

Chair
Cabinet Finance, Infrastructure and Economic Committee

AQUACULTURE REFORMS

PAPER A: OVERVIEW OF THE PROPOSED AQUACULTURE REFORMS

Proposal

1. A number of reforms are proposed to enable aquaculture to increase the contribution it makes to the national economy while not, undermining the regime established to sustainably manage fisheries, undermining Treaty settlements, or allowing adverse effects on the environment.

Executive summary

2. This paper provides the Committee with an overview of proposed changes to resource management and fisheries legislation that will improve the coastal planning process, streamline the environmental assessment and allocation process for new marine farms, and allow greater commercial benefit to be realised from the use of coastal water space.
3. The key proposals include:
 - Changing the interface between the Resource Management Act 1991 (RMA) and fisheries legislation so that regional councils are required to consider all environmental effects and fisheries matters when they are providing for aquaculture under RMA coastal plans.
 - Providing regional councils with greater powers to manage and control the staged development of aquaculture within clearly defined Aquaculture Management Areas (AMAs).
 - Streamlining the application and environmental assessment process for new marine farms by providing a single-permit approval process to be operated under the RMA.
 - Replacing the current Fisheries Act 1983 marine farming permit regime with a more straightforward requirement that all fish farms be registered under the Fisheries Act 1996.
 - Moving all existing marine farming leases, licences, and permits into the new regime.
4. More detailed analysis of the specific reform proposals and recommendations are provided in the four cabinet papers that accompany this overview paper.

Background

5. Last year the Ministry of Fisheries (MFish), working in conjunction with the Ministry for the Environment (MfE), prepared a discussion paper as the basis for public consultation on the future management of aquaculture in New Zealand. The Finance, Infrastructure and Economic Committee (FIN) approved the release of the discussion paper in July 2000 and invited the Minister of Fisheries to report back to FIN on the outcome of the consultation process, further analysis, and recommendations for change (FIN (00) M 20/2 refers).
6. A three-month period was provided for submissions to be made on the discussion paper. Following release of the discussion paper officials from MFish and MfE held a number of hui with tangata whenua and other interested parties to explain the proposals contained in the discussion document. Public meetings were also held in Marlborough, Nelson and Golden Bay. In addition, discussions were held with a number of key groups to work through the issues and policy options identified in submissions. These groups included tangata whenua, the Treaty of Waitangi Fisheries Commission, the New Zealand Aquaculture Council, the New Zealand Seafood Industry Council, environmental groups and regional councils.
7. A total of 242 submissions were received on the discussion paper. Aquaculture interests made up 49 percent of the submissions, private individuals provided 21 percent of submissions, and local authorities provided a further seven percent of submissions. The remaining 23 percent of submissions came from a mixture of iwi, science providers, commercial fishers, environmental groups, government departments, recreational fishers and residents groups.
8. On balance, a majority of submitters favoured managing aquaculture under the RMA but with improvements being made to the coastal planning and coastal permit application process. Regional councils and those in the aquaculture industry favoured this approach. On the other hand, most iwi, commercial fishers, and the Treaty of Waitangi Fisheries Commission favoured retaining a strong role for the Crown (MFish) to ensure that Treaty obligations and the rights of customary and commercial fishers were not put at risk. Many iwi also expressed concern over their relationship with regional councils who they felt did not give adequate weight to tangata whenua concerns. Environmental groups also expressed concern over the ability of regional councils to manage aquaculture and to adequately assess the impact of marine farming on fisheries. A key issue for many submitters was the need for more effective and proactive planning in the coastal marine area and the need to move beyond the “first-in first-served” approach for allocating space for marine farm development.

Comment

The legislative problem

9. Water space is used for a variety of purposes: swimming, fishing, boating, aquaculture, laying pipelines, tourism etc. These competing uses are managed mainly through a combination of processes run under the RMA, the Marine Farming Act 1971 and the Fisheries Acts (1983 and 1996). The problem for aquaculture is that these processes fail to provide an integrated planning and decision-making framework that can manage issues relating to the carrying capacity of the aquatic ecosystem, and allow greater national benefit to be realised from the allocation and use of coastal water space.
10. In particular, the interface between the RMA and Fisheries Acts currently limits regional councils from considering the impact that aquaculture development might have on fishing. As a

consequence, the current planning approach does not enable the full range of use options for coastal communities, marine farmers and fishers to be considered concurrently. This lack of integration at the planning stage has the potential to stifle appropriate development, particularly where the opportunity exists to gain greater benefit from the commercial use of water space by moving away from lower value extractive fisheries use to higher value marine farming use.

11. The situation is complicated by the application process for new marine farm development being a two-step process that is split across the RMA and Fisheries Act. The first step in this process requires a marine farm applicant to obtain a coastal permit under the RMA. The second step requires the same marine farm applicant to obtain a separate marine farming permit granted under the Fisheries Act 1983. The second step in the process requires that new marine farm development can only take place where there is no *undue adverse effect* on fishing or the sustainability of any fisheries resource. This provision is important as it helps to underpin the rights-based management regime that government has established for fisheries, which in turn is critical to the 1992 settlement of Maori fisheries claims.
12. Another problem with the current regime is that it fails to provide regional councils with the range of prescriptive planning tools that are needed to deal with the growing number of coastal permit applications for new marine farms. Coastal permit applications are currently required to be processed on a first-come first-served basis, regardless of the size, type or number of applications being received. In some areas this has led to a “gold rush” of marine farm applications as developers seek to maximise their share of the available water space. Councils are currently dealing with applications covering a total of 35,000 hectares of new water space. This situation has led to increased conflict between coastal communities, fishers and marine farmers as they contest each new marine farm application on a site-by-site basis, as opposed to the focus being placed on more integrated management between central and local government at the start of the coastal planning process.

Expected outcome of the aquaculture reforms

13. Aquaculture is an important activity in terms of the contribution it makes to the New Zealand economy. Last year, export and domestic market sales from this sector reached \$287 million dollars. Most of this value comes from the production of greenshell mussel, quinnat salmon and oysters. We have no doubt that much of the growth in the fisheries sector will flow from investment in aquaculture and the innovative use of resources and new technology. The outcome of the reform is therefore to support the contribution that the sustainable development of aquaculture can make to the economy, by integrating the planning process, streamlining the allocation process for new marine farms, and allowing greater benefit to be realised from the commercial use of coastal water space.
14. However, an important constraint has been placed on the reform process. This is that the reforms should not place the 1992 settlement of Maori customary and commercial fisheries claims at risk by creating a new grievance. Neither should the reform undermine the management regime that government has established for fisheries, which is based on a system of individual fishing rights. If there is a need to review this fundamental assumption, then this should be addressed as part of the wider Oceans Policy review that was initiated in June last year.
15. It is our intention to amend the RMA and Fisheries Acts to provide a legislative framework that delivers better planning and more integrated decision-making. Specifically in relation to aquaculture, we propose that the RMA be changed so that regional councils are required to consider all environmental effects and fisheries matters, including impacts on the carrying capacity of the aquatic ecosystem, when they are providing for aquaculture under RMA coastal plans. This will go a long way towards improving the integration that is currently lacking between coastal planning, aquaculture development and fisheries management.

16. We also propose that regional councils be provided with greater powers to manage and control the staged development of aquaculture, by requiring new marine farm developments to take place within clearly defined AMAs. This approach should focus marine farm development into prescribed areas, as opposed to the current somewhat open-ended zoning approach whereby councils have limited control over the amount or location of water space that can be applied for, for new marine farm development.
17. In addition to the above, we would also like to streamline the application and environmental assessment process for new marine farms. To do this we propose that the marine farm permit regime currently established under the Fisheries Act be folded into a single-permit approval process to be operated under the RMA. This will enable regional councils to consider the impact that marine farming has on the aquatic environment including carrying capacity, and the use and sustainability of fisheries resources. It will also maintain a planning framework whereby the needs of the aquaculture industry, such as receiving an appropriate level of protection from inappropriate land use or land-based discharges can be considered in an integrated manner. More detail on this is provided in Paper B: "Improvements to the Coastal Planning Regime for Aquaculture".
18. MFish will retain a significant role in the application process in terms of identifying *undue adverse effects* on the collective rights of customary, recreational and commercial fishers. MFish will also retain responsibility for ensuring compliance with harvesting and product flow requirements through all existing and new fish farmers, whether using facilities based on land or at sea, being registered under the Fisheries Act 1996.
19. If possible, we also want to enable greater benefit to be obtained from the commercial use of water space by establishing a process under the Fisheries Act 1996 that can allow an exchange to take place between those using coastal water space for extractive fishing and those wanting to move into potentially higher value marine farming use. More detail on how this could occur is provided in Paper C: "Recognition of Existing Fisheries Rights Holders", and in Paper D: "Improving the Fisheries Compliance Regime for Aquaculture".
20. Finally, we think it makes sense to have all existing marine farms operating under the new regime. We currently have 672 marine farms operating under the Marine Farming Act 1971 and a further 379 marine farms operating under the joint RMA/Fisheries Act regime. Having marine farms operate under different legislative regimes has created uncertainty for administrators and marine farmers alike. The current reform provides an opportunity to consolidate management under one system. Proposals to "grandparent" existing marine farms into the new regime are provided in Paper E: "Transition of Existing Fish Farming Approvals into the New Regime for Aquaculture".

Key decisions to implement the aquaculture reforms

21. A number of key decisions need to be taken to implement the reforms that have been proposed for aquaculture. Each of the four cabinet papers that accompany this overview paper deals with a particular aspect of the reform and provides more detailed analysis of the specific reform proposals and recommendations. An outline of the key decisions to be considered in each paper is provided below.

PAPER (B): IMPROVEMENTS TO THE COASTAL PLANNING REGIME FOR AQUACULTURE

22. This paper seeks decisions on:
 - Changing the interface between the RMA and fisheries legislation so that regional councils are required to consider all environmental effects, including the impact that marine farming has on the aquatic environment and the use and sustainability of fisheries resources, when they are providing for aquaculture in RMA coastal plans

- Streamlining the application and environmental assessment process for new marine farms by providing a single-permit approval process to be operated under the RMA
- Providing regional councils with greater powers to manage and control the development of aquaculture by requiring marine farm developments to take place within clearly defined Aquaculture Management Areas (AMAs)
- Providing regional councils with additional rule-making powers to deal with competition for coastal space by all activities, including the power to limit the amount of coastal space that can be applied for within an AMA
- Providing tendering provisions for regional councils to tender for the right to apply for coastal permits, including those for individual marine farm sites within each AMA, as the default mechanism for the allocation of coastal space
- Providing for regional councils to retain 50% of the tender money to provide appropriate planning incentives and for use in improving the management of the coastal marine area.

PAPER (C): RECOGNITION OF EXISTING FISHERIES RIGHTS HOLDERS

23. This paper seeks decisions on:

- Retaining the existing legislative requirement that aquaculture development should not have an undue adverse effect on customary, recreational and commercial fishing, or place the 1992 settlement of Maori customary and commercial fisheries claims at risk
- Repealing the existing marine farm permit system that is operated under the Fisheries Act 1983, and instead requiring MFish to participate in the RMA coastal permit application process by providing regional councils with an assessment of any undue adverse effects that aquaculture development may have on fishing
- Providing in legislation for a trade off between aquaculture interests and commercial fishing rights holders in circumstances where aquaculture development would have an undue adverse effect on commercial fishing rights.

PAPER (D): IMPROVING THE FISHERIES COMPLIANCE REGIME FOR AQUACULTURE

24. This paper seeks decisions on:

- Replacing the five separate fisheries compliance regimes that are currently in place for aquaculture, with a single registration and compliance regime under the Fisheries Act 1996.
- Enabling marine farmers to retain wild spat of specified species that settle onto structures established within the marine farm area.
- Providing for the control of pests and disease on fish farms by use of the RMA and the Biosecurity Act 1993. The paper notes that it is my intention to report back to this Committee if further planned work highlights the need for amendments to the RMA or Biosecurity Act 1993 to ensure effective control of diseases or pests on fish farms.

PAPER (E): TRANSITION OF EXISTING FISH FARMING APPROVALS INTO THE NEW REGIME FOR AQUACULTURE

25. This paper seeks decisions on:

- Transferring all existing marine farm lease and licences granted under the Marine Farming Act 1971 into the new regime by deeming them to be RMA coastal permits and registered fish farms under the Fisheries Act 1996.

- Providing all deemed consent holders to continue for the balance of their current term plus 14 years provided that the total term does not exceed 20 years.
- Providing all deemed consent holders with a single preferential right to apply for a new coastal permit for the sites they occupy once their existing consent expires – subject to the applicable regional coastal plan not prohibiting marine farming on those sites.
- Transferring all existing marine farm permits granted under the Fisheries Act 1983, and all freshwater fish farm licences granted under the Freshwater Fish Farming Regulations 1983, into the new regime by deeming them to be registered as fish farms under the Fisheries Act 1996.
- Providing for all existing spat catching permits granted under the Fisheries Act 1983, to continue in effect for the balance of their current term, which in all cases is a maximum of five years.

Consultation

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

Financial Implications

27. The proposed reforms will assist economic development in the aquaculture sector and reduce business compliance costs for new marine farm development. However, there will be some organisation capability and cost recovery implications that are likely to result in increased costs to MFish. At the same time there may be increases in Crown revenue related to the proposed tendering of coastal water space.
28. The increase in costs arise through the need for MFish to provide more input into the planning processes under the RMA both to general advice and assistance to councils in placement and establishment of AMAs, and to provide specific advice on potential undue adverse effects on fishing to support the establishment of AMAs. These functions may require more comprehensive analysis in comparison to the largely administrative functions currently performed through the marine farming permit process under the Fisheries Act 1983. Costs incurred by MFish in assessing undue adverse effects on fishing through the RMA planning process will also not be able to be recovered through marine farming permit application fees as has occurred in the past. Under current cost recovery principles the maintenance and integrity of fisheries management frameworks is considered to be provided for the public interest and is therefore not generally recoverable from the aquaculture sector.
29. Within the Vote: Fisheries appropriation, approximately \$0.6 million is used for aquaculture management. Approximately \$0.25 million of this is recovered through departmental transaction revenue from application fees with the remainder cost recovered. Therefore, MFish aquaculture management is currently fiscally neutral to the Crown.
30. Following introduction of the new regime for aquaculture, it is anticipated that there will be a one-off transition cost of approximately \$0.1 million for the 2002/2003 financial year to audit and transfer existing aquaculture rights across to the new regime. The intent is for this one-off cost to be cost recovered from the aquaculture industry and therefore would be fiscally neutral to the Crown. Note that the previous National Government agreed that the Government would pick up the cost associated with the transition to the aquaculture regime proposed at that time.

31. It is anticipated that the new role required by MFish in the RMA planning process may require an increase from the current appropriation of \$0.6 million to \$1 million from 2003/2004 and onwards. Of this, it is anticipated that approximately \$0.18 million may be offset by departmental revenue from registration fees and approximately \$0.22 million would be cost recoverable in terms of general administrative, monitoring and compliance functions. The remaining \$0.6 million would be associated with the new role for MFish staff in the RMA planning processes that, under current cost recovery rules, would not be able to be recovered from the aquaculture industry. The end result is an estimated potential ongoing cost to the Crown of approximately \$0.6 million per annum.
32. It is expected that a considerable portion of the estimated \$0.6 million Crown costs could be offset by the Crown receiving funds through the tendering process for aquaculture areas established under AMAs. It is proposed in Paper C: "Recognition of Existing Fisheries Rights Holders" that a minimum tender price should be established to assist Councils and the Crown to recover costs associated with the establishment of the AMA. However, there is a risk that all Crown costs may not be able to be offset by money received through the tender process e.g. no money will be received by the Crown if a particular area is not picked up in the tender. Any tender money received by the Crown will go into the consolidated fund. The increase funding requirements outlined above will therefore still require an increase in Vote: Fisheries even if the majority of costs end up being fiscally neutral to the Crown.
33. The figures outlined above are only indicative at this stage and MFish will provide a more detailed business case as part of the New Initiative budget process for 2002/2003 if an increase in Vote: Fisheries is required to implement the reforms. It should also be noted that costs to the Crown should also decrease over time once councils have established regional coastal plans and the requirement for MFish input into the planning process decreases.
34. Costs on other agencies are estimated to be neutral for the Crown. DoC already participates in the RMA coastal planning process both at the plan preparation stage and on individual resource consent applications. Under this proposal some additional effort would be needed early in plan preparation. The NZ Coastal Policy Statement, which provides statutory guidance to councils on coastal plans, is to be reviewed in 2003 under the current work programme. Off-setting any remaining costs in assisting with plan preparation would be reduced costs of dealing with individual consents and, in cases such as Tasman District, less cost due to there being a clear process for consent consideration.
35. Councils would be faced with some additional costs to define AMAs. This will vary between regions. Some regions (e.g. Tasman and Waikato) are already part way to having AMAs. It is expected that once councils have established the AMA, the on-going costs of implementing the plan, in terms of processing applications, will be less. With other councils there could be savings in there being less scope for appeals once zones are identified.
36. Councils can recover the costs of processing individual applications from the applicant and can also recover the costs of monitoring and supervision of the consents (s36, RMA). Marine farms will still be liable for the costs of administration of their activities, only this will be under the RMA rather than fisheries legislation. Councils can also levy coastal occupation charges through their plans and it is proposed tender money could be available for funding management of the coastal marine area.
37. Funding has already been provided to make marine resource information available under a programme under the Biodiversity Strategy package. This programme, along with relevant science programmes, should provide the information needed to establish zones. It is proposed that current work by the three agencies involved (DoC, MFish and MfE) in planning for aquaculture be aligned to the new approach so that councils receive the guidance, information and support needed to establish effective zones in plans.

Human rights

38. The proposals appear to be consistent with the New Zealand Bill of Rights Act 1990. However, a number of the proposals (i.e. registration requirements, trade-off options) 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, the right to freedom from discrimination. A final view as to whether the proposals comply with the Bill of Rights Act will be possible once the legislation has been drafted.

Legislative implications

39. Implementation of the proposed reforms will require amendments to be made to RMA, Fisheries Act 1996, the Fisheries Act 1983, and the Marine Farming Act 1971. Officials are to submit a paper to the Cabinet Legislation Committee seeking a slot for a RMA (Aquaculture) Amendment Bill early in the 2002 Legislative Programme.
40. Ministers will be aware that provisions contained in the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill aim to transfer existing marine farm leases and licences out of the Marine Farming Act 1971 and into the current joint RMA and Fisheries Act 1983 regime. While this transfer is consistent with the general direction to the current reform, they are superseded by the more comprehensive policy proposals that have been developed and are described in the four cabinet papers that accompany this overview paper. It is our view therefore that the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill should not proceed.

Regulatory impact and compliance cost statement

41. A regulatory impact and compliance cost statement is attached.

Publicity

42. Decisions taken by Cabinet in relation to the aquaculture reform will be of interest to a wide range of iwi, fisheries stakeholders and regional government.
43. We therefore propose that the decisions taken by Cabinet, and the relevance and implications of those decisions to Oceans Policy, be announced by way of a joint press statement released by the Minister of Fisheries and the Minister for Environment.
44. Officials will also provide ministers with a communication strategy that will enable ministers to outline the way in which central government will work with regional councils and others, to ensure that the transition to the new regime is as smooth as possible.

Recommendations

45. It is recommended that the Committee:
- 1 note that the purpose of the reform is to enable aquaculture to increase the contribution it makes to the national economy, while not undermining the regime established to sustainably manage fisheries, undermining Treaty settlements, or allowing adverse effects on the environment
 - 2 direct officials, in consultation with other departments and the Parliamentary Counsel Office, to prepare a departmental draft of amendments to the Resource Management Act 1991, Fisheries Act 1996, the Fisheries Act 1983 and the Marine Farming Act 1971 to give effect to the decisions in the four Cabinet papers dealing with the proposed aquaculture reforms
 - 3 direct the Ministry for the Environment to submit a paper to the Cabinet Legislation Committee seeking a slot for a Resource Management Act (Aquaculture) Amendment Bill in the 2002 Legislative Programme

- 4 note that increases in funding for Vote: Fisheries may be required for new functions under the reforms and that a business case will be presented during the forthcoming 2002 budget round.

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Minister of Fisheries

Hon Marian L Hobbs
Minister for the Environment