The industry aspires to increase its revenue toward \$1 billion or higher. Industry participants feel that a more efficient regulatory framework that encourages investment is essential to realising this growth.
12. In 2015 the previous Government directed officials from the Ministry for Primary Industries, Ministry for the Environment and Department of Conservation to consider options to address inconsistency and uncertainty in the management of existing marine farms under the RMA. The policy objective was to "develop a more consistent and efficient regional planning framework for the management of existing marine aquaculture activities and on-farm biosecurity management, while supporting aquaculture within sustainable environmental limits".

13. Agencies identified a National Environmental Standard for Marine Aquaculture, issued under the RMA, as the preferred option. The proposed standard would apply to applications to continue operating existing marine farms (known as “replacement consent” applications or “re-consenting”). It would set the rules councils would consider in processing these applications, and in most cases would replace the rules already in council plans (subject to exceptions outlined later in this paper). The proposed standard would not deal with applications to establish new marine farms, except for the proposed requirement that all existing and new farms have a biosecurity management plan.
14. Agencies established an aquaculture reference group to provide input to the proposal, comprising members of the aquaculture industry, regional councils, Te Ohu Kaimoana Trustee Limited and the Environmental Defence Society. The previous Government agreed to consult the public and iwi authorities on the proposal in 2017 (CAB-17-MIN-0256 refers). Following consultation, an iwi reference group convened by Te Ohu Kaimoana¹ was consulted in late 2017 on specific provisions that recognise tangata whenua values in the coastal environment. Fisheries New Zealand, Ministry for the Environment and Department of Conservation officials have worked closely on the proposal throughout its development.
15. In early 2018, after consulting the Minister of Conservation due to her functions in relation to the coastal environment under the RMA, we directed agencies to continue work on the proposal.
16. The proposed standard has been refined, within scope of the proposal consulted on, to address issues raised during consultation and better align with this Government’s priorities. Among other things, this included refining and adding matters of discretion to make environmental protections more robust. These changes were tested with both the aquaculture and iwi reference groups.
17. We now seek your agreement to the policy of the proposed standard, so the Parliamentary Counsel Office can be instructed to draft the regulations.

Comment

The problem: inconsistency and uncertainty in planning under the RMA

18. Marine aquaculture is primarily managed under the RMA by regional councils. As their existing consents expire, marine farmers must apply for a replacement consent called a “coastal permit”² to continue farming (referred to in this paper as resource consents).

¹ The iwi reference group included representatives from iwi in Northland, Auckland, Waikato, Bay of Plenty, Tasman, Marlborough, Canterbury and Southland.

² Coastal permits have two functions: they grant a right to occupy space in the coastal marine area to the exclusion of most other uses, and they establish conditions to manage the environmental effects of the farm.

19. There are 1149 existing marine farms in New Zealand.³ The majority of these were authorised prior to the RMA coming into force, primarily under the Marine Farming Act 1971. An amendment to the RMA in 2004 deemed these existing leases and licences to be RMA resource consents with a term of 20 years, expiring on either 31 December 2024 or 1 January 2025.
20. Largely as a result of this amendment, resource consents for 689 marine farms (60%) expire over the next seven years, with 602 (52%) expiring at the end of 2024.
21. The expiry of resource consents for such a large number of farms at one time and the consequential need to obtain replacement consents, is expected to place a high resource demand on regional councils and industry.

Inconsistency

22. In considering resource consent applications for marine farms, councils refer to objectives, policies and rules contained in their regional coastal plans. Each regional council has different rules and requirements for replacement consenting, ecological assessment, and biosecurity
23. Because many marine farms were initially consented before the RMA came into force, they may not have been subject to the same level of environmental impact assessment as undertaken for farms approved under the RMA. There is potential for inconsistency in the robustness of environmental assessment to continue if councils take different approaches or do not adopt best practice.

Uncertainty and inefficiency

24. There is uncertainty in the process that will apply for replacement consent applications due to a number of factors, which also creates inefficiency. These include the activity status (i.e. what matters the council will consider in deciding the application); notification provisions and practice (whether or not public submissions will be received and whether this will lead to hearings and appeals); and how requirements to consider outstanding areas⁴ under the NZCPS will affect existing marine farms.

Inflexibility to realign farms or change species to achieve better outcomes

25. Applications to make a small change to the location of a marine farm or change the species allowed to be farmed are not currently well enabled in most regions. Making a minor change to the position of a farm could have environmental benefits (e.g. relocating away from significant ecological habitats). Similarly, farmers should be encouraged to innovate and diversify the species they farm.

³ As at March 2018.

⁴ "Outstanding areas" mean outstanding natural features, outstanding natural landscapes and/or areas of outstanding natural character identified in either a regional policy statement or regional coastal plan.

Why uncertainty and inconsistency is a problem

26. Replacement consenting processes can be complex, uncertain and inefficient. This, and the upcoming spike of expiring consents makes the future of many marine farms uncertain, and will create resource strains for councils and industry. This undermines confidence to invest in the industry. Complexity and uncertainty create inefficiency which imposes unnecessary and unjustified extra time and costs on applicants, regional councils and interested parties.
27. Councils are at different stages of reviewing their regional plans (“second generation planning”). This includes undertaking strategic planning as required by the NZCPS, including identifying which areas are appropriate or inappropriate for aquaculture. Of the eight major aquaculture regions only Auckland and Bay of Plenty have operative or near-operative second generation plans. The proposed National Environmental Standard for Marine Aquaculture would ensure more certain and efficient replacement consenting provisions are in place ahead of the peak in consent expiry in 2024/2025, including where second generation planning is not complete.

Biosecurity is a key risk which should be addressed

28. The introduction, establishment and spread of harmful aquatic organisms is also a key risk to the aquaculture industry, and the wider coastal environment. To manage risks effectively, biosecurity management needs to be nationally consistent. The proposed standard provides an opportunity to take a critical first step toward more comprehensive management of marine biosecurity risks, by implementing consistent biosecurity management for all marine farms.

The opportunity: greater consistency, certainty and efficiency in environmental management of marine farms

29. The proposed standard would introduce a nationally consistent framework for assessing marine farm replacement consent applications. The regulations in the proposed standard would ensure best practice environmental assessments are applied when determining replacement consent applications. These regulations would replace the equivalent rules in regional coastal plans, taking effect on the date specified in the proposed standard. Councils would be required to change their plans without using the RMA Schedule 1 process to make them consistent with the proposed standard.
30. The proposed standard would ensure consistent and efficient standards of environmental management across New Zealand, and increase regulatory certainty. NZIER analysis indicates that improving consistency and efficiency of regulatory process would increase confidence to invest in the aquaculture industry.⁵

⁵ NZIER (2015) *NZIER overview of the impacts of re-consenting uncertainty and delay on aquaculture investment in New Zealand*. Memo to Aquaculture New Zealand.

31. The proposed standard for which we seek your approval would:
- a. Make applications for replacement consents for existing marine farms a restricted discretionary activity, including opportunities for small-scale realignments and changes in approved species, provided the area has not been identified as inappropriate for aquaculture in a regional coastal plan.
 - b. Clearly specify matters of discretion, which address the key environmental effects of aquaculture. These encompass ecological effects determined through an extensive scientific literature review of the effects of aquaculture. They also ensure all farms, including those consented before the RMA came into force, are subject to appropriate seabed surveys to ensure adverse effects on significant habitats are avoided.
 - c. Preclude public or limited notification for most replacement consent applications, except of affected tangata whenua, and where special circumstances and other RMA notification exceptions apply (sections 95A and 95B). Councils would follow the normal statutory tests under the RMA to determine whether to notify replacement consent applications that include realignment, species changes that require changes in surface structures and/or involve finfish, and any applications in areas that the councils have determined to be inappropriate for aquaculture (if applications are allowed at all in that area)
 - d. Require pre-application consultation by the applicant to identify and consider tangata whenua values in deciding replacement consent applications. Where this consultation does not occur, a broader matter of discretion on tangata whenua values would apply and limited notification would not be precluded, so that iwi could submit on the application.
 - e. Clarify that consideration of the effects of an existing marine farm on an outstanding area is limited to farms that are partially or fully within an outstanding area.
 - f. Enable, as part of a replacement consent application, a change to the location of an existing marine farm by up to one third of the farm area, to address adverse environmental effects associated with the existing location. Farms larger than 10 hectares and those that use supplementary feeding (i.e. finfish farms) would not qualify for this provision.
 - g. Enable as a part of a replacement consent application for an existing marine farm, applications to change the species farmed. Four categories of species changes would be recognised, with specific matters of discretion to manage the effects created by the species to be added or any changes to farm structures, and appropriate notification requirements for each type of species change.
 - h. Allow councils, through their regional coastal plans (which undergo a significant public consultation process), to set activity status for consent applications for existing marine farms that are more lenient than the proposed standard.
 - i. In areas where, after 1 January 2019, regional councils have determined that aquaculture is inappropriate through their regional coastal plan, set a discretionary activity status for replacement consent applications and allow councils to set an activity status that is more stringent.

- j. Require that regional councils only grant a resource consent for a marine farm (whether an existing farm or a new application) where a biosecurity management plan has been lodged and assessed by the regional council as meeting the criteria specified in an externally referenced document, which will be developed by Fisheries New Zealand.
 - k. For existing consents that do not expire before 31 January 2025, require councils to review the consent before that date to implement a biosecurity management plan.
32. The biosecurity management proposal would apply to all existing farm replacement consent applications and new marine farm consent applications.
33. As noted above, the proposed standard would apply to most, but not all, replacement consent applications. The replacement consenting standards would not apply to marine farms in Wilson Bay Marine Farming Zone (Waikato region), or to farms in the Tasman Aquaculture Management Areas and Wainui Bay (in the Tasman district).
34. In the case of the Wilson Bay Marine Farming Zone and Tasman Aquaculture Management Areas, this is to recognise the significant planning processes undertaken for aquaculture in those areas to date. In the case of the Wainui Bay spat catching farms, it is to allow for strategic planning to be undertaken by Tasman District Council, as was directed by the Environment Court in 2018. [REDACTED] we do not consider it appropriate to intervene in this ongoing process through the proposed standard.

Consultation on the proposed standard

35. Between June and August 2017, the Ministry for Primary Industries consulted the public and all iwi authorities on the proposal. The Ministry for Primary Industries called for submissions, held public meetings, and held hui with iwi authorities in the key aquaculture regions and Wellington.
36. The early engagement and formal consultation with Māori (which occurred in mid-2016 and mid-2017 respectively) is considered to be consistent with the engagement framework and guidelines developed by the Office for Māori Crown Relations - Te Arawhiti and approved by Cabinet in 2018.
37. The proposals were broadly supported. Of 107 submissions received, 58 submitters (55%) expressed support, either for the whole proposal or subject to modifications. The majority of the aquaculture industry and regional councils were supportive, subject to modifications. Half of the submissions from iwi organisations expressed support subject to modifications (with two opposing and the remainder either neutral or not stating a position). 35 submitters (33%) opposed the proposed standard either entirely (11 submitters) or in part (24 submitters). The remaining 12% of submitters either took a neutral position on the proposals or did not state their position.
38. Fisheries New Zealand, the Ministry for the Environment and Department of Conservation made changes to the proposal in response to the submissions.

These changes were tested with the aquaculture and iwi reference groups. We have reviewed and agreed the changes in consultation with the Minister of Conservation. The key submitter concerns and changes made in response are outlined below.

Key areas of stakeholder concern and how these have been addressed

39. Industry was generally supportive, but several industry members sought more enabling provisions, for instance through controlled activity status (where the council cannot decline the application). We consider that the proposed standard as consulted on, applying restricted discretionary status, strikes an appropriate balance between greater regulatory certainty and a robust level of assessment of environmental effects. No change was made in this respect.

Biosecurity implementation and resource requirements

40. Some submitters, including some regional councils, were concerned about the cost and capability requirements to implement biosecurity management plans. Some council submitters believe the resource required for this would detract from potentially more effective biosecurity management work. All regional council submitters noted a need for pathway management plans under the Biosecurity Act 1993 to complement farm management plans.
41. In response to this concern, the proposed standard has been amended to ensure the biosecurity requirements can be effectively managed within the RMA framework. These amendments also ensure flexibility to manage biosecurity through farm-specific biosecurity management plans and/or area-based biosecurity management plans. We anticipate that area-based management would be significantly less costly, and Fisheries New Zealand would work with councils and industry to promote adoption of area-based management plans, where possible.
42. We believe the costs of the biosecurity proposal are justified, as it is an important first step in improving wider marine biosecurity management. To further reduce costs, Fisheries New Zealand will work with industry, regional councils and biosecurity experts in advance of the proposed standard being gazetted, to prepare comprehensive guidance material to assist regional councils in assessing and monitoring biosecurity management plans.
43. Some submitters had concerns that the 2025 deadline for implementing biosecurity management plans was too late. This date was chosen to strike a balance between timely implementation and minimising the resource burden on councils from reviewing consent conditions to implement biosecurity management plans.

Public input to ensure consideration of environmental effects

44. Environmental groups and some interested individuals were concerned about the reduced ability of the public to participate in farm-by-farm decision making, due to the restrictions on public notification. Several submitters suggested that

more stringent activity status was necessary to ensure a range of important environmental concerns could be considered by councils.

45. To address this and other concerns raised by environmental groups, the following changes have been made:
- i. Amending the proposed standard to recognise future planning processes which have identified areas as inappropriate for aquaculture in accordance with Policy 7 of the New Zealand Coastal Policy Statement 2010 (NZCPS).
 - ii. Amending the matters over which councils can exercise discretion to ensure consistency with Policy 11 of the NZCPS, which relates to protecting indigenous biodiversity.
 - iii. Refining and adding other matters of discretion to make environmental protections more rigorous or less ambiguous.
 - iv. Adding a further matter of discretion related to adaptive management. This partially addresses the concern held by some environmental groups and interested individuals that bay-wide management and cumulative effects were not addressed in the proposed standard. As these effects are more appropriately dealt with at the planning stage rather than the consenting stage, the proposed standard has been amended to allow councils to set conditions on resource consents to implement adaptive management regimes set out in their plans.
46. Rather than publicly notifying applications by default, the proposed standard encourages participation in the planning process and working with councils to identify areas of concern as being inappropriate for existing aquaculture. Councils can set more stringent rules and notification requirements to enable public participation on applications in those areas of high concern. This is a more efficient approach than re-litigating issues on a farm-by-farm basis, and is intended to align the NES-MA with a broader shift we are beginning to see in planning practice toward more integrated, strategic decision making under the RMA. In addition, the matters of discretion contained in the proposed standard are based on expert scientific advice to ensure the ecological effects of aquaculture are managed effectively. A council can decline a consent if any adverse effect cannot be avoided, remedied or mitigated.

Provisions for particularly important sites, including Wainui Bay

47. There was a divergence in views between environmental groups, interested individuals and industry submitters about a proposal to treat sites of particular importance to the industry differently. Specifically this related to spat catching farms which collect wild juvenile mussels to be on-grown to harvest size on mussel farms. 11 submissions were solely focussed on seeking that the Wainui Bay spat catching farms in the Tasman District should not be treated differently. This particular proposal is not being progressed in the proposed standard, but officials are continuing to assess the issues associated with these sites.

Recognising tangata whenua values in the coastal marine area

48. The proposal consulted on included a placeholder matter of discretion to recognise tangata whenua values in the coastal marine area. In response to submissions, hui with iwi, and working with an iwi reference group, the draft matter of discretion has been finalised. The proposed standard has also been amended to require marine farmers to consult with tangata whenua before making an application for a new resource consent, to ensure tangata whenua values are identified and assessed. Where pre-application consultation does not occur the regional council would be able to notify potentially affected parties (including but not limited to tangata whenua).
49. Two iwi organisations from the Bay of Plenty opposed the proposal, considering that a national environmental standard was not warranted and that regional councils and communities should continue to be responsible for setting rules in their regions.

Consistency with Government's priority goals and existing policy

50. The proposed standard is consistent with the Coalition Government's priority goal to recognise the potential for aquaculture in promoting regional economic growth.
51. Agencies assessed the consistency of the proposed standard with the NZCPS. An independent expert also assessed this and both concluded that the proposal is consistent with the NZCPS. The matters of discretion will allow relevant NZCPS policies including Policy 11 (Indigenous biodiversity), Policy 13 (Preservation of natural character) and Policy 15 (Natural features and natural landscapes) to be appropriately considered by regional councils when making decisions on replacement consent applications.

Māori perspectives

52. Māori participation in aquaculture is significant both in terms of Māori businesses and individual owners, operators and staff. Māori own aquaculture assets throughout the main aquaculture regions. Māori would share the same benefits and costs from the proposal as the wider sector. The pre-application consultation process to identify tangata whenua values would impose some additional costs on iwi compared to the status quo, but would also provide a cultural benefit by better reflecting iwi views, and recognise the role of tangata whenua as kaitiaki in the coastal environment.
53. Relevant legislative provisions that affect Māori have been considered in developing the proposed standard. The proposed standard does not affect the application of the Māori Commercial Aquaculture Claims Settlement Act 2004.
54. Under the Marine and Coastal Area (Takutai Moana) Act 2011, replacement consent applications for marine farms are accommodated activities, including those involving a change in species. Replacement consent applications therefore do not require permission from customary marine title holders.

Applications to increase the farm area or change its location, including realignments under the proposed standard, are not accommodated activities. They would therefore require permission from any group with customary marine title over the site. Obtaining permission is the responsibility of the applicant.

Evaluation of the proposal

55. A full evaluation report and cost benefit analysis of the final proposal have been prepared, as required by section 32 of the RMA. The section 32 analysis concludes that the proposed standard is the most appropriate way to achieve the purpose of the RMA, and the provisions of the proposed standard are the most appropriate way to achieve the proposed standard's objectives
56. The cost benefit analysis by NZIER shows the benefits outweigh the costs in all scenarios modelled, driven primarily by certainty and biosecurity benefits. The benefit cost ratio is between 1.37 and 8.73. This range incorporates low and high benefits/costs scenarios, with the higher ratio driven primarily by the implementation of area-based biosecurity management plans.⁶ Some assumptions, such as the timing of costs in relation to biosecurity, mean benefits are likely to be larger in practice than modelled
57. Other benefits include simpler processes associated with replacement consenting; certainty of timing of new rules coming into effect and improved investor confidence; reduced council costs in processing consents and not having to develop rules through the Schedule 1 process; recognition of tangata whenua values; and more effective biosecurity management.
58. The costs of the proposal are expected to include fewer opportunities for public input into farm-by-farm decision making; costs to farmers and tangata whenua to undertake pre-application consultation; and costs to central Government in developing guidance material, investing in regional council capacity and planning, and undertaking monitoring and review.
59. The major cost to both councils and the industry is associated with implementation of biosecurity management plans. The total estimated combined cost to all regional councils ranges from \$899,000 to \$7.4 m (present value). This is primarily associated with biosecurity management plan monitoring costs (\$0.65 m), spread over 20 years. The total estimated costs to marine farmers ranges from \$2 m to \$19.9 m (present value), entirely associated with implementing biosecurity management plans.
60. These ranges represent the extremes between all biosecurity management plans being "area-based" (low cost) and all plans being "farm-based" (high-cost). Fisheries New Zealand would work with councils and industry to support and encourage area-based management being adopted as broadly as possible to minimise costs.

⁶ Fisheries New Zealand will work closely with the aquaculture industry to encourage marine farmers to work jointly on area-based management plans.

61. The attached regulatory impact assessment contains more detail on the assessment of options, benefits and costs.

Compliance

62. Under the RMA, the Minister for the Environment has the responsibility of recommending the making of national environmental standards. The Minister of Fisheries leads Government policy on aquaculture.
63. Before recommending the making of the proposed standard to the Governor-General, the Minister for the Environment must satisfy the requirements of sections 44(1) and 46A of the RMA, summarised below. As Minister for the Environment I anticipate making a formal decision on this when I recommend the regulations be made. I will seek the Cabinet Legislation Committee's approval at this time. Nonetheless, I consider that the requirements in (i) to (iii) above have already been met, and requirement (iv) will be met when I consider the final section 32 report prior to recommending the making of the proposed standard.
- i. **Adequate consultation process:** I am satisfied that the consultation process for the proposed standard provided adequate time and opportunity for submissions from the public and iwi authorities. The process to develop the proposed standard included consultation with the public and iwi authorities and ongoing stakeholder engagement;
 - ii. **Considering submissions:** a section 46A(4)(c) RMA report and recommendations on submissions and the subject matter of the proposed standard has been made to me, which summarises the feedback received from consultation. I have considered changes proposed following consultation and will publicly notify this report prior to recommending the making of the final regulations to the Governor-General;
 - iii. **Consistency with the RMA:** I am satisfied that the proposed standard is consistent with the purpose of the RMA;
 - iv. **Section 32 evaluation report:** I have had particular regard to a draft evaluation report prepared in accordance with section 32 of the RMA. I will consider the finalised section 32 report before deciding whether to recommend the making of the proposed standard, and publicly notify the report when the proposed standard is gazetted.
64. We therefore seek Cabinet's approval of the final policy provisions of the proposed standard.
65. If you agree to proceed, the Parliamentary Counsel Office will be instructed to draft the regulations. We intend to release an exposure draft of the draft regulations to identified stakeholders, including the Aquaculture Reference Group and relevant regional councils to ensure the drafted regulations achieve the policy intent. We seek Cabinet's agreement to releasing the exposure draft. Note we will seek advice from the Ministry for the Environment's Chief Legal Advisor prior to the release.

66. Following the exposure draft process, the Cabinet Legislation Committee would be asked to approve the final regulations and any minor and technical changes identified through the exposure draft process. As Minister for the Environment I would then formally recommend the making of the regulations, and the Governor-General would make the regulations by Order in Council, before the proposed standard was gazetted.

Implementation and review

67. If Cabinet agrees to proceed, agencies would develop guidance to assist councils in implementing the proposed standard. The RMA requires councils to replace any rules in their plans that conflict with the proposed standard's provisions.
68. Fisheries New Zealand will monitor and evaluate the effectiveness and implementation of the proposed standard. This will assist me in my role as Minister for the Environment under section 24(f) of the RMA in monitoring the effect and implementation of the RMA and its regulations.
69. There will be an initial review of the effectiveness of implementation and the regulations after 3 years, with a second wider review to evaluate the effectiveness of the proposed standard after 8 years

Consultation

70. The Department of Conservation, Te Puni Kōkiri, the Office of Treaty Settlements, the Ministry of Business, Innovation and Employment, Maritime New Zealand and the Treasury were consulted on this paper in late 2018 and their views reflected.
71. The Department of the Prime Minister and Cabinet has been informed.

Coastal occupation charging

72. At present marine farmers do not pay to occupy public space, with the exception of marine farmers in Southland. The NES-MA cannot be used to establish a coastal occupation charging regime, however, the NES-MA would not prevent charges from being imposed if councils already have a charging framework in place. Officials are initiating an urgent review of how a fair and appropriate charging regime for the occupation of the coastal marine area could be provided for under the RMA. This would include analysing the existing statutory provisions, and considering alternative mechanisms by which appropriate charging of occupiers of the coastal marine area (including marine farmers) could be achieved.
73. Any public messaging on the NES MA will include that a fair and appropriate charging regime will be developed separately which will apply to marine farmers and to others occupying the coastal marine area.

Financial Implications

74. If Cabinet agrees that the proposed standard should proceed, the estimated cost to Government over the next 8 years is \$317,000 (present value). This cost comprises:
- i. Implementation costs (guidance material and capability investment for councils (spread over years 1 and 2), and
 - ii. Monitoring and review costs in years 3 and 8.
75. These costs would be incurred primarily by Fisheries New Zealand with some costs incurred by the Ministry for the Environment and Department of Conservation, particularly for the reviews. Costs will be met within each department's existing baselines.

Legislative implications

76. The Parliamentary Counsel Office has been consulted. The proposed standard would be issued as regulations by the Governor-General by Order in Council.

Impact analysis

77. A draft version of the Regulatory Impact Assessment was circulated with the Cabinet paper for departmental consultation.
78. A Quality Assurance Panel with representatives from the Ministry for Primary Industries and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment "Options to improve management of existing marine aquaculture and reduce marine biosecurity risks" produced by the Ministry for Primary Industries and dated October 2018. The panel considers that it meets the Quality Assurance criteria.
79. The problem definition is clearly articulated, the analysis of options is comprehensive and the costs and benefits monetised and robust. The panel notes that outcomes are not fully predictable and will require careful monitoring and evaluation by the responsible agencies.

Human rights

80. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Publicity

81. If Cabinet approves our proposal we will issue a press release.

Proactive release

82. We propose that this Cabinet paper be proactively released at the time of a public announcement, subject to redactions considered under the provisions of the Official Information Act.

Recommendations

The Minister for the Environment and the Minister of Fisheries recommend that the Cabinet Environment, Energy and Climate Committee:

1. **Note** that marine aquaculture is an important component of New Zealand's primary sector.
2. **Note** the existing regulatory framework for marine aquaculture is complex and inefficient, with inconsistent rules between regions, and that this creates regulatory uncertainty.
3. **Agree** that greater regulatory consistency and certainty is necessary to:
 - 3.1 Reduce costs for councils and the aquaculture industry in processing upcoming replacement consent applications.
 - 3.2 Ensure consistency in the best practice management of environmental effects.
 - 3.3 As a result of (i) and (ii), increase confidence to invest in the industry.
4. **Note** a proposed national environmental standard to achieve these objectives has been publicly notified and consulted on in accordance with the Resource Management Act 1991.
5. **Agree** that the Minister for the Environment instruct the Parliamentary Counsel Office to draft a National Environmental Standard for Marine Aquaculture, consistent with the proposals set out in the section 46A(4)(c) report and recommendations to the Minister on the submissions and subject matter of the proposed National Environmental Standard for Marine Aquaculture, which would:
 - 5.1 Make applications for replacement consents for existing marine farms a restricted discretionary activity, including opportunities for small-scale realignments and changes in approved species, provided the area has not been identified as inappropriate for aquaculture in a regional coastal plan.
 - 5.2 Clearly specify matters of discretion which councils would consider when determining whether to grant or decline a replacement consent application. These matters of discretion address the key environmental effects of aquaculture, and encompass ecological effects determined through an extensive scientific literature review of the effects of aquaculture.
 - 5.3 Preclude public or limited notification for most replacement consent applications, except to affected tangata whenua and where special circumstances and other RMA notification exceptions apply (sections 95A and 95B). Councils would follow the normal statutory tests under the RMA to determine whether to notify replacement consent applications that include realignment, species changes that require changes in structures (beyond subsurface structures) and/or involve finfish, and any applications in areas that the councils have determined to be inappropriate for aquaculture (if applications are allowed at all in that area).

- 5.4 Require pre-application consultation by the applicant to identify and consider tangata whenua values in deciding replacement consent applications. Where this consultation does not occur, a broader matter of discretion on tangata whenua values would apply and limited notification would not be precluded, so that iwi could submit on the application.
 - 5.5 Clarify that consideration of the effects of an existing marine farm on an outstanding area is limited to farms that are partially or fully within an outstanding area.
 - 5.6 Enable, as part of a replacement consent application, a change to the location of an existing marine farm by up to one third of the farm area to address adverse environmental effects associated with the existing location. Farms larger than 10 hectares and those that use supplementary feeding would not qualify for this provision.
 - 5.7 Enable, as a part of a replacement consent application for an existing marine farm, the ability to change the species farmed. Four categories of species changes would be recognised, with specific matters of discretion to manage the effects created by the species to be added or any changes to farm structures, and appropriate notification requirements for each type of species change.
 - 5.8 Allow councils, through their regional coastal plans (which undergo a significant public consultation process), to set activity status for consent applications for existing marine farms that are more lenient than the proposed standard.
 - 5.9 In areas where, after 1 January 2019, regional councils have determined that aquaculture is inappropriate through their regional coastal plan, set a discretionary activity status for replacement consent applications and allow councils to set an activity status that is more stringent.
 - 5.10 Require that regional councils only grant a resource consent for a marine farm (whether an existing farm or a new application) where a biosecurity management plan has been lodged and assessed by the regional council as meeting the criteria specified in an externally referenced document which will be developed by Fisheries New Zealand.
 - 5.11 For existing consents that do not expire before 31 January 2025, require councils to review the consent before that date to implement a biosecurity management plan.
 - 5.12 The replacement consenting, realignment and change of species provisions will not apply to marine farms in Wainui Bay and the Tasman Aquaculture Management Areas in the Tasman District, or the Wilson Bay Marine Farming Zone in the Waikato Region.
6. **Note** that the Minister for the Environment has agreed the proposed National Environmental Standard for Marine Aquaculture is consistent with requirements under the Resource Management Act 1991.
 7. **Note** the proposed standard is consistent with the Government's priority goal to recognise the potential contribution of aquaculture to regional economic growth, while ensuring management within environmental limits.

8. **Note** that iwi have been consulted during development of the proposal, and the proposal is expected to deliver net benefits to iwi with aquaculture interests.
9. **Agree** that we release an exposure draft of the regulations to identified stakeholders, subject to advice from the Ministry for the Environment's Chief Legal Advisor.
10. **Agree** that the Minister for the Environment and Minister of Fisheries approve the final details of the regulations to give effect to the policy in this paper, as may be required.
11. **Note** that any changes will be reported to the Cabinet Legislation Committee when seeking approval for the regulations to be signed by the Governor General by Order in Council.
12. **Note** that Fisheries New Zealand will monitor and evaluate the effectiveness of the proposed standard.
13. **Agree** to the publish the section 32 RMA report (as required by section 32(5) of the RMA) and the section 46A(4)(c) report and recommendations on the submissions and subject matter (as required by section 44(1)(d) of the RMA), subject to minor editorial changes as agreed by the Minister for the Environment and the Minister of Fisheries.
14. **Agree** to an initial review of the effectiveness of the regulations and their implementation after 3 years, with a second wider review to evaluate the effectiveness of the regulations after 8 years.
15. **Agree** that the Minister for the Environment and Minister of Fisheries publicly release this paper following Cabinet's decision (with any appropriate redactions) including any Cabinet decisions and any Annexes including the Regulatory Impact Analysis, to meet statutory requirements.

Authorised for Lodgement

Hon David Parker
Minister for the Environment

Hon Stuart Nash
Minister of Fisheries