

REGULATORY IMPACT STATEMENT

Implementation of Aquaculture Reforms

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

1. The management of aquaculture has undergone legislative reform, which took effect on 1 January 2005. As part of this reform, sections 186K and 186ZE of the Fisheries Act 1996 (the Act) require the Chief Executive of the Ministry of Fisheries to establish by regulation and keep two aquaculture registers. A fish farmer register and a register of aquaculture agreements (the registers). The fish farmer register is statutorily required, under sections 17 and 29 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, by 1 January 2006. There are currently approximately 390 fish farmers who will need to be registered.
2. The Ministry manages the risks to the wild fisheries regime that fish farming may pose. In particular it must look to minimise the risk of subverting the wild fisheries management regime that fish farming activities potentially poses by enabling the possession and disposal of fish that have been unlawfully obtained. The Ministry has identified three risks that fish farming poses to the compliance regime for wild fisheries. Fish farming and other activities associated with fish farming could:
 - a) Undermine the Ministry's ability to enforce wild fishery rules. For example the aquaculture industry can supply product below legal size limits and provide product in excess of recreation bag limits to the public;
 - b) Be used to disguise the illegal harvest and sale of wild fish; or
 - c) Reduce voluntary compliance by the public. For example the sale of farmed product which is smaller than the legal minimum size if caught in the wild, may add confusion to the public's understanding of minimum legal size.
3. The risks have not been quantified; however there have been instances where illegal catches have been attributed to fish farms. Laundering wild fish through fish farms could potentially be of a serious nature as large volumes of illegal wild product could be laundered.
4. Under the previous regime the Ministry of Fisheries managed its risks by conditioning marine farm leases, licences and permits. Under the legislative reform, leases, licences and permits have been deemed coastal permits under sections 10 and 20 of the Aquaculture Reforms (Repeals and Transitional Provisions) Act 2004. The Ministry of Fisheries has no authority to place conditions on the coastal permits. Coastal permits are now administered under the Resource Management Act 1991 by regional councils who have no jurisdiction to manage the risks to the wild fisheries regime.

Statement of the public policy objective

5. To ensure that the Ministry of Fisheries meets its obligations under the Fisheries Act 1996 by providing for the effective utilisation of fisheries resources while ensuring sustainability, and obligations under part 9A of the Act requiring the Ministry to be responsible for the management of two registers relating to the aquaculture industry.

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

Registers

6. *Status Quo* – Sections 186K and 186ZE of the Fisheries Act 1996 (the Act) require the Chief Executive of the Ministry of Fisheries to establish by regulation to keep a fish farmer register and a register of aquaculture agreements. Holders of marine farm leases, licenses, and permits that are now deemed coastal permits are deemed registered fish farmers until such time as the registers have been implemented by way of regulation. It is a statutory requirement under the Act for the fish farmer register to be established by 1 January 2006. Part 9A of the Fisheries Act 1996 outlines the information that must be contained in the registers including client, site and species information. The status quo is not the preferred option, as it does not meet the public policy objective.
7. *Preferred Option* – Amend the Fisheries (Registers) Regulations 2001 to establish a fish farmer register and a register of aquaculture agreements. Deemed coastal permit holders will automatically be registered on the fish farmer register. The registers will be open to the public. A fish farmer would not be authorised to farm fish unless they are registered on the fish farmer register. In addition to material that must be held on the registers under part 9A of the Fisheries Act 1996, the Ministry of Fisheries is proposing to collect further administrative information for the registers.

Management of risks to wild fisheries

8. *Status Quo* – In the past, fish farmers were granted authorisations under a variety of permits, leases and licences. The Ministry of Fisheries was able to manage any risks associated with fish farming on the management of the wild fisheries regime by conditioning these authorisations. These permits, leases and licences have been deemed coastal permits. The Ministry of Fisheries has no authority under the Fisheries Act 1996 to condition the coastal permits as these are administered under the Resource Management Act 1991. As a result the status quo is unable to address the Ministry of Fisheries' responsibilities to manage the adverse risks associated with fish farming on the management of the wild fisheries regime. Therefore the status quo is not the preferred option because it does not meet the public policy objective.
9. *Preferred option* – Amending the Fisheries (Recordkeeping) Regulations 1990 to establish a two tiered recordkeeping regime for registered fish farmers. The Ministry of Fisheries proposes a two-tiered approach to managing the risks. Registered fish farmers farming risk level two species are required to keep sales and purchase invoices. Registered fish farmers farming risk level one species (rock lobster and paua) are additionally required to keep transfer, mortality and annual inventory records. There are a number of proposed amendments and policies to assist with the implementation of the recordkeeping regime. The key features being:
 - a. Criteria developed for identifying risk level one species being; where the demand for fish is not met by farmed or legally harvested wild fish and where an active black-market exists.
 - b. Risk level one records for Paua under 25mm in length are not required to be kept.
 - c. Records to be kept as soon as practicable after the event.

- d. Offence for failure to comply with recordkeeping provisions or failure to allow inspection of records.
- e. Penalty for offences up to \$100,000.
- f. A number of consequential amendments to the recordkeeping regulations to allow for the implementation of the recordkeeping regime for registered fish farmers.

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

Government

- 10. The fish farmer register provides the Ministry of Fisheries with information on who is farming and therefore assists the Ministry to check fish farmers' compliance with regulatory requirements. Potentially the fish farmer register could also provide benefits to the central and local government by providing a single available and comprehensive register that can be used to identify fish farmers, which is useful for organisations such as Biosecurity New Zealand.
- 11. The register of aquaculture agreements enables the Ministry of Fisheries to be assured that those wishing to tender for aquaculture space have obtained the consent of those fisheries rights holders who have been identified by the Chief Executive as being affected by the allocation of space for aquaculture activities. Regional councils are ultimately responsible for developing aquaculture management areas.
- 12. The recordkeeping regime is consistent with the Ministry of Fisheries' management of similar commercial activities where there are opportunities for the laundering of wild fish. The regime manages the obligations of the Ministry of Fisheries to manage the adverse effects fish farming may have on the management of wild fisheries regime. Monitoring of the recordkeeping regime will fall under business as usual.

Industry

- 13. The register of aquaculture agreements is the mechanism that will give surety to persons wishing to tender for aquaculture space that they have satisfied a legislative requirement to record the consents, obtained from of all those commercial fishers identified by the chief executive as being affected by an aquaculture management area prior to the tender, so that they may tender for aquaculture space.
- 14. The recordkeeping regime provides for some continuity between the old and the new regimes. The new recordkeeping regime has been refined and in a number of cases the recordkeeping obligations are less onerous than under the previous regime. The Ministry of Fisheries has also established a risk framework where higher risk species have greater obligations. Persons farming species that are not on risk level 1 will not have to complete more onerous recordkeeping requirements.
- 15. The costs associated with the management of the registers will be cost recovered from industry. The recovery of such costs will require regulatory change and appropriate consultation with industry. A Regulatory Impact Statement will be prepared when cost recovery regulations are proposed at a later date.

Society

16. Both registers are public registers and will be available for the public to view. The management of the risks to the wild fisheries regime that fish farms pose will ensure that the Ministry is managing its obligations to provide for the utilisation of fisheries resources while ensuring sustainability of the fisheries for future generations.

Statement of consultation undertaken

17. A detailed Initial Position Paper was developed for the proposals and sent out, seeking submissions, to members of the aquaculture and fishing industries, such as the Seafood Industry Council and Mussel Industry Council, environmental and recreational sectors, tangata whenua and any other interested parties who would be directly affected. In addition, meetings have been carried out with aquaculture industry representative organisations and other interested parties.
18. There were some significant concerns raised by the aquaculture industry regarding the overall cost of business associated with whole of government administration and processes. The Ministry of Fisheries has a small but important role in the management of the aquaculture industry and has looked to minimise costs where possible. For example the recordkeeping regime was developed so that records required by other agencies such as the Inland Revenue Department and New Zealand Food Safety Authority would be sufficient.
19. Consultation was also undertaken with Ministry of Justice, Ministry for the Environment, Ministry of Economic Development, Te Puni Kokiri, the Treasury, and Department of Conservation.

BUSINESS COMPLIANCE COST STATEMENT

20. There will be some minor administrative costs arising out of the requirement to be on the fish farmer and aquaculture agreements registers. There may be some fine-tuning of recordkeeping systems required for some businesses.
21. There are approximately 390 fish farmers at this time. The size of the businesses range from small fish farmers with a single site to four significant industry participants who run a number of fish farm sites. The Aquaculture industry is currently worth approximately 250 million dollars annually to New Zealand's economy.
22. Business compliance costs for the fish farmer register will be an original application on an approved form to register a new fish farmer. Once established there may be an annual update requirement. The details of the holders of deemed coastal permits will be migrated to the new register at no cost to the fish farmers. They will be sent an update form to ensure the details are correct. Potential costs are limited to the time to fill out the form and postage of one letter once a year.
23. Business compliance costs for the aquaculture agreements register will vary depending on how many consents the applicant has to obtain in order to meet the registers requirements. Applicants will need to send in the consents they have established with the relevant

fisheries stakeholders. Potential costs include postage of consents. Numbers and amount of postage will depend on the number and size of consents.

24. The recordkeeping regime was developed in line with existing Inland Revenue Department and New Zealand Food Safety Authority requirements and is seen as part of usual business practice. There will be costs to learn the new regulations, and if inspected, provide time for inspections to take place. Potential compliance costs are minor set up costs, i.e. purchasing of regulations, to ensure compliance with recordkeeping regulations and time costs for any inspections.
25. The Ministry will advise fish farmers of when the regulations will come into force, and what the regulations entail to minimise possible implementation costs.