

Chair
Cabinet Finance, Infrastructure and Economic Committee

AQUACULTURE REFORMS

PAPER D: IMPROVING THE FISHERIES COMPLIANCE REGIME FOR AQUACULTURE

Proposal

1. This paper seeks the Committee's agreement to consolidate the current licensing and compliance regimes applying to aquaculture. It proposes that all fish farmers, whether using land or sea based facilities, be registered under the Fisheries Act 1996. Registered fish farmers would be required to comply with controls (primarily set by regulation), governing the acquisition and disposal of fish, the operation of the farms, and the creation and supply of information regarding the farmed product.

Executive summary

2. The current licensing and permit regime for aquaculture is fragmented and of uneven application. There is scope for consolidating them into one regime that applies to all farms whether land or sea based
3. Once the general environmental effects of fish farming are dealt with under the Resource Management Act 1991 (RMA), there are only two aspects of fish farming that could have impacts on sustainable utilisation of wild stocks of fish aquatic life or seaweed:
 - Use of the farm to disguise disposal of illegally harvested wild fish
 - Spread of disease or pests from fish farms.
4. We therefore propose that the current requirement for new marine farm applicants to obtain a marine farming permit under the Fisheries Act 1983 after obtaining a coastal permit under the RMA be removed.
5. The risk of fish farms being used to "launder" illegal fish will be controlled by a requirement that fish farmers are registered with the Ministry of Fisheries, and comply with controls applying to the acquisition and disposal of fish, and maintenance of records and reports about fish farming activity. Fishery Officers will be able to inspect farms and records to determine whether farmed stock has been lawfully acquired.
6. We propose that the control of disease and pests on farms will be maintained by use of provisions in the RMA and the Biosecurity Act. Both those Acts contain provisions which appear comprehensive enough to regulate disease and pest issues, and it is our long-term policy to repeal the Freshwater Fish Farming regulations, and have the matters that were dealt with in those regulations dealt with, for all farms, under one or both of the two Acts.

7. We have directed our officials to work with officials from the Department of Conservation (DoC) and the Ministry of Agriculture and Forestry, to ensure that the RMA and Biosecurity Act can be readily and effectively used for fish farms diseases and pest control. Their report on those matters will be available well before the end of the year, and will show whether any statutory amendment is required. Such amendment (if any) seems likely to be minor and could be dealt with as part of the drafting process following the major decisions arising from this suite of papers.

Background

8. Background on the development of proposals contained in this paper is provided in Paper A: “Overview of the Proposed Aquaculture Reforms”.

Comment

Relationship between fish farming and wild fisheries

9. The Fisheries Act 1996 is primarily concerned with the sustainable utilisation of wild stocks of fish, aquatic life and seaweed (“fish”). It provides that harvest of such wild stocks can only take place under specified authorisation (e.g. permits) and within specified limits (e.g. TAC, bag limit). Each of the major access rights (commercial, customary and recreational) contain restrictions on the use to which the harvested fish can be put; and checks can be made on the possession and use of fish, after harvest, in order to verify that the taking itself was lawful.
10. In the case of commercial fishing there is a defined and mandated “product flow” from fisher to Licensed Fish Receiver (LFR) to retailer, and the penalties for dealing in fish outside this process are severe. Each of the parties in the chain, but particularly the LFR, is required to keep records of the fish received and disposed of. These records can then be used as a means of verifying the accuracy of declarations made by the fisher as to the amount and type of fish harvested.
11. The overall effect of the compliance regime for wild fisheries is to create a dual series of controls:
 - Harvest (primary) controls which limit the catch to sustainable levels
 - Post harvest (secondary) controls which enable compliance with the primary controls to be checked.
12. Fish farming, on the other hand, is essentially a three-stage process whereby a fish farmer acquires stock, holds the stock on the farm until it is marketable, and finally transfers or sells the farmed stock to a customer.
13. The farmed stock is separate from the wild stock and the manner in which it is harvested will have no impact on the sustainability of the wild fishery. It follows therefore that there is no need for the primary controls imposed on wild fisheries (e.g. size, bag limits) referred to above, and farmers should be entitled to farm the size and state of fish that maximise their market return, even though such a state and size might be unlawful if taken from the wild.
14. There is however a need to ensure that farming operations are not used as a means of subverting the wild fisheries management regime by enabling the possession and disposal of fish that have been unlawfully obtained. Wild fish are, generally speaking, not “traceable” and a fish that was harvested unlawfully (for example undersize), would be indistinguishable from farmed product once within the farm. The risk of such “laundering” varies, according to the type of fish being farmed, but is high in the case of high value species where there are size or catch limits, for example paua.
15. Fish farms therefore need to be subject to a compliance regime which enables checks to be made that farm stock have been lawfully obtained, and that the operation of the fish farm is not

compromising the sustainable utilisation of the wild fisheries. In many respects the compliance issues for fish farms are similar to those for licensed fish receivers.

Current fish farming compliance regimes

16. In relation to aquaculture, the fisheries compliance issues outlined above are currently managed under five different regimes:
 - *Regime one, freshwater fish farming licenses* granted under the Fisheries Act 1983 for activity that takes place on land e.g. using fish ponds and paua hatcheries (there are 93 farm licences currently approved)
 - *Regime two, marine farming leases* granted prior to 1991 under the Marine Farming Act 1971 for activity that takes place at sea e.g. using intertidal oyster racks (there are 168 farm leases currently approved)
 - *Regime three, marine farming licences* granted prior to 1991 under the Marine Farming Act 1971 for activity that takes place at sea e.g. using mussel longlines and salmon cages (there are 504 farm licences currently approved)
 - *Regime four, marine farming permits* granted post 1991 under the Fisheries Act 1983 for activity that takes place at sea (there are 379 farm permits currently approved)
 - *Regime five, spat catching permits* granted post 1991 under the Fisheries Act 1983 for activity that takes place at sea and involves catching spat (there are 37 spat permits currently approved).
17. The fisheries compliance requirements imposed on farmers under each regime, although intended to address the same general issues of lawful acquisition, farming and subsequent disposal, are not the same in all cases. In addition, some farmers have to comply with different requirements covering essentially the same activity, and several of the regimes cover environmental impacts that in future will be dealt with under the RMA and the Biosecurity Act.
18. The reform of the aquaculture legislation provides an opportunity to establish a simpler and more unified compliance regime that can provide the clarity and consistency to enable farmers to achieve high levels of voluntary compliance. It will also enable the clear separation of controls dealing with environmental impact, which in future will be dealt with under the RMA, from those required to safeguard the sustainable harvest of wild stocks.

Proposed new fisheries compliance regime for fish farming

DEFINITION OF FISH FARMING

19. We propose that the current definition of “fish farming” in the Fisheries Act 1996 be used as the basis for the new compliance regime.
20. Section 2 defines fish farming as;
 - “(a) Means the activity of breeding, hatching, cultivating, rearing, or on-growing of fish, aquatic life, or seaweed for harvest; but
 - (b) Does not include -
 - (i) Any such activity where fish, aquatic life, or seaweed are not within the exclusive and continuous possession or control of the fish farmer; or
 - (ii) Any such activity where the fish, aquatic life, or seaweed being farmed cannot be distinguished, or kept separate, from naturally occurring fish, aquatic life, or seaweed;”
21. Carrying this definition of fish farming into the new regime for aquaculture will enable fisheries enforcement staff to maintain the separation that is necessary between farmed and wild fish stocks. It does not cover enhanced wild fisheries, because although the initial breeding of stock

may be fish farming, once released back into the wild, those fish are no longer possessed or controlled.

22. We propose that all fish farming as defined above, whether land or sea based, take place under a single fisheries compliance regime. The key features of the new regime are:
- a) All fish farmers would be required to be registered under the Fisheries Act 1996, and
 - b) Registered farmers would be subject to statutory requirements covering:
 - Sources of fish for their farms
 - Manner of operation of the farm
 - Disposal of farmed fish
 - Keeping of records and supplying returns in respect of the farming operation.

23. Some important elements of the proposed regime are examined in more detail below.

FISH FARM REGISTRATION

24. The purpose of registration is to enable MFish to keep track of persons operating fish farms, in order to check their compliance with regulatory requirements. That is, registration provides a list of persons, locations and species that can be used more effectively to carry out compliance checks on fish farming operations. The regulatory requirements will primarily be aimed at monitoring product flow.
25. Applicants would be required to provide full details of the proposed farming operation, the species to be farmed, the premises and sites that would be used, as well as reference to any consents or permits held under the RMA.
26. Registration would not occur unless the Chief Executive was satisfied that the applicant:
- Had the right to occupy that site, and
 - Was not a person with a fisheries offending history, or if they were, would conduct the farming operation in a proper manner.
27. Registration under the Fisheries Act 1996 would allow that person, and any employees, to operate a fish farm within a defined area. Where one person operated more than one farm, each site would be separately specified, but only one registration would be needed. Details of registered farms would be kept on a public register, and would include:
- Name of the farmer
 - Legal description of the site(s) on which farming is able to occur
 - Type of species authorised to be farmed, on each site.
28. Registration would last only as long as the farmer had the legal right to occupy the site, and registration conditions could be varied to accommodate changes in farm sites and species. Transfers of registration would not be permitted.
29. Registration could be suspended if the farmer failed to carry out regulatory requirements under the Fisheries Act 1996 or failed to pay cost recovery levies. However, as long as the farm was conducted in accordance with relevant regulations, the operation would be exempt from any harvest or other controls, that apply to wild fisheries.

RECORDKEEPING AND RETURN REQUIREMENTS FOR FISH FARMS

30. The Fisheries Act 1996 allows for regulations to be made requiring fish farmers to keep records and supply returns. We propose that these powers be used to establish a recordkeeping and reporting regime for all types of fish farms. These documents would fulfil the same function as

those currently completed by fishers and licensed fish receivers; to enable detection of the illegal harvest and disposal of fish. Many fish farmers are already subject to similar requirements under the conditions of their licences. The penalty regime for breach of these regulations would be consistent with that established for recordkeeping and reporting in respect of wild fish.

31. The amount of information that would be required from each farm would be dependent on the risk that the farm poses to the wild fishery management regime, including fish health (see below). For example, while a mussel farm may pose little risk to wild fisheries, more detailed and frequent information may be needed in respect of a paua farm, because of the higher value of that species, and thus increased likelihood of blackmarket activity.

EXEMPTION FROM REGISTRATION REQUIREMENTS

32. The definition of “fish farming” is comprehensive, and may in some cases cover activities that do not pose any threat to wild fishery sustainability. We propose to allow for the power to exempt persons (either generally or specifically) conducting particular fish farming operations from registration, where the Chief Executive considers that it is appropriate to do so, and to provide that the exemption can be given subject to conditions.
33. Two common situations where such an exemption might be given are in respect of ornamental fish (e.g. goldfish), as defined under s307 of the Act, and hatcheries for sports fish (e.g. trout) as defined in the Freshwater Fisheries Regulations.
34. While ornamental fish pose some biosecurity risks in geothermal and warmer northern regions, the compliance risks to wild stocks are limited, and there is no need to safeguard these feral stocks of ornamental fish. Sports fish hatcheries are under the control of Fish and Game Councils and DoC, which have statutory obligations for these under the Conservation Act.

SPECIES THAT MAY NOT BE FARMED

35. The environmental effects of fish farming will be controlled under the RMA, and coastal permits and resource consents granted under it. The details regarding the proposed amendments to the RMA, and the appropriate rationale, are included in Cabinet paper B: “Improvements to the Coastal Planning Regime for Aquaculture”. In general, any species may be farmed if the requirements of the RMA can be met, and the fisher is able lawfully to obtain fish to stock the farm.
36. However, there are currently a number of species that are specifically excluded from being able to be farmed. These species are termed “unwanted aquatic life”. Unwanted aquatic life is defined under the Fisheries Act to mean:
 - Any species listed in the 3rd Schedule of the Freshwater Fisheries Regulations (FFRegs)
 - Any species of fish, aquatic life or seaweed that is determined by a chief technical officer under the Bio-security Act 1993 to be an unwanted organism.
37. Species currently listed under the FFRegs include piranha and pike, and the undaria seaweed has been classed as an unwanted organism under the Bio-security Act. The risks (to the environment and wild stocks of fish) involved in farming these species are such that they should not be able to be farmed unless a specific additional consent is obtained.
38. We propose that the current prohibition on farming such species continue, but with a provision enabling the consent of the relevant minister (Fisheries, Conservation, Biosecurity) to specific proposals to be obtained.

INCIDENTAL RIGHT TO TAKE SPAT

39. It is proposed that the taking of juvenile wild stock for the use on marine farms (spat catching) for all species outside marine farm boundaries will be managed through provision of special

permits issued under the Fisheries Act 1996. However, it is proposed that some flexibility be provided in circumstances where juvenile wild stock is collected within marine farm boundaries.

40. A fish farmer is in general only entitled to possess, and to take, the stock that has been farmed. Because the overall harvest of wild stocks, for direct consumption and for farming, must be kept at sustainable levels, a farmer should not generally take wild fish from within the farmed area except under the authority of a fishing permit or a spat-catching permit issued under the Fisheries Act 1983. The granting of such permits will occur only if the harvest can be sustained within limits set under the Act. However, this boundary between wild and farmed stock is problematic in the case of wild stock that is passively “taken” in the course of farming.
41. Where farms contain structures for the purpose of on-growing farmed stock, those structures will automatically capture wild fish (at larval stage) that are present in the water column. In theory, the taking of these larvae should be subject to a separate approval (i.e. fishing permit or spat catching permit) from the marine farming approval already provided under the Fisheries Act 1983. However, we propose to take a more pragmatic approach to dealing with spat catching on approved farms.
42. Those species accidentally “taken” for which the farmer has no approval to retain should be returned to the water column. However, where larvae of the same species as the farmed stock is collected on farm structures, it is proposed that they can be utilised by the farmer without the need to apply for an additional permit under the Fisheries Act, provided the loss of such juvenile wild stock does not affect the recruitment to the wild fishery.
43. The approved species where this can occur will be specified, and the larval spat defined, in Gazette Notices, that can be amended from time to time. The first such notice will include spat from the following species: blue mussel *Mytilus galloprovincialis*, green mussel *Perna canaliculus*, rock oyster *Saccostrea glomerata*, Pacific oyster *Crassostrea gigas* and scallop *Pecten novaezelandiae*. These species have been chosen because their biology and reproductive strategy means that retaining them at the larval stage does not threaten the sustainability of wild adult stocks.

PREVENTION AND CONTROL OF DISEASE AND PESTS ON FISH FARMS

44. Sustainable harvest of wild fishstocks is affected by disease and pests. Fish farms pose a risk in this respect, both from the operations on the farm and from the disposal of fish from the farm, whether by way of transfer to other farms or consumers, or release to the wild (accidental or otherwise).
45. Disease prevention and outbreak controls are currently provided for land-based fish farms by the Freshwater Fish Farming Regulations 1983. Following a disease outbreak, these provisions allow for the prevention of any discharge of water from land-based fish farms, destruction or removal of all or part of the stock on the fish farm, decontamination of ponds, intake and outlet structures, and prevention of disposal of stock from the fish farm. In addition, they contain provisions to avoid diseases becoming established on fish farms by requiring animal feeds used on the farm to be sterilised, maintaining separate water supply to each pond on the farm, and controlling the movement of stock between fish farms. Officers authorised under the Fisheries Act 1996 are able to destroy stock and take specimens and samples for examination. All such measures may be taken with or without the payment of compensation.
46. It is our intention, consistent with the transfer of management of environmental effects from the Ministry of Fisheries to other agencies, to rely on the RMA and the Biosecurity Act for the prevention and control of disease and pests on fish farms.
47. Both those Acts contain provisions which appear comprehensive enough to regulate disease and pest issues, and the Biosecurity Act allows for compensation to be paid for losses incurred through exercise of the Act’s powers. It is our long-term policy to repeal the Freshwater Fish

Farming regulations, and have the matters that were dealt with in those regulations dealt with, for all farms, under one or both of the two Acts.

48. We have directed our officials to work with officials from the Department of Conservation and the Ministry of Agriculture and Forestry to ensure that the RMA and Biosecurity Acts can be readily and effectively used for fish farms diseases and pest control.
49. Their report on those matters will be available before the end of the year, and will show whether any statutory amendment is required. Such amendment (if any) seems likely to be minor and could be dealt with as part of the drafting process following the major decisions arising from this suite of papers.

Consultation

50. The Ministry of Fisheries and the Ministry for the Environment have consulted with the Department of Conservation, Ministry of Justice, Ministry of Maori Development, Department of the Prime Minister and Cabinet, The State Services Commission, The Treasury, the Ministry of Agriculture and Forestry, Ministry of Transport, Ministry of Economic Development, and the Department of Internal Affairs in the development of this paper. Comments have been incorporated into this paper.

Financial Implications

51. The financial implications of the aquaculture reforms are contained in Paper A: “Overview of the Proposed Aquaculture Reforms.

Human rights

52. The proposals in this paper are not inconsistent with the Human Rights Act 1993. The proposals also appear to be consistent with the New Zealand Bill of Rights Act 1990. However, a number of the proposals (such as registration and disclosure requirements) do raise the prospect that the draft legislation will need to be considered carefully in light of a number of rights, such as the right to the observance of the principles of natural justice and the right to freedom from discrimination. A final view as to whether the proposals comply with the Bill of Rights Act 1990 will be possible once the legislation has been drafted.

Legislative implications

53. The proposals in this paper require legislative amendment to the Fisheries Act 1996. We propose that these amendments be included in a RMA (Aquaculture) Amendment Bill to be introduced into the House during 2002. An appropriate bid will be made for a legislative slot as part of the normal consideration of the 2002 legislative programme.

Regulatory impact and compliance cost statement

54. A regulatory impact statement and business compliance cost statement (BCCS) is attached to the suite of Cabinet papers on the aquaculture reforms.
55. The BCCS notes there are compliance costs associated with the processes outlined in this paper, but the reforms proposed should not lead to an increase in these costs.

Publicity

56. Proposed publicity for the proposals outlined in this paper are provided in Paper A: “Overview of the Proposed Aquaculture Reforms”.

Recommendations

57. It is recommended that the Committee:
- 1 agree that the compliance regimes currently in place for fish farming (aquaculture) be replaced by a single registration and compliance regime under the Fisheries Act 1996
 - 2 agree that such a regime contain the following elements:
 - 2.1 All existing and new fish farms, whether using facilities at sea or on land, must be registered under the Fisheries Act 1996, unless exempted by the Chief Executive, Ministry of Fisheries
 - 2.2 Registration will be site, and species, specific and will last for as long as the holder has the right to occupy the site
 - 2.3 Registered fish farmers must comply with statutory and regulatory controls established under the Fisheries Act 1996 concerning;
 - 2.3.1 Keeping records and making returns in respect of the operation of fish farms
 - 2.3.2 Sources of acquisition and disposal of farmed fish
 - 2.4 Offences and penalties for breaches of the controls will be consistent with those established for wild stock harvest
 - 2.5 Administration and enforcement of the regime will be carried out using powers provided to Fishery Officers under the Fisheries Act 1996
 - 3 agree that registered fish farmers be permitted to retain wild spat of specified species that has settled onto structures in the farmed area
 - 4 agree that the control of pests and disease on fish farms should be achieved through use of the Resource Management Act and the Biosecurity Act
 - 5 note that it is the intention of the Minister of Fisheries to report back to this Committee before the reform bill has been drafted, if amendments to the Resource Management Act or Biosecurity Act are necessary to ensure effective control of diseases or pests on fish farms.

Hon Pete Hodgson
Minister of Fisheries

Hon Marian L Hobbs
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