Aquaculture Legislation Reform

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for the Environment, the Ministry of Fisheries and the Ministry of Economic Development. It analyses options to reform the aquaculture legislation

There are some constraints, caveats or uncertainties concerning the analysis in this RIS:

- there has not been consultation on the full range of policy options identified in the RIS because of the timeframes for policy development. Consultation on the TAG report did not canvass the full range of options in this paper. Therefore the analysis in some areas does not take account of Māori or stakeholder views, or have an ideal evidence base on some aspects of the problem definition, or the costs and benefits of some options.
- because aquaculture reform is highly complex technically, and covers a broad and interrelated range of topics, the timeframe for development of options has meant not all issues could be worked through to a level of detail to give full certainty on costs and benefits. The timing for policy development has been fast, with consultation on the TAG report ending 16 Dec 2009 and this paper completed in mid January. This has required development of detailed policy simultaneous with consultation on the TAG report.

Further work required before officials can fully assess the effectiveness, costs, benefits and other implementation issues includes detailed analysis of regional coastal plans to determine how they can manage aquaculture applications if AMA provisions are removed from law.

The proposals in this RIS will not override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines) or impair private property rights. Some impacts remain on market competition and/or incentives for business to innovate and invest but the overall effect is to reduce these impacts. Some of the policy options identified in this paper may impose additional costs on businesses (e.g. the aquaculture settlement provisions, cost recovery on the Undue Adverse Effects test (UAE), an aquaculture levy).

Mark Sowden, Director Natural and Built Systems, Ministry for the Environment

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Cathy Scott, Deputy Chief Executive Strategy, Ministry of Fisheries

9/3/10

Paul Swallow, Manager Business Projects, Ministry of Economic Development

9/3/10

Executive Summary

The aquaculture industry has potential to contribute significantly to New Zealand's future economic growth. The aquaculture legislation creates significant barriers to this potential, and this paper assesses options for reform.

The 2004 aquaculture reforms, and prior moratoria, were a response to high and scattered demand for aquaculture space. The 2004 reforms prohibited aquaculture outside Aquaculture Management Areas (AMA) – a new tool that combined RMA planning zones, an aquaculture settlement and an assessment of the effects of new aquaculture on existing fishing (the UAE test). The rationale for this model was that upfront planning for aquaculture would focus development in a manageable way.

The legislation has overcorrected beyond what is needed to manage high demand and has placed significant barriers to new aquaculture. The legislation is extremely complicated, and the incentives lie in the wrong place, as industry in most cases need to wait for councils to initiate aquaculture planning before they can apply for consents.

The objectives of this aquaculture reform are:

1. Reduce cost, delays and uncertainty with the aquaculture regulatory process
2. Promote investment in aquaculture development
3. Integrated decision making

Some of the options in this paper focus on the key problems with the legislation – the most significant being the statutory restriction on aquaculture outside AMAs. Other options go beyond addressing proven problems to actively promoting aquaculture development, for example through stronger consent rights and central government intervention. This reflects the fact that aquaculture development has been in past disadvantaged by the legislation, and that some strong signals are required to make it attractive again as an investment opportunity.

The table attached to this RIS summarises the options for reform, assesses them against the objectives, and lists any risks or areas requiring further work.

These reforms are closely related to the review of the Foreshore and Seabed Act, which is examining fundamental ownership issues. It will be important to coordinate both the policy development and consultation on these two matters to ensure coherent policy development, and recognise Māori interests.

Aquaculture reform is also part of Phase II of the RM review. Some of the proposals in this RIS create different rules for aquaculture in comparison to other RMA activities, for example 'strengthening' aquaculture resource consents. These proposals are considered necessary to help promote investment certainty in aquaculture development, but they need to be carefully coordinated with the wider reform programme to seek common solutions for common problems and avoid overcomplicating the legislation.

The aquaculture Cabinet papers are split into two tranches – the initial paper seeks decisions on options regarding an active role for government, planning and consenting, and the UAE test. Cabinet will later consider decisions on the aquaculture settlement, coastal charging and transition to the new law. This RIS contains less detail on the second tranche of decisions, but sets out the key questions that will inform that work. In particular, a detailed understanding of regional coastal plan provisions and resource consent practice is necessary to help guide any central government interventions under the RMA.

Introduction

1. The aquaculture industry has potential to contribute significantly to New Zealand's future economic growth. The aquaculture legislation creates significant barriers to this potential, and this paper assesses a range of options for reform.

2. This paper discusses problems with the legislation, objectives for reform, and options to meet these objectives. The attached table provides an overview summary of the options, objectives, risks and further work required.

3. Aquaculture Cabinet decisions are split into two tranches – the initial paper seeks decisions on options regarding an active role for government, planning and consenting, and the UAE test. Cabinet will later consider decisions on the aquaculture settlement, coastal charging and transition to the new law. This RIS contains more detail on the first set of decisions, as the policy is more settled. There is less detail on the options for the second tranche of decisions, but rather a discussion of the key questions that will inform that work.

Key features of the aquaculture legislation

Drivers for previous aquaculture reforms

4. The aquaculture industry went through a boom period in the late 1990s, and demand for coastal space increased significantly. This growth in demand placed councils, other coastal users and the community under increasing pressure. The government in November 2001 legislated a national moratorium on new aquaculture applications and began a review of the legislation, culminating in the 2004 Aquaculture Reform Act.

5. This Act lifted the national moratorium and introduced a new regime for aquaculture management, based around the establishment of Aquaculture Management Areas (AMAs) in Resource Management Act 1991 (RMA) regional coastal plans. The new law required that applications for aquaculture resource consents could only be made in AMAs, ensuring that any aquaculture development had to be planned for in advance.

Summary of the aquaculture legislation

6. The legislation has five main elements:

   - initial planning provision for aquaculture through draft AMAs
   - assessment of effects on fishing activity through the Undue Effects Test (UAE)
   - confirmation of provision for aquaculture (finalisation of AMAs)
   - the aquaculture Treaty settlement
   - applications for resource consent.

Initial planning provision for aquaculture

7. New aquaculture can only occur in AMAs defined in regional coastal plans. Regional councils assume responsible for deciding what locations and species are appropriate in their region, although AMAs also can be initiated by councils or by private interests. Marine farms are prohibited outside AMAs.

8. The aquaculture Treaty settlement and UAE provisions are integrated with the AMA planning process (in the past, marine farms had required dual approval under the RMA and fisheries legislation, and the aquaculture settlement was introduced in the 2004 legislation).

i) Council-initiated process

9. If a council chooses to initiate the AMA process, changes, variations and reviews of regional coastal plans go through the RMA planning process. Councils will consult widely to decide where marine farming should happen, and as part of the process, will consider the potential effects on the environment, such as marine farming's effects on other users, marine life, fisheries sustainability and nutrient depletion. Aquaculture space created by a council-initiated plan change would eventually be allocated to interested parties by mechanisms such as tendering.

ii) Invited Private Plan Change:

10. Some councils may prefer to decide where they do not want aquaculture, and invite industry to submit Private Plan Changes in the remaining coastal marine space. The Council can accept one or more proposals, combine proposals into one larger proposal, or reject all the proposals. Proponents of the plan change get preferential allocation of space within its area.

iii) Standard Private Plan Change:

11. The Private Plan Change process is exactly the same as for a council-initiated plan change, except that the private party carries the costs of the planning process.

Assessment of effects on fishing activity

12. The Ministry of Fisheries contributes early in the AMA process by testing for any undue adverse effects on commercial, recreational and customary fishing (the UAE test) before an AMA can be established (whether council or privately initiated). This assessment is separate to the RMA consideration of aquaculture effects on fishing interests.

13. The Ministry of Fisheries gives its approval to the AMA if no undue adverse effects are identified on customary, recreational or commercial fishing. However, if part of a proposed AMA is found to have an undue adverse effect on customary or recreational fishing, then it will be deleted from the proposal.

14. If part of a proposed AMA is found to have an undue adverse effect on commercial fishing, a 'reservation' is placed on these areas and the consent applicant is required to negotiate a voluntary agreement with 90% of the affected quota owners before the area can be allocated under the RMA.

Confirmation of provision for aquaculture

15. After the UAE test, the area of the proposed AMA that was approved by the Ministry of Fisheries must then be publicly notified as a change to the regional coastal plan to get the area formalised as an AMA. There is opportunity for the community to provide submissions and have a say in whether the AMA should be approved. The process involves public notification, hearing submissions and opportunities for appeals to the

Environment Court. The Minister for Conservation then needs to give final approval to the plan change.

Settlement

16. The legislation also includes an obligation to provide Maori with assets equivalent to 20 per cent of the existing space created since 21 September 1992 (called pre-commencement space) and 20 per cent of any new space allocated in AMAs in future. If an Invited Private Plan change is successful, 20 percent of the space would be provided for the settlement of Māori claims, and the proponent of the plan change will be authorised to apply for consents for the remaining 80 percent. The council also may add space to the area requested by the plan change. If it does so, the council contributes to the costs of the planning process, and the remaining space is allocated according to the coastal plan provisions.

Applications for resource consent

17. Once the AMA is approved applicants are required to obtain a resource consent for marine farming activities from the regional council. The application may or not be publicly notified depending on the plan provisions, and there is the possibility of appeal to the Environment Court.

Governance

18. There is no one agency with overall responsibility for aquaculture. Responsibilities are split between:

    - The Ministry of Fisheries – responsible for decisions under the UAE test, processing of some pre-2004 "backlogged" applications, and maintaining a public register to identify persons who are authorised to operate fish farms
    - The Minister of Conservation – responsible for approving RMA regional coastal plans and the New Zealand Coastal Policy Statement
    - The Minister for the Environment – overall responsibility for the RMA.

19. The Ministry for the Environment, Department of Conservation and Ministry of Fisheries formed a cross-agency group (the Aquaculture Implementation Team or AIT), with support from New Zealand Trade and Enterprise, Te Puni Kokiri, and the Ministry of Economic Development.

Implementation of the 2004 reforms

20. There have been no AMAs created under the 2004 reforms, except those established through approval of older applications, and transitioned into the new regime as "deemed" and "interim" AMAs. There has, therefore, been no possibility of applying for new aquaculture resource consents.

21. Some new aquaculture space has been created through the transitional provisions of the legislation (i.e. applications made before the moratorium that have taken several years to get approval under the RMA and the Fisheries Act). For example, in December 2009, 3143 hectares of aquaculture space were approved by the Ministry of Fisheries.

22. Some councils have made progress on aquaculture planning – for example Northland Regional Council is developing a plan change to create a policy framework for AMAs, and Environment Waikato is developing a plan change looking at the species restrictions in their planning rules. No regional councils have, however, yet notified any plan changes to create new AMAs. Even if such a plan change was started tomorrow it is unlikely that resource consent applications under the 2004 legislation will be possible for several years, because of the time it would take to go through the AMA statutory process.

23. The AIT developed an implementation plan to assist regional councils and others in making the law work in practice. Over 2005 – 2009, the AIT has initiated and overseen a series of projects, including assisting Northland, Waikato, Canterbury and Auckland Regional Councils in developing policy frameworks for aquaculture, and supporting the development of an industry-led marketing plan and investment strategy.

24. The AIT has also administered the Aquaculture Planning Fund, a $2M contestable fund intended to support regional council initiatives to provide for aquaculture. Approximately half the fund has been distributed thus far, in support of a variety of projects, including:

    - a review of the harvesting classification for the Waikare Inlet (this is leading to the rejuvenation of the oyster industry following pollution problems)
    - an economic assessment of the actual and potential value of the industry in Northland
    - the development of standard methodologies for effects assessment
    - support for the development of policy frameworks in Northland, Waikato and Marlborough.

25. In mid-2008 the then Government initiated a series of regional projects intended to facilitate the creation of new space or more flexible use of existing space in Northland, Tasman and Marlborough. These had the potential to lead to Government-sponsored private plan changes to create AMAs. A special appropriation of $2.6M was allocated for this work.

26. Although the investment the Government has made through the AIT has resulted in some positive outcomes and has been supported by stakeholders, it has been unable to overcome the fundamental disincentives in the current law that have constrained the creation of new space. The regional projects referred to above were an example of an attempt to test that law and break the inertia. The level of support from industry for such Government-led initiatives was muted. The view generally expressed by the industry was that the Government should focus on removing those disincentives and allow the industry to make its own investment decisions.

Key problems

Problems specific to the aquaculture legislation

Overly restrictive and complex AMA planning provisions

27. Aquaculture is treated more restrictively than any other RMA activity in the coastal marine area, because it is prohibited in all areas outside AMAs. This makes any new resource consent application conditional on AMAs first having been created. There currently are no plan changes in train to provide for new AMAs, and even if there were, the plan change process will take several years.

28. The key reason for these delays is the number of statutory steps to complete under the RMA and the UAE test, and the incentives and resources of local government to both begin in the first place and prioritise an aquaculture plan change against their other business. There also are multiple points for review and appeal, which is not a problem as of itself, but means it is hard to estimate timeframes or have certainty about outcomes. Current estimates based on planning progress to date is that it will take 6-13 years (including appeals) to develop plans, establish AMAs and then allocate and consent space. This is an estimate because no plan change to create AMAs has yet been completed (or indeed even started).

29. The intent of the AMA model was that aquaculture should be planned for in advance, therefore focusing development in defined areas, rather than having to deal with issues individually for each consent application, and scattered development. The AMA model, though, has "overcorrected" beyond what is required to manage high demand for space, and in practice has created high barriers to future aquaculture development.

30. The complexity of the law also has meant that the policy intent has been stymied by grey areas and technical problems. These have required amendment through aquaculture amendment Bills – one passed in 2008 and another now reported back from Select Committee.

31. This restrictive and complex AMA model is the most significant problem with the legislation. It also influences some the problems discussed below. For example, the complexity of the AMA process is a disincentive to councils or industry commencing aquaculture planning.

Complexity and controversy of the planning issues

32. Aquaculture proposals are usually contentious. Access to new space is an important industry need, but in some regions concerns about the effects of aquaculture has led to restrictive planning provisions or decline of aquaculture consents in areas highly suitable for aquaculture from an ecological and economic perspective. Areas of interest for aquaculture (primarily sheltered and clean water bays) are often where recreational and amenity interests also are highest. This means that aquaculture plan or consent proposals may face significant opposition through the RMA process.

33. This is not a problem with the legislation per se, it simply reflects high interest in the issues. But since RMA decisions at predominantly made at the local level, the controversy of aquaculture issues has a strong effect on the incentives and priorities of councils for aquaculture planning.

Fisheries UAE assessment

34. Areas of interest for aquaculture are often also where customary, commercial and recreational fishing interests are highest. The UAE adopts a 'threshold' approach by assessing whether the (adverse) effects of aquaculture proposals on existing fishing are "undue". This is additional to the RMA's "balancing test" consideration of effects on fishing and fisheries resources, and the benefits of aquaculture. The UAE test aims to ensure that aquaculture development does not unduly affect existing rights and interests of fishers, or create a Fisheries Settlement Act grievance as a result of quota or customary rights being rendered ineffective through the cumulative impact of new aquaculture activity. Certainty around how and when such rights, especially fishing quota rights, can be affected provides an important incentive for fishers to invest in fisheries, and contribute to successful fisheries management.

35. This test does, however, add time, complexity and uncertainty to the process for establishing new aquaculture:

    - the timing of the application of the test increases uncertainty – initial planning work must be undertaken for the RMA plan change process before it can be assessed for effects (this prior work might be in vain if there is a undue adverse effect), reducing the incentives for council to begin RMA aquaculture planning

    - where an undue adverse effect is found, there is a limited opportunity for aquaculture applicants and quota holders to reach agreement sufficient to allow aquaculture to proceed. The current processes for reaching agreement, including Court-sanctioned proposals, have not yet been used, but they are considered unlikely to be a cost-effective way of dealing with this issue.

36. The UAE is controversial with councils and industry – because it is perceived as a barrier to aquaculture development and adds complexity to the statutory process. There is no practical evidence on the impact of the 2004 UAE test, because it has never been used (as no AMA proposals have yet been developed that far). Criticism of the test therefore either relates to historical issues with implementation of the UAE (for example long timeframes for the assessment of previous tests), or criticisms of its principles (for example that aquaculture is subject to a test not necessary for other activities under the RMA, or gives incumbent fishers strong leverage over new prospective marine farmers.

37. It is inevitable that aquaculture and fishing will continue to come into conflict in New Zealand's crowded nearshore space. We cannot predict how widespread or significant this issue will be. As of 2004 the UAE test no longer includes assessment of effects on "fisheries resources", which required the majority of analysis and created the most uncertainty. The Ministry of Fisheries considers this will make decisions on the UAE test considerably easier. It is also unclear exactly how much aquaculture space will be applied for in the future, and whether it will be specifically in areas that will trigger the UAE.

38. In conclusion, the UAE test helps protect existing fishing rights from erosion, but presents an additional regulatory barrier to aquaculture that is not present for other activities managed under the RMA. There is a lack of evidence on how this will affect future aquaculture development.

Incentives and resources

39. The 2004 reforms created a complex and expensive statutory path for the creation of AMAs. The expectation was that regional councils would initiate AMA planning, as they are best placed to plan for their own regions. A problem, however, is that councils have little incentive to go through the AMA process. The key reasons are:

    - industry, not councils, are best placed to identify areas of interest for aquaculture
    - the legislation is complex, with multiple decision points and opportunities for public participation, judicial review and appeal rights, which means long time frames and uncertainty about outcomes. Councils do not want to sink costs into a multi-year planning process that has uncertain outcomes
    - some councils may not have the staff expertise, capacity or funding to do expensive and complicated plan changes, or to prioritise aquaculture above other issues for their region
    - AMA planning will often face significant opposition from local ratepayers, particularly since the work will benefit private industry from use of a public resource, and create significant impacts to the amenity values of the coastal environment. This makes it politically difficult for some councils to initiate aquaculture planning.

40. There also is the option for industry-initiated private plan changes. Industry has indicated that the financial costs associated with a plan change and the uncertainty around outcomes (because there is no guarantee on how the council will receive the plan change or how the space created will be allocated), are significant disincentives.

41. A third option is invited private plan changes – where industry has identified as a barrier to implementation the lack of provisions to deal with the possible competition between different applicants over the same water space. The Aquaculture Amendment Bill (No.2) has provisions for allocation of the right to apply for an invited private plan change, which could makes this a more attractive option, if that Bill is passed into law.

Generic issues with New Zealand's resource management system

42. Some aquaculture problems are symptoms of broader issues with New Zealand's resource management framework, but are outside the scope of the aquaculture review:

    - there is criticism that the RMA planning and consents framework is not optimal for managing the allocation of natural resources – such as coastal space or freshwater. While local government has the mandate to plan for improved allocation of natural resources, to date such planning has been impeded because the issues are politically contentious, and councils lack capacity to deal with some of the more complex issues
    - the RMA devolves resource management decisions almost exclusively to local government. While central government has the ability to provide national guidance and direction, a past criticism of RMA implementation has been that this national direction is lacking. This can lead to tensions in decision making between local impacts and national benefits, and also that councils are individually left to solve problems that need national perspective and resourcing
    - New Zealand's marine management framework has some integration problems between different laws and agencies. For example, the RMA and Fisheries Act have completely different approaches to resource management and property rights, which is reflected in the complexity of the UAE test that seeks to interface the two.

There also are unresolved issues around ownership and the nature of Crown and Māori interests in the coastal marine area

- the devolved system of resource management in NZ also raises issues for Māori involvement in these processes and to what extent Treaty issues should be resolved by local government when it is the Crown that is the Treaty partner. This is becoming increasingly important as Treaty relationship moves from settlement of historical grievances to ongoing iwi involvement in the governance of natural resources. This presents challenges for existing resource management frameworks where councils are variable in their relationships with local iwi/hāpu and are also accountable to their own electors.

Regional variations

43. Issues with aquaculture, and the economic potential of aquaculture, vary greatly across different regions. In Marlborough, for example, aquaculture is a mature industry, better supported by the local community and with detailed aquaculture provisions in the coastal plan. By contrast, in Northland there is a smaller oyster-based industry, with interest and potential for development of new species, and a supportive regional council, but the risk of substantial opposition from local residents and recreational interests.

44. The status of plans, therefore, reflects local issues and pressures, and some planning provisions restrictive to aquaculture have been developed through a public process. A single "blunt" centralised regulatory solution is unlikely to be nuanced enough to address these regional differences.

Reform of current legislation

Development of options

45. Reform of aquaculture legislation is a high priority for the government. A report was commissioned in late 2008 from LECG consultants recommending improvements to aquaculture legislation. After receiving advice from officials on the range of reform options, in mid-2009 Aquaculture Ministers directed the appointment of an Aquaculture Technical Advisory Group (TAG) to generate independent advice to Ministers on reform of the legislation. The TAG report was completed in October 2009 and consulted on over November / December 2010.

Consultation

46. Between 5 November and 16 December 2009 the Ministry of Fisheries invited written submissions from the public on the recommendations of the TAG report. This involved sending the report directly to key groups, including iwi, Te Ohu Kai Moana, aquaculture and fishing industry groups, NGOs and interest groups such as Yachting New Zealand. The TAG report, and Q&As, were made publicly available on the internet. Workshops and hui on the TAG report were held in December with iwi, local government, industry, and 223 submissions were received.

47. There is a wide range of opinions on the TAG's recommendations, and general acknowledgement that significant work is required to develop the detail of the policy options. Further, submitters sought further consultation on the policy options as they are developed and during the drafting of the legislation.

48. Submissions can be grouped into two broad positions. First are those who stated the need to unlock the economic potential of aquaculture in New Zealand, and tended to

support in principle all or most parts of the TAG's recommendations. However, most of these submissions have issues with the lack of specificity and/or oppose particular recommendations based on their interest area.

49. The second grouping is those who oppose the TAG's recommendations because:

- they offer aquaculture special status over other coastal marine uses and do not give due consideration to environmental issues and the needs of other coastal marine users
- they prefer the development of an Aquaculture Act to offer greater certainty to industry
- they prefer a more regionalised approach, reflecting specific and significant regional matters.

50. Ministers directed consultation on the TAG report, with submissions by 16 December 2009 and a Cabinet paper with final decisions in February 2010. Although policy development has scoped a wider range of options, there has not been time to consult on anything but the recommendations in the TAG report.

Related government reforms

51. Aquaculture reform is directly related to other projects across government:

- the review of the Foreshore and Seabed Act – as this addresses underlying ownership issues in the coastal marine area. This is relevant to all aspects of aquaculture policy, but particularly key for issues with coastal occupation charging, the aquaculture settlement and allocation of space
- other projects in RM Phase 2, especially the RM II Generic workstream which is looking at consent security, consent processing and plan development more broadly, and the RMII_W Freshwater work stream is looking at allocation and governance issues in the context of water
- the Aquaculture Legislation Amendment Bill (No 2) was reported back from Select Committee on 1 September 2009. It addresses some technical problems with the current aquaculture regime. Some aspects of the Bill remain relevant to the intent of broader reforms – for example the provisions on experimental aquaculture. Other aspects of this Bill will be defunct under a revised regime (for example the majority of amendments that relate to AMAs). Ministers will need to consider options to either proceed immediately with this Bill, amend it through a Supplementary Order Paper, or combine it with the broader reforms
- the Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Bill was reported back from Select Committee on 28 August 2009. This Bill gives 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. Because this Bill – which deals with existing, rather than future, settlement obligations, it does not overlap with the proposals in this RIS.

Objectives for aquaculture reform

Economic growth potential of aquaculture

52. Aquaculture currently generates approximately NZ$370 million of sales annually, with two-thirds of these sales generated through exports, or approximately 20% of the total value of New Zealand seafood production, and has significant growth opportunities, particularly in higher value finfish species. A report by Ernst and Young estimated the growth potential of aquaculture as between $1.7 to $2.2 billion *per annum* by 2025 if some basic business practices are followed, further water space is made available and there is flexibility for farm conversions in some existing space.

53. Aquaculture can contribute significantly to regional economic development. For example, the 313ha of developed and productive oyster farming in Northland is estimated to contribute (directly and indirectly) $30 million per annum and 465 jobs to the region.

54. The purpose of Ministers in directing these aquaculture reforms is to unlock the economic potential of aquaculture. Some of the objectives and options below, therefore, go beyond solving proven problems with the legislation, to actively promoting investment in the sector.

Objective 1: Reduce cost, delays and uncertainty with the aquaculture regulatory process

55. The current legislative framework presents serious barriers to industry development. The role of government is to provide an efficient regulatory framework that enables the development of the aquaculture industry.

Objective 2: Promote investment in aquaculture development

56. The government has identified aquaculture as an industry of national economic potential. The government also recognises that the 2004 legislation reforms, and the earlier moratorium, have created active barriers to aquaculture development. There is a desire, therefore, to kickstart implementation of the new regime and promote the national economic benefits of aquaculture.

57. Given the past barriers legislated to aquaculture, and its economic potential, Ministers have directed the development of measures that go beyond addressing proven problems to active promotion as an area for new investment. The key sub-objectives are:

    2.1 establishing a clear role and framework for central government involvement in aquaculture matters

    2.2 ensure the national and regional economic benefits of aquaculture development are considered in decision making

    2.3 increased investment certainty in aquaculture resource consents.

Objective 3: Integrated decision making

58. Aquaculture development needs to be managed within the broader context of coastal management, which includes robust assessment of environmental impacts, and a balancing of aquaculture within other marine interests, both within and outside the RMA.

Decision making should maximise net benefits to New Zealand by taking all interests into account and balancing local and national interests.

59. Specific objectives are:

3.1 integration of aquaculture management with other RMA activities

3.2 integration of decision-making on aquaculture with decision-making on related/affected activities which are managed outside the RMA – particularly existing fisheries rights

3.3 providing for the aquaculture Treaty settlement and coordinating aquaculture policy with the review of the Foreshore and Seabed Act.

60. There is a natural tension between this and objective (2) – insofar in that giving aquaculture special treatment creates different rules and precedents in comparison to other activities.

Assessment of problems vs objectives

Problem	**Specific to aquaculture?**	**Impact on objective 1 (reduce costs, delays and uncertainties)**	**Impact on Objective 2 (promote aquaculture development**	**Impact on Objective 3 (integrated decision making)**
Law prohibits aquaculture outside AMAs	Yes. Only aquaculture has these provisions in the RMA.	High. Pathway to creation of AMAs means consents applications unlikely for years.	High. Barriers within the law preclude major economic benefits from aquaculture development	Medium. Aquaculture is managed within the RMA, but separate rules to other coastal activities. Provides for UAE and settlement.
No incentives for coastal planning to enable aquaculture	Yes. AMA provisions impact directly on coastal planning incentives.	High – though incentive problems with the AMA model also addressed by removing AMAs provisions.	High. No incentives to commence AMAs preclude any industry development.	Low.
Fisheries (UAE) test	Yes. UAE test applies only to impacts of aquaculture.	Medium. Lack of evidence on quantum of issue	Medium. Hard to quantify.	Medium. UAE does attempt to integrate RMA and QMS rights, but has implementation problems.

Controversy of planning issues	No. Generic to many RMA issues	n/a.	Medium. Large RMA developments attract substantial local opposition. Hard to estimate the economic impact.	n/a.
Regional variations (not a problem per se but something to take into account)	No. Resource management issues differ across NZ.	Variable. Large regional difference in coastal plans and attitude of councils.	Variable. Some councils are far more pro-aquaculture than others.	Variable. Regional coastal plans all have different means of dealing with aquaculture vs. other coastal activities.

Conclusions

61. The key problem is the statutory prohibition on aquaculture outside AMAs, coupled with the complexity of the AMA process. Incentives to go through the regulatory process also are a key problem, although these may partly be contingent on the AMA model (in other words, incentives may be higher were the regulatory process more attractive).

62. Medium-impact issues include the balance between fishing interests and aquaculture, and the fact that aquaculture proposals are, by their very nature, likely to face a bumpy ride through RMA processes.

63. These issues all are inter-related, and are complicated by regional variations around New Zealand. Any effective options to improve the regulatory framework need to address these problems holistically. For example, it may be difficult to improve incentives for aquaculture if the legislation is unworkable.

Assessment of options

Options for improving the planning framework

64. The AMA planning framework is the most significant problem with the legislation. Three options for reform are proposed below.

Option 1: No legislation reform, but increased support and involvement from central government

65. This option would involve no changes to the AMA provisions, but central government extending the existing Aquaculture Implementation Programme and becoming a more active player - in particular by developing aquaculture private plan changes, and calling-in plan changes or consent applications to the EPA. This option could be implemented immediately (subject to funding being available), and would place incentives to plan with central government, who could act to promote national economic objectives.

66. The costs of this option will vary with the degree of government intervention the facts of the case and the degree of public opposition. "Ballpark" figures for intervention (based on previous call-in costs and work on the aquaculture implementation programme) are:

- calling-in an aquaculture consent or plan change: $1M - $2M
- preparing an aquaculture private plan change $0.5M - $2M.

67. Benefits from this approach would accrue to industry — insofar as planning provides more certainty for aquaculture applications. There also could be public good benefits to regions from work – i.e. good coastal planning also identifies areas not suitable for aquaculture, or helps with management of other activities. The point of coastal plans is to enable orderly development as well as protecting the environment and aspects of it of value to others.

68. This option does provide strong promotion by central government of aquaculture development (Objective 2), but the legislation would remain complicated and slow, with uncertain outcomes. It does not address the fundamental problems with the complexity and uncertainty of the AMA model. It would, therefore, be ineffective in meeting Objective 1, as costs, delays and uncertainty with the law would remain.

69. There also may be an expectation that central government has to initiate all regional aquaculture planning, and that government, rather than industry, is making decisions about where aquaculture investment should focus.

Option 2: Manage aquaculture under specific new standalone legislation

70. An option is to keep environmental effects management under the RMA, but carve out the allocation of coastal space into an Aquaculture Act which clearly states the law required to enable aquaculture activity to occur in the coastal marine area, and an independent body (e.g. an Aquaculture Commission) to undertake planning/zoning and allocate space for aquaculture through a strengthened occupation/use right.

71. This option would create clear incentives for the creation of aquaculture space, and separate allocation of space out of RMA effects management and into a more proactive, development-focused model. This directly addresses the incentives for creating AMAs by

removing allocation from the RMA altogether. It would be similar to the current allocation mechanisms under the Crown Minerals Act.

72. Some downsides of this option are:

- aquaculture is further dis-integrated from management of other coastal activities, presenting difficulties for management of other uses and values in coastal marine areas. For example, aquaculture is affected by many other matters managed under the RMA – such as management of land-based activities or coastal water quality (this has happened already with the UAE etc)
- there are high transaction costs to establishing and maintaining a separate statutory regime for one activity (we face these now with the both the UAE and the RMA litigation)
- while clear incentives are created for the initial allocation of space, the subsequent RMA process is where problems are still likely to come – i.e. decision making still needs to deal with the effects of aquaculture development.

73. This option may deliver strong central government direction (Objective 2), but it is unclear whether it would meet Objective 1, since new legislation does not necessarily address delays and uncertainties (and in fact could add another complex layer of statutory decision making). This option would not meet Objective 3, given that it would further distance aquaculture management from that of other coastal activities.

Option 3: Remove statutory prohibition on Aquaculture outside AMAs

74. Removing the prohibition on aquaculture applications outside AMAs would enable aquaculture applications to be made as for any other activity under the RMA – i.e. subject to regional coastal plans, rather than first requiring the AMA process. This option could be combined with various permutations of the options described below in the remainder of this RIS. For example, there are varying degrees of central government intervention or assistance that could accompany this option to help kickstart the industry under the new legislation, or varying degrees to which the UAE test could be reformed alongside a resource consent process.

75. The advantages of this option are:

- it enables applications for aquaculture from "day one" of the prohibition being removed (subject to the provisions of the regional coastal plans and provisions for the UAE and settlement)
- aquaculture applications can be dealt with at a site-specific resource consent level on their own merits, rather than requiring an AMA process first

76. A risk with this option is another "goldrush" for space. It is hard to quantify this risk because it depends on the decisions of individual prospective marine farmers, the different regional plans, and other economic factors influencing investment (e.g. exchange rates, access to finance. This risk is considered lower than at the time of the goldrush because councils now have greater powers under the RMA to reject substandard applications for lack of information, and because the economic conditions at the time of the goldrush (i.e. exchange rates and global prices for shellfish) are less favourable now.

77. Consultation on the TAG report indicated that regional councils do not consider this a high risk issue. It will be important, however, to ensure there is provision to deal with excessive demand should it again create problems. The effectiveness of this option also is contingent on coastal plans having a comprehensive framework for sustainable management of aquaculture in their regions.

78. This option is the preferred option in the Aquaculture Cabinet papers. Removing the statutory prohibition on aquaculture outside AMAs addresses the key legislative problem, and helps normalise aquaculture within the RMA (Objectives 1 and 3). There is ample scope within this model for strong central government direction to promote development (Objective 2) – with further options discussed below. A key challenge with this option will be the delivery of the aquaculture settlement, which is premised on the AMA model. The statutory provision for the aquaculture settlement and UAE also will "fall out" of the AMA model and need different means of implementation.

Options to improve central government governance and direction

79. The options in this section relate to Objective 2, focusing on the central government actions that can help promote aquaculture development.

Lead Aquaculture Minister and agency

80. Statutory responsibility for aquaculture policy is split between the Ministry of Fisheries, Ministry for the Environment and Department of Conservation. This can mean a lack of clear focus, and considerable churn between the different focuses and drivers of those agencies. Appointing a lead Minister and agency would provide a 'voice' for aquaculture within government, and a lead for some of the proposals below – e.g. responsibility for an Aquaculture Strategy.

81. The exact costs, benefits and risks of a lead agency and Minister vary considerably depending on the nature of their responsibilities. Key design questions include:

- the purpose of the lead Minister and Agency – e.g. are they actively promoting aquaculture development, or trying to balance development opportunities with other factors such as integrated coastal management or management of fish stocks

- whether the Minister and agency would have regulatory decision-making powers, or solely a policy and coordination role. If the former, there would be a need to carefully integrate any regulatory functions with those existing elsewhere, and to avoid any possible conflicts of interest. For example, if the Aquaculture Minister exercises RMA-related regulatory powers, these may cut across the existing statutory responsibilities of the Minister for Conservation for the approval of coastal plans, or conflict with responsibilities under the Fisheries Act.

Government policy strategies

82. A non-statutory Aquaculture Strategy could clearly state objectives and a plan for government actions. The merit in such a strategy is clarity and guidance for government action, and certainty to stakeholders on what to expect. A non-statutory strategy also is relatively fast to draft and amend in comparison to a statutory instrument. An Aquaculture Strategy would strongly deliver on Objective 2. Possible content of a strategy could include:

- government objectives
- governance arrangements both within government and with stakeholders
- an implementation plan for government action
- a monitoring and evaluation plan.

83. A key issue for Objective 3 (integration) is the extent to which the strategy fits within other related instruments or reviews, some of which may have incompatible outcomes. For example, the New Zealand Coastal Policy statement, or the Marine Protected Areas Policy and Implementation Plan, are focused respectively on sustainable management and marine protection, rather than industry development.

84. The New Zealand Coastal Policy Statement (NZCPS) is under consideration more broadly on the balance between protection/preservation and economic opportunities. Because the NZCPS is the key national instrument for guidance on RMA coastal management, it is desirable for it to provide guidance on aquaculture matters, either specifically or through more general policy on economic development.

RMA non-statutory guidance, National Environmental Standards and s360 Regulations

85. Central government already has a role in promoting (non-statutory) good practice guidance, for example through the Quality Planning website, and accreditation for council decision makers. A good practice guidance programme for aquaculture could create shared expectations of good consenting practice and performance e.g. information requirements, monitoring, contingency responses to disease. This will help applicants know what they need to do to prepare good applications and councils to assess whether applications are to be considered adequate.

86. National Environmental Standards (NES) and section 360 regulations under the RMA are a more prescriptive means of providing such consistency and clarity, particularly if non statutory guidance material is proving ineffective. Because aquaculture management is so case- and region-specific, it is unclear whether an NES or regulations for aquaculture is necessary or appropriate. It would be necessary to first make a strong case that they were the best tool for the job, rather than trying to shoehorn the tool around the issues.

Private plan changes and call-ins

87. Central government already has the power (though it has never been exercised) to prepare RMA private plan changes, as can the aquaculture industry. Because private plan changes are initiated and funded by the applicant, the problems with council incentives and resources for aquaculture planning are overcome. The advantage of this option is it provides directly for central government objectives, while keeping aquaculture planning within the scope of the RMA (Objectives 2 and 3). A disadvantage of this option (from the perspective of industry development) is that the final decision on the plan change reverts to the regional council, which creates more uncertainty on the outcomes.

88. The RMA enables the call-in of matters of national significance to a Board of Inquiry. This power could be exercised over aquaculture consents or plan changes. The advantage of this approach is it puts decision making with an expert body, less influenced by local politics and (in theory) better able to balance national benefits of the proposal with local impacts. The disadvantage is the considerable costs of call-ins ($1.5M plus), and the

precedent value of calling-in aquaculture when many other proposals of similar or larger scale are seen fit to proceed through the regional council decision process.

Changing coastal plans through new Ministerial intervention power

89. A new power could be created to insert provisions into regional coastal plans where necessary to meet the Government objectives for aquaculture as set out in the Aquaculture Strategy. These provisions could be promulgated through the Parliamentary process (e.g. as regulations), rather than through the RMA.

90. A number of submitters on the TAG report, particularly local government, are particularly concerned with the use of such a power overriding local decision-making, including overriding plan provisions that have been developed through a full consultation process.

91. This option would provide very strongly for Objective 2 (greater central government direction), in that it would effectively pull aquaculture planning completely out of the RMA and into a central government process. The key advantage of this process is that the incentives to commence rest entirely with central government, and timing is likely to be faster than that for a RMA plan change, particularly since the usual appeal process would not be available.

92. This option would be stronger than any interventions currently existing under the RMA, and would be highly unpopular with local government and those who would like to participate through the public RMA process. As such, it would ideally be a "final option" to be exercised in circumstances of national importance, and where government interventions options have been exhausted. A key risk in the use of such a power is that any plan provision inserted, having been developed away from local concerns and knowledge, could have unintended consequences within the regional coastal plan, particularly when dealing with regionally specific circumstances, and will not have any "buy in" from the council who must implement the provisions.

Options to improve the interface for approvals under the RMA and Fisheries Act

93. Changes will be required to the UAE test as a consequence of other changes to the legislation (e.g. the proposal to remove the AMA model, of which the UAE test is a component). As outlined above in the problem definition section, there also are concerns with time, complexity and scope for legal challenge in the UAE test, and the balance between existing fishing rights and proposed new aquaculture. Reforming the UAE test relates to Objective 1, in that it is creates costs and uncertainties, and Objective 3, regarding the integration of aquaculture and fisheries quota management.

Removing the UAE test

94. The UAE could be removed from the Fisheries Act and the effect on fishing considered under the general RMA provisions (a balancing test). Alternatively, additional provisions could be inserted in the RMA, to enable the UAE to continue to be a threshold test.

95. If the UAE on fishing was considered as part of the general RMA provisions, there would be a reduction in the protection afforded to fisheries rights holders by the current UAE

test. Quota holders and Te Ohu Kaimoana (as a Trustee of settlement assets), are likely to have serious concerns over this approach.

96. Consideration of this option thus requires a fundamental understanding of how important the UAE test is to the integrity of fisheries management. This information would enable consideration of the costs and benefits of removing the UAE test, versus the potential benefits to aquaculture development. There has insufficient analysis on these issues to draw any conclusions at this time.

Coordinating resource consents and UAE determination

97. Removal of the AMA model requires the UAE test to be adapted to a consenting, rather than planning, process. The most efficient regulatory process would involve one application to be lodged with the consent authority, covering both the RMA consent application and those matters relevant to the UAE determination. The consent authority would forward the latter to the Ministry of Fisheries.

98. The statutory timeframes for public notification, timelines, submissions and hearing processes for the resource consent and UAE could be coordinated by legislative changes to the Fisheries Act provisions.

99. The advantage of this process is efficiency – it avoids overlapping consideration of information between different processes, and help stop the same issues being relitigated in different fora.

100. A downside of this option is that the resource consent process may be complicated by the multiple linkages with another process, and extra judicial review and appeal points that arise under the UAE process. For example, it may be possible that a consent application needs to wait until issues with the UAE are sorted out, or vice versa. These issues are, however, inevitable consequence of requiring dual approval under two statutes, and it is preferable to combine and streamline them as much as possible.

101. An operational risk with this option is the resource implications for the Ministry of Fisheries – in terms of dealing with a potential high number of applications scattered around New Zealand. These risks can be mitigated to some extent by other changes to the test that streamline the information and decision making requirements (see below).

Information requirements

102. Past delays to the UAE process have often related to the iterative process for gathering information. An option is to amend the legislation so the information to be taken into account in making a UAE decision is limited to information provided by the applicant, further information requested by the Ministry of Fisheries and information provided in submissions.

Allow aquaculture development to progress when there is an undue adverse effect on commercial fishing

103. A more fundamental change to the principles of the UAE would be allowing aquaculture to progress when a UAE has been determined. Currently, when there is a UAE, the aquaculture can only proceed through aquaculture applicants reaching agreement with 90% of quota holders. Lowering the level of agreement required of quota holders provides less rent-seeking opportunity for existing commercial fisheries rights holders and

may also reduce transaction costs for trade-offs to occur. However, this option only reduces the level of the barrier.

104. Another option is to provide a set of statutory criteria to determine how fair compensation for reduction in quota value should be assessed. This would have the benefit of potentially reducing the transaction costs of the agreement process, while reducing incentives for quota holders to 'hold out' for excessive compensation. The applicant would not need to reach any predetermined threshold of quota holder numbers before being able to test the adequacy of the compensation offer, either through arbitration of Court process. This approach is similar to that used in respect of compensation for the impact of public works on interests in land. It allows for the objections of existing fishers to be overridden, but only where they have been offered fair compensation for their losses. The calculation of loss and appropriate compensation will likely require the use of specialist valuation expertise. This option would not provide the protection, to the on-going stability of the Fisheries Settlement, that the agreement threshold option does.

Use of quota as compensation mechanism

105. A related option is to provide for the purchase, by the aquaculture applicant of sufficient quota shares to offset the impact on quota value, of the proposed aquaculture activity. The benefit of this approach is that it makes use of existing mechanisms for holding and trading quota rights to distribute the compensation across quota holders. It can also provide an effective mechanism for enabling the orderly transition back to fishing, from aquaculture, should the latter activity be discontinued.

Options for dealing with high demand

106. The TAG report noted the importance of councils having tools for managing high and/or competing demands by aquaculture interests for the same space. While alternatives to the "first in, first served" (FIFS) approach to processing consent applications are available under the RMA for activities other than aquaculture, to date these tools have not yet needed to be implemented in regional coastal plans, as the goldrush issues has been confined to aquaculture (which has its own regime).

107. High demand for coastal space in some regions was a key problem sparking the moratorium and subsequent reforms. Proposals to deal with high demand relate mainly to Objective 1 – as an ineffective system leads to delays and uncertainties, and Objective 3 – as tools for management of high demand are necessary to integrate aquaculture with those activities it may affect or compete with.

108. Consultation on the TAG report showed that regional council planners believe FIFS is mostly sufficient to deal with high demand for coastal space. Key justifications for this position are:

- the economic conditions underlying the 1990s to 2001 goldrush are not present – for example low global mussel price and thus lower demand for space for mussel farms
- amendments to the RMA in recent years, such as changes to section 88 allowing councils to reject inadequate applications, mean that a speculative flood of applications is unlikely – as in practice a robust aquaculture consent application requires months of work and dialogue/consultation and considerable expenditure.

109. It is prudent, however, to have tools in place for risk management. If high demand arises in the future it would not be ideal to resort to further moratoria.

110. There is provision in the RMA for regional coastal plans to include allocation tools as an alternative to FIFS. A problem, however, is that it takes time to incorporate these into regional coastal plans by way of plan changes, which means tools may not be available from commencement of the new legislation or immediately available to councils should demand for space significantly increase. One option is inserting alternative allocation rules into plans by way of deeming legislation, but this would be problematic given the degree of variation between such plans.

111. A more flexible option is to make available in legislation a full set of allocation options available to councils for use without any necessity for a plan change. Possible allocation options include:

- enabling councils to call for authorisations to apply for consent in defined parts of the Coastal management area at particular times and/or at regular intervals, consider them together, and grant rights to apply to particular parties
- enabling consent applications for overlapping space or in close proximity to be heard and processed together
- active allocation of the right to apply for consents, including tendering, auction or balloting of coastal space.

112. The law could also provide for a defined and limited contingency halt on applications where councils do face an unexpected level of demand, for example an ability for councils to request from government a temporarily suspension of the receipt and/or processing of new applications, pending the preparation of plan changes to address the effects of the proposed activities or manage competition. This power would need to have clear criteria for its exercise, and a sunset clause to avoid unreasonable delays in changing plans.

Improving investment certainty in aquaculture resource consents

113. Consent security is a key priority of the RMII Generic and RMII Infrastructure work streams. Although these problems are not unique to aquaculture (being shared by a number of sectors that rely on private access to resources and face consent terms limited by law, such as generators, port companies, and irrigators) they have, due to wider problems with the current aquaculture legislation, assumed a particular profile in perceptions of industry operators and potential investors. In the longer term it would be preferable to examine resource consent issues for all activities, but since aquaculture reform is proceeding at a faster pace than these processes, the options below are aquaculture-specific.

114. The key driver for these proposals is the government's desire to kickstart development of the aquaculture industry, rather than addressed proven problems with the status quo. Greater consent security supports Objective 2 (increasing the investment certainty on the property rights associated with an aquaculture resource consent). This may have a negative impact on integrated management (Objective 3), insofar as aquaculture consents would have different rules. A risk in this area is that strengthening of the consents above and beyond the rights for other RMA activities makes them less likely to be granted (because of increased opposition or fears that the consent, once granted, will be locked in "in perpetuity").

115. There is little evidence to evaluate the pros and cons of the options below. The key issue appears to be perception of how "strong" the consent right is. For example, industry may find it easier to attract investment if it is perceived by a bank as a stronger right. Conversely, councils have stated that some aquaculture consents may be more likely to be opposed and/or declined if the consent right is perceived as stronger than what the community (or their plan) is comfortable with. The proposals below, if implemented, would need careful monitoring to assess their effectiveness, and any perverse outcomes.

Consent duration

116. Councils generally grant coastal permits for marine farms for 15 – 35 years, with some exceptions (5 - 15 years). The TAG report states that consent terms at the lower end of the range affect the viability of those farms with longer investment terms, and proposes a 20 year consent term for aquaculture. The AQNZ submission on the TAG report, for example, states that all aquaculture consents should be granted for 35 years (the maximum term possible under the RMA).

117. There is a lack of clear evidence on whether a "problem" exists around consent duration and council data suggests consents are predominantly granted for long terms anyway. In cases where consents are granted for a shorter duration, councils advise that this is often to deal with uncertainty about environmental effects, or significant community opposition. As discussed above, the objective of reforms in this area is not to address a proven problem, but rather to actively promote development in the aquaculture sector.

118. The three main options for addressing aquaculture consent duration are:

a. No legislative reforms, but good practice guidance to councils on appropriate terms for resource consents. In the longer term, consent duration issues could be dealt with across the RMA should evidence emerge sufficient to warrant legislative change.

b. Establishing in law a specific default term for aquaculture. A default term provides a reasonable signal to councils regarding appropriate consent terms and may encourage councils to lift terms from otherwise residing in the lower end of the range (i.e. 5+ years). Because councils are unlikely to <u>not</u> specify a consent duration, however, this option effectively is akin to good practice guidance.

c. An obligatory minimum term for consents, for example 20 years. An obligatory term would send a stronger signal to councils and lift average consent terms to around 20 years. Such a special status would also send a signal to the investment community that aquaculture was now regarded by the Government as a sector at least equal to others in terms of investment potential; thereby countering perceptions that previous regime had created. It would still enable councils to deviate from that minimum with 'good reason'. However, an essentially obligatory minimum may impinge on the ability of councils to comprehensively manage the CMA, create a precedent for other commercial consents in the CMA, could have unintended consequences (e.g. leading to a greater degree of opposition to applications from those parties who consider the balance has been tipped in favour of the industry) and could therefore be counterproductive,

119. Options (a) and (b) do not have any statutory "teeth", and are therefore a less direct means of enhancing consent duration – which will still be at discretion of the regional council. If obligatory minimum consent terms were specified as in (c), applicants would have stronger certainty on the minimum terms for their consents. A key design issue

would be the degree of flexibility for councils to depart from a statutory minimum, because consent duration is affected strongly by the facts of individual applications. For example, shorter consent durations are more likely for controversial proposals or to manage uncertainty. Sometimes applicants may agree to apply for shorter terms to help get consent.

120. A risk identified by regional councils is of perverse outcomes from overly prescriptive rules on consent duration. As suggested above, if councils and communities are concerned with "hardwired" statutory durations of consents it may make the consent more likely to be declined, rather than giving flexibility to negotiate.

121. It is hard to evaluate the benefits and risks of these options as most of the arguments are anecdotal, and consent duration decisions vary between individual cases.

Re-consenting process

122. The TAG report raises concerns with the cost and time associated with a *de novo* re-consenting of existing marine farms. The TAG recommends a simplified default process for re-consenting that relies on current consent terms and conditions and the ability of councils to request further information. An alternative option to the status quo is a new, default process for 'continuation of existing activities' that groups in one place in the RMA existing protections around existing activities and narrows the scope of the decisions for decision-makers, for example constraining decision making requirements to only that information required in addition to existing monitoring data and the original application.

123. This process may work as a potential solution across the RMA where issues of certainty leading up to the point of consent expiry are concerned. Although in some cases simply codifying what is currently achievable in law and practice (e.g. 'evergreen consenting'), it would send a clear signal to councils. It would ensure that councils are not prevented from managing common resources in an integrated, comprehensive manner, because the new re-consenting path, while acting as a default, could be deviated from with good reason and not an obligatory provision. As with other generic issues, the timeframes for reform preclude it being applied wider than aquaculture at this time, although the option can be revisited for other sectors as part of subsequent Phase 2 RMA reform.

Re-consenting - status

124. The TAG recommended making a new consent for an existing aquaculture activity a "controlled" or "restricted discretionary" activity as a default. This means that the plan rules governing the status of an activity are changed through granting of the consent, rather than a plan change. In cases where the plan specifies an otherwise more restrictive activity category (e.g. discretionary or non-complying), this would give the consent greater certainty of re-consenting once its term expires.

125. Specifying existing marine farms as controlled activities means the re-application cannot be declined as long as the application meets certain criteria. A default status at this level would create a precedent for or expectation of rights of occupation in perpetuity. This would thus provide a high level of certainty for aquaculture investment. It also may create a high degree of community opposition to consent applications, and make it harder to manage unforeseen environmental impacts.

126. Specifying farms a restricted discretionary activity status in law, would require a list of what councils were restricted to in exercising their discretion. The list would need to be

Part G - Implementation

156. A key plank of the reforms will be an aquaculture implementation strategy. The implementation tasks for this strategy will include:

- a highly detailed analysis of coastal plans, in partnership with councils, to enable plan readiness for applications from enactment of new legislation – and to enable smart and targeted central government assistance and intervention
- a clear statement and detailed programme for central government's investment in local plan development, guidance development etc. This would include the option above for a central government implementation strategy
- clear government objectives (and triggers) to guide the development and application of guidance or intervention tools
- building of strong relationships with councils and industry
- active monitoring and evaluation of the effect of the legislation.

157. Because aquaculture regulatory functions and implementation are split across three central government agencies, plus the regional councils, a collaborative and flexible approach will be crucial. It will be hard to deliver effective reforms if everyone is pulling in different directions.

158. How these tasks are delivered depends on the final governance structure in government. If a lead agency, such as an AQA, comes into force, it would be the logical "owner" of an implementation strategy, in partnership with other central and local government agencies.

159. It also will be important to clarify the relationship between government and industry. Industry are best placed to identify areas for aquaculture development, and to drive the business case for their own investment. A central government intervention strategy can only set the scene for aquaculture development.

160. Pre-requisites to success, or critical success factors, include:

- clarity on the respective roles of government and industry
- collaborative and flexible arrangements that include the range of central and local government agencies
- sufficient funding for any central government interventions, and lead agency functions
- accurate understanding of the issues facing different regions, and the state of their coastal plans.

Part H - Monitoring and Evaluation

161. Monitoring and evaluation of these reforms needs to focus directly on the objectives of reform and those matters within the central government sphere of control. The success, or otherwise, or the aquaculture industry depends on many industry factors and the wider economic environment. For this reason, it would not be appropriate to have indicators related, for example, to the amount of new space created, or the export earnings of the industry. This relies on industry actions and no government intervention can guarantee exactly how future investment is targeted.

162. The following process-related indicators are proposed:

- target timeframes for processing of consents and the UAE test under the preferred option
- target timeframes for development of regional coastal plan amendments, and indicators around plan readiness – e.g. can scan the regions and demonstrate that provisions exist to manage aquaculture applications and deal with high demand if necessary This analysis is quite subjective, depending on what different sectors will see as a "good" plan
- target timeframes for development of government guidance and assistance – e.g. the aquaculture strategy and good practice guidance
- timeframes for preparation of guidance material
- a survey of council practice on consent duration and re-consenting – to examine implementation of any reforms to resource consent provisions
- some evaluation will have to be more subjective than objective – e.g. participants people will know the system is better, and roadblocks have been removed. This could come from formal survey of councils and industry, for example a six-monthly formal survey or key stakeholders asking for perspectives and evidence on whether key aspects of the planning and consenting processes have improved, and why / why not.

163. Evaluation also will be required of the fundamental legislative policy settings, in particular:

- the balance between fishing rights and new aquaculture – for example monitoring of the implementation and outcomes of the UAE test to determine what impact aquaculture and fisheries are having on each other

- the effects of any changes to resource consent provisions – for example do they affect the likelihood of resource consents being granted, or make a material difference to investment certainty

- if delivery of the aquaculture settlement is meeting the Crown's obligations to Maori, and whether it is creating implementation problems for the legislation.

164. Evaluation of these matters would be informed by quantitative information (e.g. information on resource consent processing), but will involve some subjective assessment (for example the appropriate balance between existing fishing rights and new aquaculture).

165. Evaluation and monitoring of these indicators should be the responsibility of the lead aquaculture agency. The implementation strategy should set out the indicators of success and the methodology for their assessment.

Part I - Conclusions

166. The key problem with the current law is the statutory restriction on aquaculture outside of AMAs. Removing this provision will make aquaculture consent applications possible in majority of New Zealand's coastal waters (subject to other issues like the UAE test).

167. Other problems and options are more finely balanced. The UAE test provides an additional barrier to aquaculture development that is not faced by other coastal activities. The UAE does, however, help protect fishing rights against erosion by aquaculture. Decisions on reform on the UAE test therefore need some fundamental choices on the balance between aquaculture and fishing rights.

168. Many of the other options in this paper go beyond addressing proven problems to actively promoting aquaculture development, for example through stronger consent rights and central government intervention. This reflects the fact that aquaculture development has been in past disadvantaged by the legislation, and thus some strong signals are required to make it attractive again as an investment opportunity.

169. The key question is the degree to which central government is comfortable "picking winners" with aquaculture – and willing to take a more centralised approach to resource management, rather than most decision making remaining devolved to the regional level. If a more centralised approach is taken then it may provide a stronger focus on development, but resource management decisions will be shifted to some extent away from the communities affected, and aquaculture separated to some degree from the management of other coastal activities.

170. The complex and inter-related facets of aquaculture legislation makes implementation, monitoring and evaluation of the reforms particularly important. If a wide suite of policy tools are being utilised to enable aquaculture, it will be crucial to assess how they collectively and individually are working, and whether they lead to any unexpected or perverse outcomes.

171. Some aquaculture problems are symptoms of broader issues with New Zealand's resource management framework. There is still a need to address fundamental questions around the allocation of public resources, the nature of the Crown/Maori relationship for resource management, and the broader coherence of the marine management framework.