

The Chair
Cabinet Committee on Finance, Infrastructure and Environment

AQUACULTURE REFORMS PAPER B: IMPROVEMENTS TO THE COASTAL PLANNING REGIME FOR AQUACULTURE

Proposal

1. This paper proposes a number of reforms to improve the management of the cumulative effects of marine farming, streamline the allocation process for new marine farms, and allow greater commercial benefit to be realised from the use of coastal space. The proposals would make changes to the generic provisions of the Resource Management Act 1991 (RMA) controlling the occupation of coastal space and would establish some specific provisions for aquaculture.

Executive summary

2. This paper outlines changes to the coastal planning provisions of the RMA that will improve the integration between coastal planning, aquaculture development and fisheries management, improve the assessment of environmental effects of aquaculture and allow greater commercial benefit to be realised from the use of coastal space. The paper also proposes a package of Crown advice and involvement in RMA coastal planning processes to assist with implementation of the new provisions.
3. The key proposals include:
 - changing the interface between the RMA and fisheries legislation so that:
 - the current overlap of functions is removed and regional councils have responsibility for assessing all of the environmental effects of marine farming on aquatic life and habitat, including fished species; and
 - regional councils are able to consider the impact that occupation of space by marine farms has on fishing
 - streamlining the application and environmental assessment process for new marine farms by providing a single-permit approval process to be operated under the RMA
 - clarifying the existing presumption against allowing occupation of coastal space to ensure that occupation of coastal space is controlled properly by plan provisions
 - providing regional councils with greater powers to manage and control (including staging) development within zones
 - requiring marine farm developments to take place within clearly defined 'Aquaculture Management Areas' (AMAs)

- providing for experimental aquaculture in AMAs tailored to that purpose
- providing regional councils with additional rule-making powers to deal with competition for coastal space by all activities, including power to limit the coastal space that can be applied for in individual applications, and determine appropriate mechanisms to allocate individual marine farm sites within an AMA
- providing tendering provisions for regional councils to tender for the right to apply for coastal permits for space, including those for individual marine farm sites within each AMA, and as the default mechanism for the allocation of coastal space for aquaculture
- providing policy guidance on the allocation of coastal space through a coastal policy statement, supported by use of the powers of the Minister of Conservation under the RMA and through involvement in RMA processes.

Background

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

Comment

5. There are two major areas of difficulty with the current approach to allocating and regulating the use of coastal space for aquaculture: limitations in the RMA planning process; and the dual permit processes operated under the RMA and the Fisheries Act 1983 (FA83).

Limitations on RMA coastal planning process

6. In making the decision under the RMA to allocate coastal space, councils must consider the general environmental effects of the proposed marine farm. However, councils do not have the authority to control the harvesting or enhancement of populations of aquatic organisms where the purpose of the control “is to conserve, use, enhance, or develop any fisheries resources controlled under the Fisheries Act 1996”. The Fisheries Act 1996 (FA96) also prevents councils from addressing allocation issues between fisheries sectors. These provisions ensure that fisheries allocation and management is undertaken under fisheries legislation. However, as aquaculture is considered a fishing activity, these legislative exclusions have had the result that impacts of aquaculture on fishing are not currently considered under the RMA.
7. In addition, existing RMA provisions and processes have not been able to effectively manage the recent high demand for coastal space for aquaculture. Under the RMA it is not clear whether councils are able to make rules limiting the area that can be covered in one application and they generally must process applications as they are received. Changing the plan to respond to increased demand is often not possible as applications made during the plan amendment process are considered under the old rules and therefore can pre-empt any change. This means that councils have limited ability to manage the allocation of space for aquaculture.

Two-step approval process for new marine farms

8. Because the allocation and sustainability of fisheries resources is addressed under fisheries legislation and sustainability of natural resources is addressed under the RMA, there is a two-permit process that can produce decisions that are unsatisfactory from marine farming, fishing, and environmental perspectives. Regional councils allocate coastal space for marine farms and other uses under the RMA. Marine farmers must subsequently obtain a permit under the FA83 before they are able to commence marine farming activity. The decision under the FA83 is made after the RMA consent is issued, and it deals with the impact of the proposed farm on fishing and the sustainability of any fisheries resource.
9. Planning authorities are unable to consider the impacts of aquaculture development on fishing and fisheries resources for utilization purposes under the RMA process. Therefore councils cannot weigh up all of the competing uses of the coastal marine area. The fact that councils do

not have regard to all information relating to impacts on fisheries when considering applications for aquaculture development increases the likelihood of conflict arising between aquaculture developers and fishers when applicants get to the marine farm permit process under the FA83. A crucial issue to which councils ought to have regard is the location of fishing grounds.

10. The dual process therefore leads to uncertainty and to additional costs. This affects not only marine farmers but also other groups in the community with an interest in the use of coastal space and agencies with responsibilities for planning in the coastal marine area. The difficulties of a two-permit approach have been exacerbated by uncertainty over the interface between the RMA and fisheries legislation. However, the recent Environment Court interim decision on references relating to the proposed Tasman Resource Management Plan (*Golden Bay Marine Farmers v Tasman District Council* W42/2001) has helped to clarify the present interface.

Proposals

Changing the interface between the RMA and fisheries legislation

11. We propose that, in relation to aquaculture, the interface between the RMA and fisheries legislation be changed 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 providing for aquaculture in regional coastal plans. This will ensure that the size and location of any aquaculture development is decided having regard to all uses of coastal space and accommodates, to the greatest extent possible, the interests of other users (including fishers) of the coastal marine area.
12. This will involve a number of minor amendments to the RMA and to the FA96. The proposed amendments will bring aquaculture in line with other activities in the coastal marine area where all aspects are dealt with under the RMA. Considering all aspects of development in one process should result in aquaculture occurring in the best possible location.
13. The legislative changes will be complemented by use of the existing provisions that require councils to have regard to management plans prepared under other Acts, and regulations relating to ensuring sustainability, or conservation, management or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai or customary fishing).

Streamlining the approval process for new marine farms

14. The current application process for a new marine farm is a two-step one that is split across the RMA and FA83. The first step in the process requires an applicant to obtain a coastal permit under the RMA. The second step requires the same applicant to obtain a separate marine farming permit granted under the FA83. We propose that the application and environmental assessment process for new marine farms be streamlined by providing a single-permit approval process operated under the RMA. The current permitting provisions in the FA83 will be repealed.

Providing for improved environmental assessment

15. Many submissions, including those from regional councils, expressed concern that regional councils do not currently have sufficient skills and knowledge to enable them to be the sole agency considering all of the environmental impacts of aquaculture. In theory, regional councils should have access to adequate knowledge to ensure that the impact of marine farm development is addressed. In practice, environmental assessment is inadequate in many areas. In the short term, it is therefore important that MFish and other agencies provide regional councils with more guidance and information to enable them operate under the new regime proposed for aquaculture. Specifically, councils will require more information on the impact that the establishment of AMAs, and the granting of coastal permits for new marine farm

development, might have on the aquatic environment, including carrying capacity, and the sustainability of fisheries resources.

16. A key element of the proposed reform to streamline the application process for new marine farms is to have MFish and other agencies provide more input at the start of the planning process when AMAs are identified for new marine farm development. Under the current regime, the Minister of Fisheries may provide guidance to regional councils. The Minister must be consulted on fisheries management and the management of aquaculture in the development of regional coastal plans. However, detailed advice on the impact that new marine farm developments may have on the sustainability of fisheries is commonly provided on a site-by-site basis through the marine farming permit regime operated under the FA83. Under the proposed reform, this advice will be provided to councils earlier on in the RMA process, when AMAs are established. The increased advisory role could have some financial implications for the Crown. This is discussed under the financial implications section of Paper A: “Overview of the Proposed Aquaculture Reforms”.
17. Regional councils also require assistance in the form of national guidelines and methodology for undertaking environmental assessments and monitoring. Support is also required to gather more fundamental baseline information on the long-term effects of aquaculture development. The Crown currently contributes to the collection of information through science funding and, more recently, the Biodiversity Strategy package. Officials have recognised that a nationally coordinated and strategic approach needs to be developed to improve environmental assessment and monitoring of aquaculture development. It is proposed that officials report on any issue that arises in coordinating the Crown’s involvement in marine research and coastal planning to provide councils with the guidance, support and information needed to implement the new approach to coastal planning.

Prescriptive zoning

18. We propose that regional councils be provided with greater powers to manage aquaculture so that new marine farm developments take place within clearly defined AMAs established under regional coastal plans.
19. The RMA coastal provisions cover two quite distinct decisions:
 - The allocation decision on behalf of the Crown as to the appropriate uses (both public and private) of the Crown’s land
 - The decision on behalf of the community as to how the effects of activities are managed and whether adverse effects are such that the activity should be prohibited.
20. Following practice on land (which reflects the investment of applicants in the ownership or occupation rights in relation to land), existing coastal plans have not been prescriptive. Where coastal zoning is not prescriptive and where only broad zones are identified, it is left to decisions on subsequent individual applications to define the area finally allocated to marine farming. Regional coastal plans to date have tended to follow the principle of enabling people to use resources provided that the effects are avoided, remedied or mitigated. There is a reluctance to use prohibited activity status because this must be justified by an effects-based analysis rather than analysis of whether there is justification to overturn the public open space presumption.
21. We consider the current approach to coastal planning needs to be modified in order to better reflect the public open space presumption in the coastal marine area. We propose a more prescriptive planning approach to make clear that occupation of coastal space is to be properly controlled. While the RMA already contains a presumption against allowing occupation of coastal space, a minor amendment to the RMA would ensure the law is clear. Strengthening this presumption in law will ensure that occupation of coastal space is controlled properly by plan provisions, including appropriate rules and zones. In addition, for the special case of

aquaculture provision will be made in the law for aquaculture development to only occur within an AMA. It may be desirable to also extend this last provision to other occupations later, but there are risks in moving beyond aquaculture at this stage as the review and consultation focused on aquaculture.

22. The Government would assist implementation of the new approach to coastal planning through a Coastal Policy Statement, supported by use of the powers of the Minister of Conservation under the RMA and involvement in RMA processes. Under the RMA, the Minister of Conservation approves all coastal plans.
23. It is proposed that councils would establish AMAs in their coastal plans. These AMAs would be for specified types of aquaculture (such as long line shellfish, caged fish, or spat catching). Where possible, performance standards could be defined and the specified type of aquaculture within these zones could be a controlled activity. Aspiring marine farmers would then know where they could apply for consents to occupy, and that the consent would be approved subject to conditions. This would mean greater certainty of RMA outcome for all parties and would avoid some of stresses being felt by the community, including disenchantment with the planning process, and the transaction costs involved with considering applications on a case-by-case basis. Other stakeholders (including fishers and the community) would have their interests considered at the plan preparation stage and would not need to make submissions on a series of applications lodged in the coastal marine area.
24. As is currently the case, some individuals may be disadvantaged by the location of marine farms. Examples could include residents having their coastal landscape views affected or fishers being excluded from the area under the farm. The potential impact of development will be minimised by considering all of the effects at the time the AMA is defined and locating the AMA so as to achieve least impact while enabling aquaculture.
25. The impacts on fishers (that is the residual effects after the AMA zoning has been decided) and the implications for the Quota Management System are considered in paper C: "Recognition of Existing Fisheries Rights Holders". We propose that fisheries rights holders would still have specific legislative recognition under fisheries legislation but, as with other interests in the coastal marine area, fisheries impacts would be considered as part of the planning process during the establishment of AMAs.
26. In order for an AMA to be effective, the use of the area outside the AMAs for aquaculture must be prohibited. The prohibited areas, effectively aquaculture exclusion areas, mean other users are protected from continual incremental expansion of marine farming. While no amendment is required to enable more prescriptive zoning some amendment will be needed to ensure it is done for all plans. The Tasman decision referred to above clarified that councils could develop prescriptive plans under current law. That decision also clarified that zoning, including a prohibited zone, is an appropriate method to provide for aquaculture and was further justified by the presumption in favour of the coastal marine area being retained for public use and enjoyment contained in s 12(2) of the RMA. In most regions, for councils to adopt this approach, significant change to plans and the planning approach in the coastal marine area will be required.
27. New and experimental forms of aquaculture could be provided for in AMAs tailored to the purpose. These AMAs would also be established through the plan process but the rules would define the effects that could be considered and put limits on the total area that could be considered for occupation to avoid early speculative applications pre-empting later planned development.
28. A lack of environmental information will mean that some work is needed before effective AMAs can be established in some regions. Zoning using existing information in some regions would result in poor zones. Guidance will be needed on this and some interim measures concerning aquaculture may be needed while AMAs are investigated and established. If

development were to be sought earlier than a scheduled plan revision, then a plan variation would be needed before there could be any applications for aquaculture. While this may impose additional costs on the industry, these disadvantages are considered to be outweighed by the greater certainty and other benefits of mandatory zoning.

Duration of consents

29. As is the case now, the RMA consent to occupy coastal space would be for a specified period. Under s 123 the maximum period consent can be given for coastal occupation is 35 years and if no period is specified the consent is for 5 years. Very few consents are for more than 30 years and most marine farm consents are for 15 years or less. Renewal would need to be applied for and would be considered under the zoning and rules applying at the time of the application for extension. This allows for changes to zoning to be put into effect.

Allocation within the zones – Tendering

30. Within the AMAs, new rules and mechanisms will be needed to allocate the available coastal space. Under current law, councils must process the first application received for a given area, even if this covers all of the available space (the special tender provisions in Part VII of the Act are only available to the Crown, and not regional councils, and have never been used).
31. Options for future allocation within AMAs include balloting or tendering. Tendering areas within AMAs has the advantage of identifying the highest valued use while generating some revenue. For this reason, we propose that within AMAs tendering would be the default approach to allocation of coastal space for private use. Any alternatives to tendering in AMAs would need to be established through provisions in the approved regional coastal plan.
32. Any tender would, as now, be for the right to lodge an application for a resource consent. However, the AMA would give greater certainty, particularly where controlled activity status is possible. The plan would also indicate the likely conditions that would be applied, including the term of any resource consent and, in a few circumstances, whether the site would be subject to re-tender at the end of the term. As in the current provisions, any tender money would be returned if the applicant's application for a resource consent is not granted.
33. Tendering would be an instrument to implement the plan and it is intended that councils would run the tender. The legislation would provide that where a regional council established an AMA, it must allocate the right to apply for consent to occupy blocks of a size determined by the council within the AMA by tender. Coastal plans or the tender documents would indicate whether the intent was to re-tender the block at end of a specified period or not (currently this is specified in the notice of tender). Councils would need guidance on re-tendering and any Treaty implications of this. In the event that areas are to be provided for Treaty settlements, this would be done through specific legislation implementing the individual settlement concerned.

Role of the Minister of Conservation in tendering

34. The zoning rules and other provisions of the plan would establish the broad environmental rules applying to any tender area. These could be worked into model consent conditions that would be available prior to tendering. Any consideration of restricted coastal activities by the Minister of Conservation (in accordance with the current provisions in s117 and s119 of the RMA) would occur at this time. The current restricted coastal activities applying to occupation will no longer be appropriate under the new aquaculture regime and a new New Zealand Coastal Policy Statement (NZCPS) covering aquaculture will be needed. The main criteria for deciding which tender is successful would be return to the community (which should also reflect efficiency of resource use) subject to environmental performance standards. Transparency is easier to achieve with fewer, simple criteria. Allowing councils to favour particular interests or applicants for other reasons could distort the purpose of the RMA and carries the risk that the Act would be used as a tool for providing commercial advantage to

particular groups. Such an approach would also increase risks for councils of legal review of the tender process.

35. There is a distinction to be made between *allocation* decisions (what activities are acceptable to a landowner and who will be allowed to carry out an activity) and *regulatory* decisions that deal with environmental effects. In the case of nearly all foreshore and seabed, the Crown is the owner. Departments have different views on providing for the Minister of Conservation to intervene on behalf of the Crown in the tendering process.
36. **[Department of Conservation view]:** Currently, the RMA tendering provisions enable the Minister of Conservation to reflect the interests of the Crown when making decisions to accept a particular tender. The RMA also enables the Government to consider what activities will be tendered for authorisations to occupy, and also to consider matters other than price when deciding on tender criteria. Such decisions could be influenced, for example, by defence or regional development needs, a desire to set limits on foreign ownership, customary claims to foreshore and seabed, or the need to set limits on the period of occupation to accommodate Treaty settlements. These matters lie outside councils' mandate. In giving responsibility for tendering of the occupation of coastal space to councils it will be necessary for the Crown's interests to be conveyed in some way. General policy can be made through a new NZCPS. However, this is not a quick or responsive mechanism and the Department of Conservation (DoC) believes that the Minister of Conservation should have the power to give directions to councils on matters related to the regional councils allocation powers within AMAs. This will not pose a risk to councils of legal review, since the criteria will be known to all of those participating prior to the start of the process. DoC believes such powers are not outside of the scope of the RMA.
37. **[Treasury, MFiFish, MfE view]:** Other departments consider that the ability to develop tender criteria should lie with regional councils and that the Crown's ability to meet wider policy objectives (in relation to allocation of coastal space for aquaculture) should be provided for by way of the Minister of Conservation approving coastal plans, approving restricted coastal activities, and in developing coastal policy statements. MfE has also questioned whether some of the examples of direction given in paragraph 36 above are within the scope of the RMA and notes the caution on favouring individual applications noted in paragraph 34 above.

Use of tender revenue

38. Money from tendering coastal space currently goes to the Crown through the Crown Bank Account. However, allowing for some of the revenue derived from tendering coastal space within AMAs to be used for management in the coastal marine area would mean that councils could meet some or all of the costs of establishing zones in the coastal marine area. Proper assessment of cumulative environmental effects and carrying capacity will have a cost. Allowing councils to use some of the money in coastal management would provide an incentive to zone and tender, as opposed to dealing with applications case-by-case. While costs of individual applications can be recovered, those associated with plan development are met by the general ratepayer and tend to be under-funded. We therefore propose that councils should be able to retain 50% of the tender money derived from allocation of space within AMAs to pay for management of the coastal marine area.
39. Where tendering occurs, a percentage of the area of some AMAs may need to be set aside for iwi under the provisions of legislation implementing individual Treaty settlements. For example, under the Ngai Tahu Claims Settlement Act 1998, Te Runanga o Ngai Tahu have a preferential right to purchase 10% of the area of the authorisations tendered by the Minister of Conservation in relation to the takiwa of the Ngai Tahu Whanui for the right to apply for coastal permit authorisations. Some legislative amendment will be required to ensure that Treaty arrangements linked to the current Crown tender process under the RMA will carry over into the proposed regional council tendering process after the aquaculture reforms.

Tender provisions in the RMA

40. Currently, Part VII of the RMA enables the Minister of Conservation to put in place a moratorium on coastal occupation applications where there is competing demand for space in the coastal marine area of a region. This is to enable the Minister to set up a coastal tendering regime to deal with the competing demand. However, by the time a moratorium has been declared, it may well be too late to manage the demand, as the moratorium cannot apply to existing applications and councils must process applications in the order in which they are received. As a result, these provisions have proved unsatisfactory and will be replaced by the new tender provisions.
41. Experience to date suggests that the role of any tender round for coastal space should be decided at the plan preparation stage with the tender being a mechanism to implement the regional coastal plan. Councils would implement tendering of coastal space in AMAs defined in the plan with the timing and details determined by the council as part of the Annual Plan. As tendering would be the default approach to allocating space within AMAs, any situations where there would be a departure from tendering would need to be included in the regional coastal plan, and have approval from the Crown as part of the plan approval process.
42. Under this proposal new tendering provisions would be available for the occupation of coastal space for all purposes, including aquaculture, but they would be the default mechanism only for aquaculture. The existing provisions would remain for the removal of sand and shingle and for reclamations and drainage.

Additional changes to RMA allocation processes

43. A number of other changes to the RMA would facilitate the aquaculture management process. At present, councils must process applications for consent on a first come first served basis and the RMA imposes time limits on the various stages of the application process. When addressing the use of a public resource, councils need greater flexibility to deal effectively with competition for space.
44. We propose amendments to the RMA that would allow councils to:
 - make rules as to the maximum area that could be covered by an application for consent to occupy coastal space. This would facilitate tendering, by providing for AMAs to be allocated in blocks of suitable size for tendering, and would provide limits on the size of any block allocated to experimental marine farming in the special AMAs established for this purpose
 - specify the process by which applications for consent to occupy coastal space are received and dealt with. This could include specifying information requirements, grouping of applications in a particular locality for processing together to better consider cumulative effects, rules concerning applications over space already occupied, and procedures to deal with coastal permit applications similar to ones already declined
 - include provisions setting a limit on occupation within a zone, including an AMA. This would enable limited development to occur within the boundary of an AMA. It would also allow further consideration of issues surrounding carrying capacity without running the risk of initial over-allocation.
45. Where a council establishes an AMA, the council would need to use these powers to control when discrete areas within the AMA would become available for tender (staged release of space). This will enable councils to address cumulative environmental impacts, with new blocks to be released within the AMA only if the cumulative effects of the activity were acceptable (this could include a staged tender).

Coastal charges

46. There is a charging regime for coastal occupation under the RMA that was provided for in a

1997 amendment to the Act. Under this provision, councils must consider coastal charging when preparing coastal plans and any charge is implemented through the coastal plans. Money received from coastal occupation charges must be applied by regional councils to promoting sustainable management of the coastal marine area. Coastal charges are not a resource rental as charges vary with the activity and they are not a return to the Crown as owner of the space. In contrast, as mentioned earlier in this paper, money from the current tendering provisions (Part VII of the RMA) goes to the Crown.

47. Many councils were already part way through the process for preparing plans in 1997, when the amendment allowing charging was passed. Only one council, Southland Regional Council, applies coastal charges at present. These charges are low and are applied on each occupier (rather than on the area occupied). The Auckland Regional Council (ARC) is investigating coastal charges with a view to proposing a plan variation that would institute occupation charges next year. The Environment Court has ruled that Marlborough District Council should work on coastal charging provisions following hearing a reference on their Coastal Plan. Applying a charging regime through the RMA coastal plan process takes time. The ARC experience, should it go ahead with consideration of coastal charges, will provide experience with the process and identify any existing shortcomings in the legislative framework.
48. Some councils have noted the inconsistency that an RMA coastal charging regime would have in their regions as it cannot be applied to farms authorised under the old Marine Farming Act. Paper E: "Transition of Existing Marine Farming Approvals into the New Regime for Aquaculture" will amend this anomaly. There has also been a reluctance to institute charges while there was uncertainty about ownership of the seabed.
49. Any charging for marine farms needs to be considered in the context of other uses of the coastal marine area. The current coastal charging provisions, while not ideal, treat all coastal permit applicants consistently.
50. We do not propose to make changes to the coastal charges regime under the current reforms. Rather, it is expected that councils will implement the existing provisions. Bringing all aquaculture under the RMA and using more prescriptive zoning will encourage councils to develop rational coastal occupation charging regimes in their plans. It is proposed that officials report back by March 2004 on progress towards implementing coastal occupation charges.
51. It will be important that when tenders are called that potential tenderers know if coastal charges will also apply. This will enable tenderers to factor any charges into their estimation of the worth of blocks. This happens now in commercial decisions on land with respect to rates. Progress with implementing coastal occupation charging is therefore important.

Treaty issues

52. Treaty issues are an important consideration in the management of the coastal marine area. Marine resources are important to Maori and the Treaty relationship is critical. Treaty settlements also involve marine resources and the provisions of these should be recognised and implemented by the reform.
53. Under s 6 of the RMA, councils must "recognise and provide for" the "relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga". Section 7 makes kaitiakitanga a matter that councils must have particular regard to and, under s 8, councils must take the principles of the Treaty of Waitangi into account in implementation of the RMA.
54. During consultation, some councils were heavily criticised for perceived shortcomings in their relationship with iwi and their consideration of iwi interests. Many of these criticisms concerned matters such as degradation of the marine area and decisions on applications by iwi for aquaculture. However, the issue of council engagement with iwi is wider than aquaculture. Moves are being undertaken to start to address concerns, including wording in the Resource

Management Amendment Bill currently before the House to strengthen the status of iwi management plans in the RMA. Work is also being undertaken with councils to improve their performance in this area, including providing a guide on making the best use of iwi management plans. In the longer term, this approach should produce a better outcome for iwi. It should also ensure that iwi make a substantive input into a process of integrated resource management rather than relying upon additional processes on particular aspects such as aquaculture.

55. There have been claims that iwi own the seabed. These claims have been subject to action in the High Court. The Court issued a judgment on 22 June 2001 (Ellis J AP152/2000) finding that the Crown owns the seabed under the internal waters and territorial sea, and that, where the dry land contiguous with the foreshore is not in customary Maori ownership, the foreshore cannot be in Maori ownership. Under the RMA, authorisation is given to use coastal space for a specified period. Rules are made to control the environmental effects of this use. If Maori are successful in their current legal action, this regulation of use could potentially continue under a different ownership regime, as it does on land, with the main difference being that any new owner would have to agree to any use of the space. No change in the nature of the authorisation under the RMA is currently planned.
56. Legislation implementing some Treaty settlements, for example the Ngai Tahu settlement, requires a proportion of any tendered space in an AMA to be offered to iwi. The aquaculture reform establishes tendering as the default mechanism for allocating space within an AMA. This will therefore give greater effect to these types of settlement provisions, either when the AMA is first established or when consents expire and sites are potentially re-tendered.
57. Consideration has also been given to setting aside some proportion of AMAs outside of areas with current Treaty settlements to provide a reserve of assets available for any redress that may be agreed in future settlements. However, doing this could influence individual negotiations and add a difficult dimension to zoning by councils where the potential beneficiaries of the settlement are not clearly identified. We propose that space be set aside only where settlement has been agreed and where this is a provision in legislation implementing the settlements. The Crown's interest in coastal space, as a potential asset for inclusion in settlements, could be protected by allowing future re-tendering of the AMA (including a right of first refusal to iwi where there are settlements in place). Guidance on this should be included in the NZCPS.

Consultation

58. 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 are incorporated.
59. The proposals have been developed with some consultation with resource management specialists from councils. This dialogue will continue but will now focus on technical implementation issues.

Financial implications

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

Human rights

61. 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 re-tendering) 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

62. The proposals in this paper would require legislative amendment to the RMA, the FA83, and the FA96. We propose that these amendments be included in an 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

63. A regulatory impact statement and business compliance cost statement (BCCS) is attached to the suite of Cabinet papers on the aquaculture reforms.
64. The BCCS notes that increased compliance costs are likely to result from the additional planning requirement in establishing AMAs and tendering for authorizations. However, these should be offset through savings from streamlining the approval system into one process under the RMA and the significant reduction in potential conflicts through individual resource consent consideration and resultant appeals to the environment court.

Publicity

65. Paper A: "Overview of the Proposed Aquaculture Reforms" sets out the publicity planned for the announcement of decisions taken by Cabinet on the proposals outlined in this paper.

Recommendations

66. It is recommended that the Committee:
 - 1 agree that the coastal planning provisions of the Resource Management Act 1991 (RMA) be amended to improve the integration between coastal planning, aquaculture development and fisheries management, and allow greater benefit to be obtained from the use of coastal space, through:
 - 1.1. 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
 - 1.2. streamlining the application and environmental assessment process for new marine farms by providing a single-permit approval process to be operated under the RMA
 - 1.3. clarifying the existing presumption against allowing occupation of coastal space to ensure that occupation of coastal space is controlled properly by plan provisions
 - 1.4. providing regional councils with greater powers to manage and control (including staging) development within zones
 - 1.5. requiring marine farm developments to take place within clearly defined 'Aquaculture Management Areas' (AMAs)
 - 1.6. providing for experimental aquaculture in AMAs tailored to that purpose
 - 1.7. providing regional councils with additional rule-making powers to deal with competition for coastal space by all activities, including power to limit the coastal space that can be applied for in individual applications and power to determine appropriate mechanisms to allocate individual sites within zones (including AMAs)
 - 1.8. providing tendering provisions for regional councils to tender for the right to apply for coastal permits for space, including those for individual marine farm sites within

each AMA, and as the default mechanism for the allocation of coastal space for aquaculture

- 1.9. amending the current Crown coastal tendering provisions so they no longer apply to occupation of coastal space

2 **EITHER [Ministry for the Environment, Ministry of Fisheries, The Treasury]**

- 2.1 invite the Minister of Conservation to provide policy guidance on the allocation of coastal space through a coastal policy statement, supported by the powers of the Minister of Conservation under the RMA and through involvement in RMA processes

OR [Department of Conservation]

- 2.2 invite the Minister of Conservation to provide policy guidance on the allocation of coastal space through a coastal policy statement, supported by the powers of the Minister of Conservation under the RMA and through involvement in RMA processes, **AND**

- 2.3 agree that the Minister of Conservation could direct the Council on matters of government policy that it needs to consider when deciding on activities/areas to be tendered and setting tender criteria (or criteria for the offer of authorisations by other methods)

- 3 agree that regional councils should retain 50% of the tender money to provide appropriate planning incentives and for use in improving management of the coastal marine area

- 4 note that the reservation of sites within AMAs will occur where necessary to fulfill the Crown's obligations under Treaty settlement legislation and that minor amendments to correctly cross reference existing settlement legislation will be needed to achieve this

- 5 note that no changes are to be made to existing coastal occupation charges provisions under the RMA, as implementation of these is in the early stages

- 6 direct officials to report on the implementation of coastal occupation charges under the RMA by 31 March 2004

- 7 note that a key element of the proposed reforms to streamline the application process for new marine farms is to have MFish and other agencies provide more input at the start of the planning process when identifying AMAs for new marine farm development

- 8 direct officials to report back on any issue that arises in coordinating the Crown's involvement in marine research and coastal planning to provide councils with the guidance, support and information needed to implement the new approach to coastal planning

- 9 note that during the drafting of legislation officials will continue their existing dialogue with regional council practitioners to cover technical implementation issues