

AQUACULTURE REFORMS: REGULATORY IMPACT AND BUSINESS COMPLIANCE COST STATEMENT

REGULATORY IMPACT STATEMENT

- **Statement of the nature and magnitude of the problem and the need for government action**

The legislative framework for aquaculture management is fragmented and out-dated. There are several different management regimes and authorisations applying to marine farms, and multiple agencies providing authorisations. The different management regimes do not provide for integration between coastal planning, aquaculture development or fisheries management.

One consequence of this is that regional councils are having difficulty in managing the demand for marine farming and spat catching permits. At present, there are applications for more than 35,000 hectares of space, and indications are that this pressure is likely to increase, both in numbers of applications and the size of applications.

Another problem is that marine farming rights and fishing rights sometime conflict. There is no mechanism available to allow water space to be allocated to the higher value use, without undermining existing rights.

The end result is high costs and lengthy delays in the coastal planning system. Most of the costs are in the appeal process. Uncertainties in the planning process and the difficulties with allocation will impact on investment decisions.

- **Statement of the public policy objectives**

A primary objective is to promote long-term efficiency while ensuring the regime continues to manage the potential adverse effects on the environment. The existing processes (including the inability to resolve competing demands from fishing and aquaculture) discourage investment in aquaculture in circumstances where this is the highest value use of water space.

Another major objective is to streamline the planning process and reduce transaction costs to applicants in dealing with multiple agencies.

A third objective is the protection of existing rights. In addition to the improved incentives provided by secure rights in general, and the improved fisheries management outcomes this provides, the security of commercial fishing rights is also an important part of the fisheries settlement with Maori.

- **Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objectives**

The reform proposals have been split into four areas, and this section looks at each in turn. Overall, it should be noted that retaining the status quo is not a viable option. The magnitude of the problem is such that councils will be unable to cope with the “gold rush” that has already started. In addition, change has already been signalled, through the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill. On the other hand, sweeping changes are not suggested either. More fundamental issues such as the better definition and integration of all use rights in the coastal marine area should be addressed in the context of the Oceans Policy and are outside the scope of this work, which seeks to significantly improve current processes without changing their essential nature.

In relation to the coastal planning regime for marine farming, the options are:

- Retain the dual Fisheries Act/ Resource Management Act processes (status quo)
- Integrate the processes under the Resource Management Act, with no further changes to the process

- Integrate the processes under the Resource Management Act, and ensure the establishment of Aquaculture Management Areas (AMAs) and tendering for authorisations. (Preferred option).

In relation to conflicts between aquaculture and commercial fishing rights, the options are:

- Status quo where aquaculture development could not proceed if there is an undue adverse effect on commercial fishing
- Voluntary agreement proposal where aquaculture development could not proceed if there is an undue adverse effect on commercial fishing unless there was an agreement reached with all unduly adversely affected commercial fisheries rights holders.

In relation to the compliance regime for aquaculture, the options are:

- Retain the current 5 regimes
- Consolidate into a single compliance regime under the Fisheries Act 1996 (Preferred option).

In relation to transitional arrangements for existing marine farms, the options are:

- Continue with the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill
- Include more comprehensive provisions as part of the new aquaculture regime (Preferred option).

- **Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options**

Coastal planning regime

The main benefit of integrating planning under one Act is that decisions will be made using all relevant information—this should result in better outcomes. There should also be significant cost savings to applicants, who will need to obtain a consent from only one agency. In addition, most of the conflicts that have previously resulted in lengthy individual resource consent processes will in future be addressed through the generic planning process during the establishment of AMAs in regional coastal plans. This should significantly reduce the business compliance costs for aquaculture developers. There will also be cost savings for other interested parties who will also only be required to provide submissions and input into one planning process rather than numerous individual resource consent processes.

There may be some increase in costs to the Crown through the requirement for the Ministry of Fisheries to play a greater role in the general planning process under the Resource Management Act. Any changes to current Vote: Fisheries funding will be subject to the preparation of a business case as part of the 2002 budget round.

The requirement to develop expertise in fisheries management issues may also result in resourcing issues for some regional councils. However, these could be offset by any income that councils receive from tendering and the councils also have the ability to utilise existing coastal charges to assist in costs associated with management of the coastal marine area. Adopting a more proactive zoning mechanism, including AMAs and tendering, will impose higher initial costs on regional councils in the planning process. However, these costs, particularly those incurred in appeals, will be incurred only once for each AMA and the subsequent savings should more than balance out the extra initial cost.

Tendering will provide an additional cost on the successful bidders, but this reflects the economic value of the resource being tendered. As already noted above, revenue obtained from the tenders may be used to defray the costs of the process for both regional councils and the Crown.

Conflicts between aquaculture and fishing rights

There are economic benefits in allowing use of coastal space to move to the higher value use, so there is an opportunity cost to the status quo situation in which aquaculture is not permitted if it has an undue adverse effect on fishing. There are also limited opportunities for trade-offs to occur between aquaculture interests and fisheries rights holders. On the other hand, there are economic benefits to granting secure rights to use a resource, so there is an opportunity cost to granting rights that may be reallocated without redress. For non-commercial fisheries, there do not appear to be satisfactory mechanisms to provide appropriate redress, and no reason to move away from the status quo.

Addressing undue impacts on commercial fishers by voluntary agreement will impose minimal costs and risks to the Crown, and allows for innovative approaches to transferring the property right. The proposed amendments to the planning process will also improve the general environment for voluntary trade-offs to occur. However, it may impose negotiating costs on the parties and fishers have the potential to display rent seeking behaviour. This could reduce the economic return to the successful developer and therefore reduce the incentives for development.

Compliance regime

There are high costs associated with managing under five different regimes. The costs of administering different regimes imposes costs on MFish, while some farmers are required to comply with more than one set of requirements, as well as environmental requirements additional to those set under the Resource Management Act. These ongoing costs should reduce under an integrated regime.

There will be costs associated with the improved implementation of reporting and record keeping regulations and the establishment of the proposed fish farm registration system.

Existing marine farming approvals

Similar concerns relate to the transition from existing marine farm approvals to the new regime. The Resource Management (Marine Farming and Heritage Provisions) Amendment Bill enables the consolidation of leases and licences into Marine Farm Permits and resource consents, but retains two consent processes. Removing the requirement to hold a Marine Farm Permit, as proposed in this reform, will further simplify arrangements.

• **Statement of the consultation undertaken**

In August 2000, the Ministry of Fisheries (MFish) and the Ministry for the Environment released a joint discussion document as the basis for public consultation. Its purpose was to identify the preferred options on the future management of aquaculture. A total of 242 submissions were received.

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.

Discussions were also 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.

- **Business compliance cost statement**

Source of compliance costs

Increased compliance costs are likely to result from the additional planning requirements in establishing Aquaculture Management Areas and tendering for authorisations (Paper B: “Improvements to the Coastal Planning Regime for Aquaculture”). However, these should be offset through savings from streamlining the approval system into one process under the Resource Management Act and the significant reduction in potential conflicts through individual resource consent consideration and resultant appeals to the environment court. The price of a successful tender does not represent a compliance cost, but an economic value.

There are compliance costs associated with the processes set out in the remaining papers, but none of the proposed reforms should lead to an increase in these costs. They are considered in turn below.

Parties affected

Marine farmers will be required to meet any increased costs for regional councils and the Ministry of Fisheries from the additional planning requirements through either tender money or through the councils’ direct coastal charging mechanisms. Marine farmers will also be required to cover costs incurred by the Ministry of Fisheries for registration and monitoring of marine farms through specific transaction fees or cost recovery levies. However, the MFish registration and monitoring costs are estimated to reduce under the reforms.

Estimates of compliance costs

There are no estimates of the compliance costs currently faced by the aquaculture industry, and no straightforward way of quantifying changes due to the proposed reforms. However, the following qualitative points may be noted:

- **Integrated Planning:** Instead of dealing with two agencies, marine farming applicants would need to deal only with the regional council. This should reduce transaction costs.
- **Voluntary agreements:** The costs of negotiating agreements with fishers could be significant. This is a voluntary process, and applicants can balance the costs and potential benefits in advance.
- **Compliance Regime:** There are compliance costs associated with registration, record keeping and reporting, but the proposed replacement with a single registration and compliance regime should lead to an overall reduction in these costs.

Other issues

Longer term cost implications of the reforms are largely positive. Any increases to Regional Councils in planning costs are likely to be recovered through one-off application fees and revenue from tenders and coastal occupation charges. On-going compliance costs are likely to be reduced as a result of the improvements to processes proposed in this reform package.

Existing compliance costs were identified as an issue during consultation, but no significant issues relating to future costs were raised.

Significant overlaps between Fisheries Act and Resource Management Act processes (and hence between regional councils and MFish) already occur. There will continue to be some degree of overlap under these proposals, but to a far lesser extent.

As noted in the Regulatory Impact Statement, the reduction of compliance costs is one of the public policy objectives underlying the proposed reform. For each process examined, integration and simplification were criteria against which options were tested.