

The Chair
Cabinet Finance, Infrastructure and Environment Committee

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

Proposal

1. This paper seeks the Committee's agreement to transfer all existing marine farms into the new regime proposed for aquaculture.

Executive summary

2. We propose that all marine farms, whether established under the Marine Farming Act 1971 (MFA), or under the joint Resource Management Act 1991 (RMA) and Fisheries Act 1983 (FA83) marine farming permit regime, be transferred into the new regime proposed for aquaculture.
3. This transfer is to be undertaken in line with the general policy agreed to during the development of the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill. Although many of the provisions of this Bill have now been overtaken by the current reform, the Bill does contain detailed transitional arrangements that can usefully form the basis of the proposed transfer of marine farm leases and licences into the new regime.
4. We also propose that all land-based fish farms currently established under a licence issued under the Freshwater Fish Farming Regulations 1983 will be deemed to be registered as fish farms under the Fisheries Act 1996 (FA96).

Background

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

Comment

6. As discussed in Paper D: "Improving the Fisheries Compliance Regime for Aquaculture", aquaculture activity currently operates under five different approval regimes. This has created uncertainty for marine farmers and administrators alike. The current reform provides an opportunity to consolidate the management of aquaculture activity under one regime.
7. The new regime proposed under the aquaculture reforms will provide for marine farms to be managed under the RMA. However, marine farms will still need to be registered under the FA96 to enable the Ministry of Fisheries (MFish) to monitor fish product flow. More information on this proposal is provided in Paper D: "Improving the Fisheries Compliance Regime for Aquaculture".

8. When the new aquaculture regime is introduced, it will be necessary to provide transitional arrangements for existing MFA leases and licences, Freshwater Fish Farm Licences, and RMA/Fisheries Act permits to bring these approvals under the new regime.
9. The provisions of the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill (introduced into the House in 1995 as part of the Resource Management Amendment Bill (No 3)) would, if enacted, have grand-parented the MFA leases and licences into the joint RMA/Fisheries Act regime. Although many of the provisions of this Bill have now been overtaken by the current reform, the Bill does contain detailed transitional arrangements that can usefully form the basis the proposed transfer of marine farm leases and licences into the new regime. The major elements to be saved from this Bill are discussed in more detail below.
10. The manner in which existing RMA/Fisheries Act permits will be brought under the new regime is also discussed below.

Leases/licences granted under the Marine Farming Act 1971

11. Under s 426 of the RMA, MFA leases and licences and spat catching permits that were in force immediately before the commencement of the RMA continue in force on the same conditions and with the same effect as if the RMA had not been enacted. This has been interpreted by the then Planning Tribunal to mean that the leases and licences continue according to their terms and conditions until their expiry, but any application for a variation must now be dealt with as an application for a new consent under the RMA (*Marlborough District Council v Southern Ocean Seafoods Ltd* [1995] NZRMA 220). However, in coming to this decision, the Tribunal noted that s 426 was not free from ambiguity.
12. If enacted, the Resource Management (Marine Farming and Heritage Provisions) Bill would have repealed the MFA and would have deemed existing leases and licences to be coastal permits under the RMA and also marine farming permits and spat catching permits under the FA83, with a number of the provisions of the MFA being carried over into the FA83. The provisions of the MFA would have ceased to apply to these deemed coastal permits and all the provisions of the RMA would apply instead. We propose that a similar transition should occur into the new regime.
13. This would enable regional councils, as the successors to the Minister of Fisheries in managing structures and the environmental impacts of MFA marine farms, to undertake their functions with confidence and if necessary to recover their costs in relation to those functions. These functions include dealing with review of conditions, monitoring, and the imposition of coastal occupation charges. Some planning authorities have been reluctant to impose coastal occupation charges on marine farms authorised under the RMA/FA regime in the past because this would result in new marine farms being treated differently from MFA marine farms. However, the proposed reforms will bring all approvals under one regime and thereby remove this impediment to coastal charges.
14. The other main provisions of the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill, which we propose should be saved, are:
 - that the term for the new deemed coastal permits would equal the balance of the current term of the lease or licence (which under current legislation could be up to 14 years) plus one renewal of 14 years, but not to exceed 20 years from the date of the amendment
 - that leases or licences grand-parented into the new regime should have a single preferential right to apply for a new coastal permit for occupation
 - to clarify that leases and licences do not authorise marine farms to add fish food or chemicals into the water and require lease and licence holders to apply for discharge permits

- that, where a variation to a MFA lease or licence allowed the holder to farm a different species of aquatic life, but the holder had not yet commenced farming that different species, the holder was not authorised to carry out any activity that has effects that are different in character, intensity or scale to the effects of farming the existing species
 - that, in the case of derelict or abandoned marine farms, any forfeiture action that has been commenced by MFish under the MFA, should continue to apply and be concluded prior to the farm being grand-parented into the new regime
 - to recognise existing mortgages over MFA leases and licences.
15. Under the MFA, marine farms required the approval of the Minister of Transport under s 178 of the Harbours Act 1950 to erect structures required for the operation of a marine farm. The High Court has found that such approvals continue indefinitely under the transitional provisions of the RMA (*Canterbury Regional Council v Lyttelton Marina Ltd* [1999] NZRMA 330 –s 425). It is proposed that every deemed coastal permit derived from such Harbours Act approval should be deemed to include a condition to the effect that it expires on the 30th anniversary of the date of the commencement of the RMA, unless a shorter term is specified in the approval. There is a similar provision in the RMA in relation to deemed permits derived from mining privileges, many of which were for indefinite terms.
16. In general, we propose that the policy reflected in the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill, as outlined above, should continue to apply. However, under the new regime, marine farm applicants who receive an appropriate coastal permit under the RMA will not be required to obtain a separate marine farming permit under the FA83. These farms will only be required to be registered under the FA96. Therefore, the provisions of the Bill which would have deemed MFA leases and licences to be marine farming permits under the FA83 will not be necessary. These will be replaced by a provision that deems MFA leases and licences to be registered under the FA96.

Marine farming permits

17. As noted earlier, new marine farms currently require two authorisations: a coastal permit issued under the RMA and a marine farming permit issued under the FA83. It is proposed under the reforms that marine farm permits issued under the FA83 should be dispensed with and that, in the future, marine farms issued with a coastal permit under the RMA would need only to be registered under the FA96. This registration would enable MFish to manage fish product flows through and between marine farms and wild fisheries. Conditions imposed on existing marine farming permits would be deemed to be conditions of the coastal permit. There would also be a deemed condition of the coastal permits that the consent authority could review the terms and conditions of the permits to ensure that they are appropriate under the new regime.
18. As the existing requirements for obtaining a coastal permit will continue, transition to the new regime is likely to have little material impact on farms authorised under the current system. The only transitional requirement will be that marine farms currently established under a marine farm permit issued under the FA83 will be deemed to be registered as a fish farm under the FA96. These marine farms will then be subject to record-keeping and reporting requirements established under that Act.

Freshwater fish farming licences

19. It is proposed that land-based fish farms be transferred into the new regime proposed for aquaculture and be registered under the FA96 and be required to comply with all relevant provisions of the RMA. Land-based fish farms currently established under a licence issued under the Freshwater Fish Farming Regulations 1983 will be deemed to be registered as fish farms under the FA96. These fish farms will then be subject to record-keeping and reporting requirements established under that Act.

Spat catching permits

20. Section 14E of the MFA provided for the Minister of Fisheries with the concurrence of the Ministers of Transport and Conservation and, in certain circumstances, the harbour board or local authority to declare an area to be a spat catching area by notice in the *Gazette*. A permit was then required for the mooring of a raft for spat catching purposes. Only the lessee or licensee of space for marine farming could obtain a spat catching permit. This section was repealed in 1993.
21. Under the current regime, spat catching is authorised by s 67Q of the FA83. Spat catching permits under the Fisheries Act have a maximum term of 5 years and are not transferable.
22. Spat catching activity is different from normal farming activity in that it involves taking wild stock from the water column. Therefore, it is proposed in Paper D: “Improving the Fisheries Compliance Regime for Aquaculture” that spat catching activity should continue to require a separate approval under the FA96, except in limited circumstances.
23. It is also proposed in Paper B: “Improvements to the Coastal Planning Regime for Marine Farming” that, insofar as a spat catching or holding operation requires the occupation of coastal space, a coastal permit under s 12 of the RMA should be required. All existing spat catching and holding permits will continue for the balance of their terms and any with no terms will be required to expire 5 years from the date the legislation takes effect.

Consultation

24. The Ministry for the Environment and the Ministry of Fisheries 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, Ministry of Transport, Ministry of Agriculture and Forestry, 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

25. The financial implications of the proposals in this paper are considered to be neutral.

Human rights

26. 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.

Legislative implications

27. The proposals in this paper require legislative amendment to fisheries legislation, the RMA, and the MFA 1971. 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.
28. 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 MFA and into the current joint RMA and FA83 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 aquaculture reform cabinet papers. 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

29. A regulatory impact statement and business compliance cost statement (BCCS) is attached to the suite of Cabinet papers on the aquaculture reforms.

30. The BCCS states that there are compliance costs associated with the processes outlined in this paper, but the reform proposals should not lead to an increase in these costs.

Publicity

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

Recommendations

32. It is recommended that the Committee:
- 1 agree that all existing marine farming leases and licences granted under the Marine Farming Act 1971 be transferred into the new regime by deeming them to be Resource Management Act 1991 coastal permits and registered fish farms under the Fisheries Act 1996
 - 2 agree that the term for the deemed coastal permits would equal the balance of the current term of the lease or licence plus one renewal of 14 years, but this combination cannot exceed 20 years, and that permit holders would have a single preferential right to apply for a new coastal permit for occupation upon expiry of the deemed coastal permit
 - 3 agree that relevant provisions of the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill be adopted as the basis for the transfer of leases and licences granted under the Marine Farming Act 1971 into the new regime
 - 4 agree that all existing marine farming permits granted under the FA83, and coastal permits granted under the Resource Management Act 1991, be transferred into the new regime by deeming them to be coastal permits and registered fish farms under the Fisheries Act 1996
 - 5 agree that all existing freshwater fish licenses granted under the Freshwater Fish Farming Regulations 1983 be transferred into the new regime by deeming them to be fish farms registered under the Fisheries Act 1996
 - 6 agree that all existing spat catching permits granted under the Fisheries Act 1983, and coastal permits granted under the Resource Management Act 1991, continue in effect for the balance of their terms
 - 7 agree that the Leader of the House be informed that the reforms proposed for aquaculture supersede those contained in the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill which is currently before the House, and that there is no need to proceed with that Bill.

Hon Pete Hodgson
Minister of Fisheries

Hon Marian L Hobbs
Minister for the Environment