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Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

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Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry for Primary Industries.

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1 Title

This Act is the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

2 Commencement

- (1) Section 33 comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on 1 January 2005.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

3 Purpose

The purpose of this Act is—

- (a) to repeal the Marine Farming Act 1971 and provide for transitional matters relating to the repeal; and
- (b) to repeal certain provisions in Part 4A of the Fisheries Act 1983 and provide for transitional matters relating to the repeal; and
- (c) to provide for transitional matters relating to the ending of the moratorium under the Resource Management Act 1991; and
- (d) to provide for transitional matters relating to amendments made in 2011 to the Fisheries Act 1996, Resource Management Act 1991, and Maori Commercial Aquaculture Claims Settlement Act 2004 to further reform the law relating to aquaculture, including the removal of requirements relating to aquaculture management areas.

Section 3(c): amended, on 1 October 2011, by section 4(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 3(d): added, on 1 October 2011, by section 4(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

4 Arrangement of this Act

(1) This Act is arranged as follows:

- (a) sections 6 to 17 repeal the Marine Farming Act 1971 and deal with transitional matters arising from the repeal and subsequent legislative reform relating to aquaculture:
- (b) sections 18 to 33 repeal certain provisions in the Fisheries Act 1983 (relating to marine farming) and deal with transitional matters arising from the repeals and subsequent legislative reform relating to aquaculture:
- (c) sections 34 to 54 deal with transitional matters relating to—
 - (i) the ending on 31 December 2004 of the moratorium established under the Resource Management (Aquaculture Moratorium) Amendment Act 2002 on the granting of coastal permits for aquaculture activities; and
 - (ii) the removal of the requirements relating to aquaculture management areas from the Resource Management Act 1991, Fisheries Act 1996, and Maori Commercial Aquaculture Claims Settlement Act 2004:
- (d) sections 55 to 58 deal with some general matters.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

Section 4(1)(a): amended, on 1 October 2011, by section 5(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 4(1)(b): amended, on 1 October 2011, by section 5(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 4(1)(c): substituted, on 1 October 2011, by section 5(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 4(2): repealed, on 1 October 2011, by section 5(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 4(3): repealed, on 1 October 2011, by section 5(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 4(4): repealed, on 1 October 2011, by section 5(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

5 Interpretation

- (1) In this Act unless the context otherwise requires, **aquatic life, fish, fishing, and seaweed** have the same meaning as in section 2(1) of the Fisheries Act 1996.
- (2) In this Act, **the commencement of this Act** means 1 January 2005.

Repeal of Marine Farming Act 1971 and transitional provisions relating to repeal

6 Marine Farming Act 1971 called principal Act in sections 7 to 17

In sections 7 to 17, the Marine Farming Act 1971 is called “the principal Act”.

Repeal

7 Repeal

The principal Act is repealed.

Transitional

8 Application

- (1) Sections 9 to 17 apply to every lease or licence that—
 - (a) has been executed under the principal Act; and
 - (b) is in force immediately before the commencement of this Act.
- (2) For the purposes of sections 9 to 17, a variation of a lease or licence made under section 13 of the principal Act and in force immediately before the commencement of this Act is to be treated as a condition of the lease or licence.

9 Interpretation

In sections 10 to 17, unless the context otherwise requires, **deemed coastal permit** means a lease or licence that is deemed to be a coastal permit under section 10(1).

10 Leases and licences deemed to be coastal permits

- (1) On and from the date specified in subsection (2), each lease and licence is deemed to be a coastal permit granted under the Resource Management Act 1991.
- (2) For the purposes of subsection (1), the date is—
 - (a) the commencement of this Act; but
 - (b) if—
 - (i) section 16(1) applies, the date on which the application referred to in that subsection is determined;
 - (ii) section 16(2) applies, the date on which the forfeiture referred to in that subsection is discontinued.
- (3) A deemed coastal permit is subject to the same conditions as applied to the lease or licence immediately before the date specified in subsection (2).
- (4) The consent authority may decide (and must decide if requested by the holder of a permit) whether to commence a review of a deemed coastal permit, including the conditions of the permit, within 12 months after—
 - (a) the lease or licence becomes a deemed coastal permit; or
 - (b) the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 if—
 - (i) section 16(2) applies; and
 - (ii) the date on which the forfeiture is discontinued is after 1 January 2006 but before the commencement of that Act.
- (4A) A deemed coastal permit may be reviewed only once under this section.
- (4B) If the consent authority decides to commence a review of a deemed coastal permit, it must commence the review within the period specified in subsection (4).
- (4C) After completing a review commenced under this section, the consent authority may, if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.
- (5) In exercising the power in subsection (4C), the consent authority must not amend the species or area covered by the permit.
- (6) The holder of a deemed coastal permit may appeal or object under subsection (6A)—
 - (a) against a decision of the consent authority not to review the conditions of a deemed coastal permit, but only if the holder requested the consent authority to review the conditions;
 - (b) against a decision of the consent authority to vary, add, or delete (or not to vary, add, or delete) conditions of a deemed coastal permit, whether or not the holder requested the authority to review the conditions.

- (6A) The holder of the deemed coastal permit may—
- (a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions;
 - (b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.
- (7) *[Repealed]*
- (8) A deemed coastal permit is to be treated as if it had been granted for a term of 20 years beginning on the commencement of this Act.
- (9) A deemed coastal permit is to be treated as if it—
- (a) authorises the holder to undertake aquaculture activities in the area specified in the lease or licence concerned to the extent consistent with the lease or licence as in force immediately before the date specified in subsection (2); and
 - (b) includes all the coastal permits that would otherwise have been required under sections 12 and 14 of the Resource Management Act 1991 to undertake those activities; and
 - (c) includes all the coastal permits that would otherwise have been required under section 15 of the Resource Management Act 1991 to undertake those activities to the extent that they were being undertaken at the commencement of this Act.
- (10) Subsection (11) applies if, immediately before the date specified in subsection (2),—
- (a) a variation has been made under section 13(1) or (3) of the principal Act to a lease or licence which authorises the farming of species of fish, aquatic life, or seaweed not authorised before the variation; and
 - (b) the holder of the lease or licence has not begun to farm the species of fish, aquatic life, or seaweed that the variation applies to.
- (11) The holder of the lease or licence must not begin farming the species of fish, aquatic life, or seaweed referred to in subsection (10)(b) if doing so would have, or is likely to have, effects that are more adverse in character, intensity, or scale than the effects of farming the species of fish, aquatic life, or seaweed that the lease or licence applied to immediately before the variation.
- (12) However, subsection (11) does not apply if the holder of the lease or licence is authorised to farm the species of fish, aquatic life, or seaweed concerned by—
- (a) a permission that is deemed to be a coastal permit by section 384 of the Resource Management Act 1991; or
 - (b) a coastal permit granted under the Resource Management Act 1991; or

(c) a variation granted before 1 October 1991.

Section 10(2)(b): substituted, on 1 October 2011, by section 6(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(4): substituted, on 1 October 2011, by section 6(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(4A): inserted, on 1 October 2011, by section 6(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(4B): inserted, on 1 October 2011, by section 6(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(4C): inserted, on 1 October 2011, by section 6(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(5): substituted, on 1 October 2011, by section 6(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(6): substituted, on 1 October 2011, by section 6(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(6A): inserted, on 1 October 2011, by section 6(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 10(7): repealed, on 1 October 2011, by section 6(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

11 Provision of records to regional councils

The chief executive of the Ministry of Fisheries must, within 3 months after the commencement of this Act, provide to each regional council details of the relevant leases and licences to which section 8 applies.

12 Approvals under Harbours Act 1950

- (1) Subsection (2) applies if a person holds—
 - (a) a deemed coastal permit; and
 - (b) an approval under section 178(1)(b) of the Harbours Act 1950 to erect structures for aquaculture activities that is—
 - (i) deemed to be a coastal permit under section 384 of the Resource Management Act 1991; and
 - (ii) in force immediately before the commencement of this Act.
- (2) The deemed coastal permit referred to in subsection (1)(b)—
 - (a) becomes part of the deemed coastal permit referred to in subsection (1)(a) and subject to section 10; and
 - (b) lapses as an approval under the Harbours Act 1950.

13 Mortgages and charges

- (1) A lease or licence that, immediately before the commencement of this Act, is subject to a mortgage registered under section 15(2) of the principal Act continues, on and from the commencement of this Act, to be subject to the mortgage.

- (2) A mortgage referred to in subsection (1) is to be treated as if it were a charge over a coastal permit, and section 122(3) and (4) of the Resource Management Act 1991 applies accordingly.
- (3) If a mortgage referred to in subsection (1) is registered under the Personal Property Securities Act 1999, within 1 year after the commencement of this Act, no fee is payable for the registration.

14 Subleases and sublicences

A sublessee or sublicensee of a lease or licence that is subject to a sublease or sublicense immediately before the commencement of this Act must be treated as a person acting under a resource consent with the permission of the consent holder.

15 Applications to extend term

- (1) An application to extend the term or period of a lease or licence under section 13(2) or (4) of the principal Act, made but not determined before the commencement of this Act, is cancelled.
- (2) Subsection (1) does not apply to an application to extend the term or period of a lease or licence, if the lease or licence has expired before the commencement of this Act.

16 Certain matters to be completed under principal Act

- (1) An application to vary a lease or licence under section 13 of the principal Act, made but not determined before the commencement of this Act, must be continued and determined under the principal Act as if this Act had not been enacted.
- (2) If a controlling authority has taken action to forfeit a lease or licence under section 14 of the principal Act, but the forfeiture has not been completed or discontinued before the commencement of this Act, then—
 - (a) the forfeiture may be completed or discontinued under the principal Act after the commencement of this Act; but
 - (b) until the forfeiture has been completed or discontinued, the other provisions of sections 9 to 15 and section 17 do not apply to the lease or licence.
- (3) This section applies subject to section 15.

17 Holder of deemed coastal permit to be treated as holder of fish farm registration pending registration by chief executive

- (1) The holder of a deemed coastal permit must be treated as a registered fish farmer under Part 9A of the Fisheries Act 1996 for the space that the deemed coastal permit relates to.

- (2) Within 12 months after the commencement of this Act or, if section 16 applies, the date referred to in section 10(2)(b), the chief executive must register the holder of the deemed coastal permit as a fish farmer under section 186V of the Fisheries Act 1996 without an application or payment of the prescribed fee.

Section 17(2): amended, on 1 October 2011, by section 7 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

17A Term of certain leases extended

- (1) The leases referred to in this section were granted under the Marine Farming Act 1971 and relate to that part of the coastal marine area in Waikare Inlet in the Bay of Islands.
- (2) Subsection (3) applies to leases 119 and 137.
- (3) The term of each lease is extended to expire 3 years after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (4) Subsections (5) and (6) apply to leases 42, 53, and 64.
- (5) Each lease is to be treated as having been varied on and from the date on which it would otherwise have expired to extend its term to expire 3 years after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (6) During the term of a lease as extended by subsection (5), the lessee may continue to operate the marine farm that is subject to the lease, subject to the same terms and conditions as applied immediately before the extension of its term.
- (7) Subsection (8) applies to—
- (a) the leases specified in subsection (2); and
 - (b) leases 165, 170, and 171.
- (8) During the term of a lease specified in subsection (7), the lessee may continue to operate the marine farm that is subject to the lease, subject to the same terms and conditions as applied immediately before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (9) To avoid doubt, subsections (6) and (8) do not prevent a lease specified in this section being forfeited.

Section 17A: inserted, on 1 October 2011, by section 8 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Repeal of certain provisions in Part 4A of Fisheries Act 1983 and transitional provisions relating to repeals

18 Fisheries Act 1983 called principal Act in sections 19 to 33

In sections 19 to 33, the Fisheries Act 1983 is called “the principal Act”.

Repeals and amendments

19 Repeals

Amendment(s) incorporated in the Act(s).

Transitional

20 Marine farming permits deemed to be coastal permits

- (1) This section applies to every marine farming permit that—
 - (a) has been granted under section 67J of the principal Act; and
 - (b) is in force immediately before the commencement of this Act.
- (2) On and from the commencement of this Act, each marine farming permit is deemed to be a coastal permit granted under the Resource Management Act 1991 for the species of fish, aquatic life, or seaweed and area referred to in the permit and on the same conditions as applied to the permit immediately before the commencement of this Act.
- (3) The consent authority may decide (and must decide if requested by the holder of a permit) within 12 months after the commencement of this Act whether to commence a review of the conditions of a coastal permit referred to in subsection (2).
- (3A) The conditions of a coastal permit may be reviewed only once under this section.
- (3B) If the consent authority decides to commence a review of a coastal permit referred to in subsection (2), it must commence the review within the period specified in subsection (3).
- (3C) After completing a review commenced under this section, the consent authority may, if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.
- (4) In exercising the power in subsection (3C), the consent authority must not amend the species or area covered by the permit.
- (5) The holder of a coastal permit referred to in subsection (2) may appeal or object under subsection (5A)—
 - (a) against a decision of the consent authority not to review the conditions of the coastal permit, but only if the holder requested the consent authority to review the conditions:
 - (b) against a decision of the consent authority to vary, add, or delete (or not to vary, add, or delete) conditions of the coastal permit, whether or not the holder requested the authority to review the conditions.
- (5A) The holder of a coastal permit referred to in subsection (2) may—

- (a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions:
 - (b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.
- (5B) A coastal permit referred to in subsection (2) expires on the same date as the coastal permit that relates to the marine farming permit that is deemed by subsection (2) to be a coastal permit.
- (6) A coastal permit referred to in subsection (2) does not, of itself, authorise the holder to occupy a coastal marine area.

Section 20(3): substituted, on 1 October 2011, by section 9(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(3A): inserted, on 1 October 2011, by section 9(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(3B): inserted, on 1 October 2011, by section 9(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(3C): inserted, on 1 October 2011, by section 9(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(4): substituted, on 1 October 2011, by section 9(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(5): substituted, on 1 October 2011, by section 9(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(5A): inserted, on 1 October 2011, by section 9(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20(5B): inserted, on 1 October 2011, by section 9(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

20A Marine Farming Permit 364 for Waikato Communal Area

- (1) This section applies in relation to marine farming permit MFP 364 for the Waikato Communal Area, which was granted under the Fisheries Act 1983 on 7 May 1998 and which expires on 31 December 2023.
- (2) Section 20 of this Act does not apply to marine farming permit MFP 364.
- (3) Marine farming permit MFP 364 is to be treated as—
 - (a) having been lawfully granted on 7 May 1998; and
 - (b) having been in force immediately before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
 - (c) as expiring on 31 December 2033.
- (4) The holder of marine farming permit MFP 364 is to be treated as having been authorised, on and from 7 May 1998, to occupy the Waikato Communal Area for the purpose of carrying out the activity authorised by the permit.

- (5) On and from the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the holder of marine farming permit MFP 364 is deemed to be the holder of a coastal permit granted by the Waikato Regional Council on the conditions referred to in Schedule 1 for the following activities:
- (a) the marine farming of Green Mussels (*Perna canaliculus*) and Pacific Oysters (*Crassostrea gigas*); and
 - (b) the occupation of the Waikato Communal Area; and
 - (c) any associated existing structures; and
 - (d) any associated discharges; and
 - (e) any associated disturbance of, and deposition on, the seabed.
- (6) Nothing in this section prevents the holder of the coastal permit from applying for a change or cancellation of the conditions of the permit under section 127 of the Resource Management Act 1991.
- (7) Nothing in this section prevents the consent authority from reviewing the conditions of the coastal permit in terms of section 128 (other than subsection (1)(c)) of the Resource Management Act 1991.
- (8) In this section, the **Waikato Communal Area** means the rectangular 22.5 hectare (more or less) coastal marine area to the east of Esk Point in the Coromandel Harbour, more particularly described as commencing at a point bearing 352° 805 metres from Trig 23B Tuhana and bounded by the lines running 90° for 750 metres, 360° for 300 metres, 270° for 750 metres, and 180° for 300 metres to the point of commencement.

Section 20A: inserted, on 1 October 2011, by section 10 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 20A(8): amended, on 5 December 2013, by section 4 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2013 (2013 No 107).

21 Certain spat catching permits deemed to be coastal permits

- (1) This section applies to every spat catching permit that—
- (a) has been granted under section 67Q(2) of the principal Act; and
 - (b) is in force immediately before the commencement of this Act.
- (2) On and from the commencement of this Act, every spat catching permit is deemed to be a coastal permit granted by a consent authority under the Resource Management Act 1991 for the species of fish, aquatic life, or seaweed and area referred to in the permit and on the conditions as applied to the permit immediately before the commencement of this Act.
- (3) The consent authority may decide (and must decide if requested by the holder of a permit) within 12 months after the commencement of this Act whether to commence a review of the conditions of a coastal permit referred to in subsection (2).

- (3A) The conditions of a coastal permit may be reviewed only once under this section.
- (3B) If the consent authority decides to commence a review of a coastal permit referred to in subsection (2), it must commence the review within the period specified in subsection (3).
- (3C) After completing a review commenced under this section, the consent authority may, if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.
- (4) In exercising the power in subsection (3C), the consent authority must not amend the species or area covered by the permit.
- (5) The holder of a coastal permit referred to in subsection (2) may appeal or object under subsection (5A)—
- (a) against a decision of the consent authority not to review the conditions of the coastal permit, but only if the holder requested the consent authority to review the conditions:
 - (b) against a decision of the consent authority to vary, add, or delete (or not to vary, add, or delete) conditions of the coastal permit, whether or not the holder requested the authority to review the conditions.
- (5A) The holder of the coastal permit referred to in subsection (2) may—
- (a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions:
 - (b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.
- (6) A coastal permit referred to in subsection (2) expires on the same date as the coastal permit that relates to the spat catching permit that is deemed by subsection (2) to be a coastal permit.
- (7) A coastal permit referred to in subsection (2) does not, of itself, authorise the holder to occupy a coastal marine area.

Section 21(3): substituted, on 1 October 2011, by section 11(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 21(3A): inserted, on 1 October 2011, by section 11(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 21(3B): inserted, on 1 October 2011, by section 11(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 21(3C): inserted, on 1 October 2011, by section 11(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 21(4): substituted, on 1 October 2011, by section 11(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 21(5): substituted, on 1 October 2011, by section 11(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 21(5A): inserted, on 1 October 2011, by section 11(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

22 Provision of records to regional councils

The chief executive of the Ministry of Fisheries must, within 3 months after the commencement of this Act, provide to each regional council details of the relevant marine farming permits and spat catching permits to which sections 20 and 21 apply.

23 Regional councils may charge for review

Section 36 of the Resource Management Act 1991 applies in relation to the functions of a consent authority under sections 10, 20, and 21 as if a review under any of those sections were a review under section 128 of the Resource Management Act 1991.

24 Objections to decisions made under sections 20(3) and 21(3)

[Repealed]

Section 24: repealed, on 1 October 2011, by section 12 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

25 Completion of certain matters pending at commencement of Act

- (1) If a person to whom subsection (2) applies makes an application to which subsection (3) applies, the application is to be continued and completed under the principal Act as it was before the commencement of this Act.
- (1A) Subsection (1) applies subject to section 25A.
- (2) This subsection applies to a person who holds—
 - (a) a coastal permit granted under the Resource Management Act 1991 to occupy a coastal marine area for a marine farming or spat catching activity; or
 - (b) a certificate of compliance granted under that Act to occupy a coastal marine area for marine farming or spat catching.
- (3) This subsection applies to the following applications if received before but not determined at the commencement of this Act:
 - (a) an application under section 67J of the principal Act for a marine farming permit;
 - (b) an application under section 67Q(2) of the principal Act for a spat catching permit;
 - (c) an application under section 67K of the principal Act to change or cancel any of the conditions of a marine farming permit or a spat catching permit, or to add new conditions to the permit.

- (4) A notice of surrender under section 67O of the principal Act forwarded before but not processed at the commencement of this Act must be processed as if this Act had not been passed.
- (5) A review under section 67P of the principal Act that has not been completed at the commencement of this Act must be completed as if this Act had not been passed.
- (6) On and from the date on which a matter referred to in this section is completed under the principal Act,—
 - (a) section 20 applies to the permit if it is a marine farming permit granted under section 67J of the principal Act;
 - (b) section 21 applies to the permit if it is a spat catching permit granted under section 67Q(2) of the principal Act.
- (7) For the purposes of subsection (6), sections 20 and 21 apply as if every reference in those sections to the commencement of this Act were a reference to the date on which the application was granted.
- (8) A coastal permit granted to a person who has made an application referred to in subsection (3), and that is for the same space and activity as a coastal permit or certificate of compliance referred to in subsection (2), is not invalid because the application in respect of which the coastal permit was granted did not comply with section 12A(1A) of the Resource Management Act 1991 as in force at the time the permit was granted.

Section 25(1): substituted, on 1 October 2011, by section 13(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 25(1A): inserted, on 1 October 2011, by section 13(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 25(8): added, on 1 October 2011, by section 13(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

25A Assessment of effect on fishing of applications pending at commencement of Act

- (1) This section applies to an application—
 - (a) to which section 25(1) applies; and
 - (b) which, as at the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, has not been determined.
- (2) The chief executive may, in addition to seeking information from the applicant under section 67J(7) of the principal Act, seek information relevant to the application from—
 - (a) any fisher whose interests may be affected if the application is granted; and

- (b) persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected if the application is granted.
- (3) The chief executive—
 - (a) may set a date by which information must be provided and may grant 1 or more extensions of that date if he or she considers it necessary to do so; and
 - (b) is not required to consider or take into account any information received after that date or extended date (as the case may be).
- (4) The chief executive must—
 - (a) grant the application under section 67J, 67K, or 67Q of the principal Act (as the case may require) if the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing; but
 - (b) decline the application under section 67J, 67K, or 67Q of the principal Act (as the case may require) if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing.
- (5) However, the chief executive must defer making a decision whether to grant or decline the application under section 67J, 67K, or 67Q of the principal Act (as the case may require) if—
 - (a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing other than commercial fishing; but
 - (b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing.
- (6) To avoid doubt, subsections (4) and (5) apply in place of section 67J(8) of the principal Act.
- (7) If subsection (4) applies but subsection (5) does not, the chief executive must give a notice to the applicant and give public notification—
 - (a) stating that the application is granted or declined; and
 - (b) giving the chief executive's reasons for granting or declining the application.
- (8) If subsection (5) applies, the chief executive must give a notice to the applicant and give public notification accordingly. The notice and public notification must also—
 - (a) specify—
 - (i) the area concerned; and

- (ii) the stocks subject to the quota management system in the area that are the reason for the chief executive's view under subsection (5)(b); and
 - (b) specify the chief executive's reasons for deciding that subsection (5) applies; and
 - (c) contain a copy, or statement to the effect, of subsections (9) and (10).
- (9) The chief executive must decline the application, if the applicant does not lodge—
 - (a) an aquaculture agreement with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZI(4) of the Fisheries Act 1996; or
 - (b) a compensation declaration with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZIA(4) of the Fisheries Act 1996.
- (10) The chief executive must grant the application and issue the permit if the applicant lodges—
 - (a) an aquaculture agreement with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZI(4) of the Fisheries Act 1996; or
 - (b) a compensation declaration with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZIA(4) of the Fisheries Act 1996.
- (11) For the purposes of this section, the reference in section 67J(10) of the principal Act to “adverse effects on fishing or the sustainability of any fisheries resource” must be read as if it were a reference to “adverse effects on fishing”.
- (12) Any person wishing to seek, under the Judicial Review Procedure Act 2016, judicial review of a decision under this section must do so within 30 working days after the public notification of the decision.
- (13) The provisions of Part 1 of Schedule 2 have effect in relation to aquaculture agreements and compensation.
- (14) In this section,—

aquaculture agreement means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 1 of Schedule 2

commercial fishing means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of stocks subject to the quota management system

compensation declaration means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 1 of Schedule 2

public notification has the same meaning as in section 2(1) of the Fisheries Act 1996.

Section 25A: inserted, on 1 October 2011, by section 14 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 25A(12): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

25B Information and matters to be considered in relation to applications to which section 25A applies

- (1) In making a decision under section 25A(4) or (5), the chief executive must have regard to any—
 - (a) information held by the Ministry of Fisheries; and
 - (b) information supplied by the applicant; and
 - (c) information supplied to the chief executive by the persons referred to in section 25A(2), whether before or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
 - (d) other information that the chief executive has requested and obtained.
- (2) In considering for the purposes of section 25A(4) and (5) whether granting the application will have an undue adverse effect on fishing, the chief executive must have regard only to the following matters:
 - (a) the location of the area that the application relates to in relation to areas in which fishing is carried out;
 - (b) the likely effect of the granting of the permit on fishing of any fishery, including the proportion of any fishery likely to become affected;
 - (c) the degree to which the granting of the permit in the area that the application relates to will lead to the exclusion of fishing;
 - (d) the extent to which fishing for a species in the area that the application relates to can be carried out in other areas;
 - (e) the extent to which the granting of the permit will increase the cost of fishing;
 - (f) the cumulative effect on fishing of any authorised aquaculture activities, including any structures authorised before the introduction of any relevant stock to the quota management system.
- (3) This section applies subject to section 25A(3).

Section 25B: inserted, on 1 October 2011, by section 14 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

26 Applications after commencement of Act

- (1) Despite section 19, a person may (after the commencement of this Act) apply for a marine farming permit or a spat catching permit under the principal Act if—
 - (a) the person holds—
 - (i) a coastal permit to occupy a coastal marine area for the purpose of marine farming or spat catching; or
 - (ii) a certificate of compliance to occupy a coastal marine area for marine farming or spat catching; and
 - (b) the application is—
 - (i) under section 67J of the principal Act for a marine farming permit for the same area and the same species of fish, aquatic life, or seaweed that the coastal permit or certificate of compliance relates to; or
 - (ii) under section 67Q(2) of the principal Act for a spat catching permit for the same area and the same species of fish, aquatic life, or seaweed that the coastal permit or certificate of compliance relates to.
- (2) The application must be made and completed under the principal Act as it was before the commencement of this Act.
- (2A) Subsection (2) applies subject to section 26A.
- (3) If the application is for a marine farming permit and the application is granted, section 20 applies to the permit as if every reference in that section to the commencement of this Act were a reference to the date on which the application was granted.
- (4) If the application is for a spat catching permit and the application is granted, section 21 applies to the permit as if every reference in that section to the commencement of this Act were a reference to the date on which the application was granted.
- (5) Subsections (6) and (7) apply to a person who—
 - (a) holds a coastal permit or certificate of compliance to occupy a coastal marine area for the purposes of marine farming or spat catching; and
 - (b) has previously made an application for a marine farming permit or spat catching permit that met the criteria in subsection (1)(b), but which was declined.
- (6) The person may make 1 further application for a marine farming permit or spat catching permit in accordance with subsection (1) before the date that is 12 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.

- (7) However, if the person has made a subsequent application for a marine farming permit or spat catching permit in accordance with subsection (1) before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, but which has not been determined before commencement of that Act, the person may not make a further application in accordance with subsection (1).
- (8) In subsections (1)(a) and (5), **coastal permit to occupy a coastal marine area for the purpose of marine farming or spat catching** means—
- (a) a coastal permit to occupy space in the coastal marine area for the purpose of marine farming or spat catching that was in force at the commencement of this Act; or
- (b) a coastal permit to occupy the same space on the same terms that was granted by a consent authority before the expiry of the consent referred to in paragraph (a).
- (9) A coastal permit referred to in subsection (8)(b) is not invalid because the application in respect of which it was granted did not comply with section 12A(1A) of the Resource Management Act 1991 as in force at the time the permit was granted.

Section 26(2): substituted, on 1 October 2011, by section 15(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26(2A): inserted, on 1 October 2011, by section 15(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26(5): added, on 1 October 2011, by section 15(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26(6): added, on 1 October 2011, by section 15(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26(7): added, on 1 October 2011, by section 15(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26(8): added, on 1 October 2011, by section 15(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26(9): added, on 1 October 2011, by section 15(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

26A Assessment of effect on fishing of applications after commencement of Act

- (1) This section applies to an application—
- (a) that section 26 applies to, whether the application is made before, on, or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
- (b) which, if made before the commencement of that Act, has not been determined as at the commencement of that Act.
- (2) The chief executive may, in addition to seeking information from the applicant under section 67J(7) of the principal Act, seek information relevant to the application from—

- (a) any fisher whose interests may be affected if the application is granted; and
 - (b) persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected if the application is granted.
- (3) The chief executive—
 - (a) may set a date by which information must be provided and may grant 1 or more extensions of that date if he or she considers it necessary to do so; and
 - (b) is not required to consider or take into account any information received after that date or extended date (as the case may be).
- (4) The chief executive must—
 - (a) grant the application under section 67J or 67Q of the principal Act (as the case may require) if the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing; but
 - (b) decline the application under section 67J or 67Q of the principal Act (as the case may require) if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing.
- (5) However, the chief executive must defer making a decision whether to grant or decline the application under section 67J or 67Q of the principal Act (as the case may require) if—
 - (a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing other than commercial fishing; but
 - (b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing.
- (6) To avoid doubt, subsections (4) and (5) apply in place of section 67J(8) of the principal Act.
- (7) If subsection (4) applies but subsection (5) does not, the chief executive must give a notice to the applicant and give public notification—
 - (a) stating that the application is granted or declined; and
 - (b) giving the chief executive's reasons for granting or declining the application.
- (8) If subsection (5) applies, the chief executive must give a notice to the applicant and give public notification accordingly. The notice and public notification must also—
 - (a) specify—

- (i) the area concerned; and
 - (ii) the stocks subject to the quota management system in the area that are the reason for the chief executive's view under subsection (5)(b); and
 - (b) specify the chief executive's reasons for deciding that subsection (5) applies; and
 - (c) contain a copy, or statement to the effect, of subsections (9) and (10).
- (9) The chief executive must decline the application, if the applicant does not lodge—
- (a) an aquaculture agreement with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZI(4) of the Fisheries Act 1996; or
 - (b) a compensation declaration with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZIA(4) of the Fisheries Act 1996.
- (10) The chief executive must grant the application and issue the permit if the applicant lodges—
- (a) an aquaculture agreement with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZI(4) of the Fisheries Act 1996; or
 - (b) a compensation declaration with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZIA(4) of the Fisheries Act 1996.
- (11) For the purposes of this section, the reference in section 67J(10) of the principal Act to “adverse effects on fishing or the sustainability of any fisheries resource” must be read as if it were a reference to “adverse effects on fishing”.
- (12) Any person wishing to seek, under the Judicial Review Procedure Act 2016, judicial review of a decision under this section must do so within 30 working days after the public notification of the decision.
- (13) The provisions of Part 1 of Schedule 2 have effect in relation to aquaculture agreements and compensation.
- (14) In this section,—
- aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 1 of Schedule 2
- commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of stocks subject to the quota management system

compensation declaration means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 1 of Schedule 2

public notification has the same meaning as in section 2(1) of the Fisheries Act 1996.

Section 26A: inserted, on 1 October 2011, by section 16 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 26A(12): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

26B Information and matters to be considered in relation to applications to which section 26A applies

- (1) In making a decision under section 26A(4) or (5), the chief executive must have regard to any—
 - (a) information held by the Ministry of Fisheries; and
 - (b) information supplied by the applicant; and
 - (c) information supplied to the chief executive by the persons referred to in section 26A(2), whether before or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
 - (d) other information that the chief executive has requested and obtained.
- (2) In considering for the purposes of section 26A(4) and (5) whether granting the application will have an undue adverse effect on fishing, the chief executive must have regard only to the following matters:
 - (a) the location of the area that the application relates to in relation to areas in which fishing is carried out;
 - (b) the likely effect of the granting of the permit on fishing of any fishery, including the proportion of any fishery likely to become affected;
 - (c) the degree to which the granting of the permit in the area that the application relates to will lead to the exclusion of fishing;
 - (d) the extent to which fishing for a species in the area that the application relates to can be carried out in other areas;
 - (e) the extent to which the granting of the permit will increase the cost of fishing;
 - (f) the cumulative effect on fishing of any authorised aquaculture activities, including any structures authorised before the introduction of any relevant stock to the quota management system.
- (3) This section applies subject to section 26A(3).

Section 26B: inserted, on 1 October 2011, by section 16 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

27 Order of processing applications and request for aquaculture decision in relation to interim aquaculture management area

- (1) This section applies in relation to an interim aquaculture management area in respect of which there are—
 - (a) 1 or more applications for permits under section 67J or section 67Q(2) of the principal Act; and
 - (b) a request for an aquaculture decision under section 186D of the Fisheries Act 1996 or section 37 of this Act.
- (2) The applications for permits and request for an aquaculture decision must be dealt with in the following order:
 - (a) first, any application for a permit received before the request for the aquaculture decision:
 - (b) second, the request for an aquaculture decision:
 - (c) third, any application for a permit received after the request for an aquaculture decision.

Section 27 heading: amended, on 1 October 2011, by section 17(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 27(1): amended, on 1 October 2011, by section 17(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 27(1)(b): amended, on 1 October 2011, by section 17(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

28 Lapsing of parts of coastal permit

- (1) This section applies to the following permits held by the same person:
 - (a) a marine farming permit or spat catching permit that is deemed to be a coastal permit under section 20 or section 21; and
 - (b) a coastal permit granted under the Resource Management Act 1991 that—
 - (i) is in force immediately before the commencement of this Act; and
 - (ii) applies to the area or part of the area and 1 or more of the species of fish, aquatic life, or sea-weed that the permit referred to in paragraph (a) relates to.
- (2) If the permits do not apply to the same species of fish, aquatic life, or seaweed, then the coastal permit referred to in subsection (1)(b)—
 - (a) has effect only in relation to the species of fish, aquatic life, or seaweed that the permit referred to in subsection (1)(a) applies to; and
 - (b) is to be treated as having lapsed in relation to the species of fish, aquatic life, or seaweed that the permit referred to in subsection (1)(a) does not apply to.
- (3) If the permits do not apply to the same area, then the coastal permit referred to in subsection (1)(b)—

- (a) has effect only in relation to the area that the permit referred to in subsection (1)(a) applies to; and
- (b) is to be treated as having lapsed in relation to the area that the permit referred to in subsection (1)(a) does not apply to.

29 Holder of deemed coastal permit to be treated as holder of fish farmer registration pending registration by chief executive

- (1) The holder of a deemed coastal permit under section 20 or section 21 must be treated as a registered fish farmer under Part 9A of the Fisheries Act 1996 for the space that the deemed coastal permit relates to.
- (2) Within 12 months after the commencement of this Act, the chief executive must register the holder of the deemed coastal permit as a fish farmer under section 186V of the Fisheries Act 1996 without an application or payment of the prescribed fee.

30 Application to register fish farmer deferred pending decision on permit

- (1) The chief executive must not grant or decline an application under section 186S of the Fisheries Act 1996 to register a fish farmer if—
 - (a) the applicant has a resource consent to use the space concerned as a fish farm that was granted—
 - (i) before the commencement of this Act; or
 - (ii) under an application to which section 50 applies; and
 - (b) the applicant—
 - (i) has not made an application under section 67J or section 67Q(2) of the Fisheries Act 1983 for the area, or part of the area, to which the resource consent relates; or
 - (ii) has made an application under section 67J or section 67Q(2) of the Fisheries Act 1983 for the area, or part of the area, to which the resource consent relates, but the chief executive has not granted or declined the application.
- (2) If the applicant makes or has made an application under section 67J or section 67Q(2) of the Fisheries Act 1983 and the application is granted, the chief executive may proceed to grant or decline the application under section 186S of the Fisheries Act 1996 to register the applicant as a fish farmer.
- (3) This section does not prevent the chief executive from granting or declining an application under section 186S of the Fisheries Act 1996 if the applicant has had an application under section 67J or section 67Q(2) of the Fisheries Act 1983 granted in respect of other space and this section does not otherwise apply in relation to that space.

31 Application to register as fish farmer to be declined if marine farming permit or spat catching permit declined

- (1) The chief executive must decline an application under section 186S of the Fisheries Act 1996 to register a fish farmer if the applicant—
 - (a) has made an application under section 67J or section 67Q(2) of the Fisheries Act 1983 for the area or part of the area to which the resource consent relates; and
 - (b) the chief executive has declined the application.
- (2) This section does not prevent the chief executive from granting or declining an application under section 186S of the Fisheries Act 1996 if the applicant has had an application under section 67J or section 67Q(2) of the Fisheries Act 1983 granted in respect of other space.

32 Levies

- (1) Subsection (2) applies to a levy or fee under the Fisheries (Cost Recovery Levies for Fisheries Services) Order 2004 payable by the holder of—
 - (a) a marine farming permit under section 67J of the Fisheries Act 1983; or
 - (b) a spat catching permit under section 67Q(2) of the Fisheries Act 1983.
- (2) A levy or fee that is, immediately before the commencement of this Act, payable but unpaid remains payable even though the permit is deemed to be a coastal permit under section 20 or section 21.

Revocation

33 Revocation of Freshwater Fish Farming Regulations 1983

- (1) The Freshwater Fish Farming Regulations 1983 (SR 1983/278) are revoked.
- (2) All licences granted under the Freshwater Fish Farming Regulations 1983 are revoked.
- (3) Section 2(1) of the Fisheries Act 1996 is amended by repealing paragraph (b) of the definitions of **fish farm** and **fish farmer**.
- (4) Sections 186ZA and 301 of the Fisheries Act 1996 are repealed.
- (5) On and from the commencement of this section the holder of a fish-farm licence immediately before the commencement of this section is to be treated as if the holder were registered as a fish farmer under section 186S of the Fisheries Act 1996.
- (6) The chief executive must, within 12 months after the commencement of this section, register without an application or payment of the prescribed fee the holder of a fish-farm licence under the Freshwater Fish Farming Regulations 1983 immediately before the commencement of this section as a fish farmer in respect of the space that the licence relates to.

- (7) An application for a fish-farm licence under regulation 6 of the Freshwater Fish Farming Regulations 1983 made but not determined at the commencement of this section must be treated as if it were an application to register as a fish farmer under section 186R of the Fisheries Act 1996.

Transitional provisions relating to end of moratorium under Resource Management Act 1991

34 Resource Management Act 1991 called principal Act in sections 35 to 54

In sections 35 to 54, the Resource Management Act 1991 is called “the principal Act”.

Section 34: replaced, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Interim aquaculture management areas

35 Interpretation

In sections 36 to 54,—

agreed space means space identified in an agreement under sections 44B to 44D for allocation to the trustee

aquaculture agreement means an aquaculture agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 2 or 3 of Schedule 2, as the case may require

aquaculture decision means a determination or reservation

chief executive means the chief executive of the Ministry of Fisheries

commercial fishing has the same meaning as in section 2(1) of the Fisheries Act 1996

compensation declaration means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 2 or 3 of Schedule 2, as the case may require

determination, in relation to an interim aquaculture management area, means a decision by the chief executive that he or she is satisfied that the interim aquaculture management area will not have an undue adverse effect on fishing or on the sustainability of fisheries resources

Gazetted aquaculture area means an area—

- (a) described and defined in a *Gazette* notice under section 44(3) or (6), including any amendments made to the area under section 44N; or
- (b) that is deemed to be a *Gazetted* aquaculture area under section 44M, including any amendments made to that area under section 44N

identified space means space identified in a public notice under section 44E(1) for allocation to the trustee

interim aquaculture management area—

- (a) means a coastal marine area described in an Order in Council made under section 150C of the principal Act or section 36 of this Act; but
- (b) does not include a coastal marine area described in paragraph (a) that became an aquaculture management area under this Act before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011

iwi aquaculture organisation means an iwi aquaculture organisation recognised under section 33 of the Maori Commercial Aquaculture Claims Settlement Act 2004

recognised iwi organisation has the same meaning as in section 5 of the Maori Fisheries Act 2004

reservation, in relation to an interim aquaculture management area, means a decision by the chief executive that he or she is not satisfied that the interim aquaculture management area will not have an undue adverse effect on fishing or on the sustainability of fisheries resources.

settlement assets has the same meaning as in section 5 of the Maori Commercial Aquaculture Claims Settlement Act 2004

trustee means Te Ohu Kai Moana Trustee Limited, a company established in accordance with section 33 of the Maori Fisheries Act 2004

Section 35 **agreed space**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **aquaculture agreement**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **commercial fishing**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **compensation declaration**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **Gazetted aquaculture area**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **identified space**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **interim aquaculture management area** paragraph (b): substituted, on 1 October 2011, by section 18(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **iwi aquaculture organisation**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **recognised iwi organisation**: inserted, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **settlement assets**: added, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 35 **trustee**: added, on 1 October 2011, by section 18(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

36 Interim aquaculture management areas declared by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Conservation, declare a coastal marine area described in the order to be an interim aquaculture management area.
- (2) The Minister must not make a recommendation unless—
 - (a) the regional council concerned has requested the Minister to make the recommendation; and
 - (b) a regional coastal plan or proposed regional coastal plan—
 - (i) has, before the commencement of this Act, been notified under clause 5 of Schedule 1 of the principal Act; and
 - (ii) applies to the coastal marine area to be described in the Order in Council; and
 - (c) the Minister is satisfied that he or she has received adequate information to base a recommendation on; and
 - (d) the Minister is satisfied that—
 - (i) the regional coastal plan or the proposed regional coastal plan provides for aquaculture activities as a controlled or restricted discretionary or discretionary or non-complying activity in the area that the request relates to; and
 - (ii) the provisions of the plan or proposed plan adequately address the adverse effects (including cumulative effects) on the environment (other than fisheries resources) of the occupation of a coastal area and of aquaculture activities.
- (3) The Minister must make a recommendation under subsection (1) within 3 months after receiving a request if the Minister is not prevented by subsection (2) from making the recommendation.
- (4) For the purposes of subsection (3), section 37 of the principal Act applies, with all necessary modifications, as if the Minister were acting as a consent authority.

37 Application for aquaculture decision in relation to interim aquaculture management area

- (1) A regional council may request the chief executive to make an aquaculture decision in relation to an interim aquaculture management area.
- (2) However, a regional council must not make a request in relation to an area to which section 39(1)(a), (b), or (c) applies.

Section 37(2): amended, on 1 October 2011, by section 19 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

38 Chief executive to make aquaculture decision

- (1) Within 6 months after receiving a request for an aquaculture decision under section 37, the chief executive must—
 - (a) make a determination; or
 - (b) make a reservation; or
 - (c) make 1 or more determinations or reservations or both in relation to different parts of the area.
- (2) The chief executive may request the regional council that requested the aquaculture decision and any person whose interests may be affected to provide him or her with further information about the effects that the interim aquaculture management area would have on access to or displacement of fishing or the sustainability of fisheries resources.
- (3) For the purposes of subsection (1), the period beginning on the day when a request for further information is made and ending on the day when the information is provided is excluded from the 6-month period referred to in subsection (1).
- (4) Before making an aquaculture decision, the chief executive must—
 - (a) consult the persons and organisations that the chief executive considers represent the classes of persons having a customary, commercial, or recreational fishing interest in the interim aquaculture management area; and
 - (b) consider any submissions made by those persons and organisations.

39 Aquaculture decisions must not be made in relation to certain areas

- (1) The chief executive must not make an aquaculture decision if the decision would apply to an area for which—
 - (a) a coastal permit under the principal Act authorises occupation for the purposes of an aquaculture activity; or
 - (b) a deemed coastal permit under section 10 or section 20 or section 21 is in force; or
 - (c) an application for a coastal permit under the principal Act to occupy a coastal marine area for the purpose of an aquaculture activity has been made but not determined.
- (2) However, subsection (1)(c) does not apply to the following applications:
 - (a) applications to which section 150B(2) of the principal Act applies;
 - (b) applications made in the period beginning on 1 January 2005 and ending with the close of 9 May 2006.

Section 39(1)(c): amended, on 28 September 2008, by section 4(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 39(2): added, on 28 September 2008, by section 4(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

40 Matters to be considered by chief executive

In deciding whether to make a determination or reservation, the chief executive must have regard only to the following matters:

- (a) the effect of the interim aquaculture management area on—
 - (i) the biological diversity of the aquatic environment;
 - (ii) the productivity and biological abundance of fisheries resources;
 - (iii) habitats of known significance for fisheries management;
- (b) the location of the interim aquaculture management area in relation to areas in which fishing is carried out;
- (c) the effect of the interim aquaculture management area on fishing of any fishery, including the proportion of any fishery likely to become affected;
- (d) the degree to which aquaculture activities within the interim aquaculture management area will lead to the exclusion of fishing;
- (e) the extent to which fishing for a species in the interim aquaculture management area can be carried out in other areas;
- (f) the extent to which the interim aquaculture management area will increase the cost of fishing;
- (g) the cumulative effect on fishing of any previous aquaculture activities.

41 Requirements for aquaculture decision

- (1) An aquaculture decision must—
 - (a) be in writing; and
 - (b) define the areas that are subject to the decision; and
 - (c) provide reasons for the decision; and
 - (d) if the decision is a determination based on a rule in a regional coastal plan or proposed regional coastal plan that relates to the character, intensity, or scale of occupation of the interim aquaculture management area by aquaculture activities,—
 - (i) specify the rule; and
 - (ii) state that the rule may not be revoked or amended until the chief executive makes a further aquaculture decision in relation to the area affected by the revocation or amendment; and
 - (e) be notified to the regional council.
- (2) If the chief executive makes a reservation, the reservation must also include—

- (a) whether the reservation relates to customary, recreational, or commercial fishing or a combination of them; and
 - (b) if the reservation relates only to commercial fishing, the stocks and areas concerned, specifying any stocks subject to the quota management system, any stocks or species specified in Schedules 4C and 4D, and any stocks for species not subject to the quota management system; and
 - (c) any other matters required by regulations to be included.
- (3) The chief executive must—
- (a) publicly notify the fact that he or she has made a determination or reservation; and
 - (b) in the notice published for that purpose, include—
 - (i) the information specified in subsections (1) and (2); and
 - (ii) information about where a copy of the determination or reservation can be obtained.

42 Aquaculture decisions made after commencement of Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011

- (1) An aquaculture decision made after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 must be made in accordance with, and subject to, the provisions of this Act as amended by the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (2) Subsection (1) applies—
- (a) whether the request for the aquaculture decision was made before or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
 - (b) whether the aquaculture decision is made as a result of proceedings in relation to an aquaculture decision made before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.

Section 42: substituted, on 1 October 2011, by section 20 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

43 Judicial review of aquaculture decision

Any person wishing to seek, under the Judicial Review Procedure Act 2016, judicial review of an aquaculture decision must do so within 30 working days after the public notification of the decision.

Section 43: amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

Section 43: amended, on 1 October 2011, by section 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

43A Applications in interim aquaculture management area

- (1) A person must not apply for a coastal permit to occupy space in an interim aquaculture management area for the purpose of aquaculture activities unless the chief executive has made—
 - (a) a reservation in relation to the space that relates to customary, recreational, or commercial fishing for stocks or species that are not subject to the quota management system; or
 - (b) a reservation in relation to the space that relates to commercial fishing for stocks that are subject to the quota management system and the space has become a *Gazetted* aquaculture area; or
 - (c) a reservation in relation to the space that relates to commercial fishing for stocks that are subject to the quota management system and—
 - (i) the regional council has notified the chief executive that it has completed its allocation of authorisations to the trustee under sections 44B to 44D and, if necessary, section 44E; and
 - (ii) the period for filing an aquaculture agreement or a compensation declaration in relation to the space has expired and no aquaculture agreement or compensation declaration has been lodged; or
 - (d) a determination in relation to the space and the space has become a *Gazetted* aquaculture area.
- (2) This section does not affect applications made in the interim aquaculture management area before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.

Section 43A: inserted, on 1 October 2011, by section 22 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44 Effect of aquaculture decision in relation to interim aquaculture management area

- (1) A regional council must, after being notified of an aquaculture decision in relation to an interim aquaculture management area,—
 - (a) comply, as soon as practicable, with sections 44B to 44D and, if necessary, section 44E; and
 - (b) notify the chief executive, immediately, when it has completed its allocation of authorisations to the trustee under those provisions.
- (2) Subsection (1) applies whether the aquaculture decision is made before or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (3) On receipt of a notice under subsection (1)(b), the chief executive must,—
 - (a) if the chief executive made a determination in relation to the interim aquaculture management area (whether the whole area or part of it), pub-

lish a notice in the *Gazette* that describes and defines the area that the determination relates to as an aquaculture area; and

- (b) if the chief executive made a reservation in relation to commercial fishing for stocks subject to the quota management system in relation to the interim aquaculture management area (whether the whole area or part of it), give public notification that any application for a coastal permit to undertake aquaculture activities in the area that the reservation relates to will be cancelled (unless already cancelled under section 44D(5) or 44E(7)) if an aquaculture agreement or compensation declaration is not lodged with the chief executive within 6 months after the date of the public notice.
- (4) Subpart 4 of Part 9A of the Fisheries Act 1996 applies to an aquaculture agreement or compensation declaration referred to in subsection (3)(b), subject to the modifications set out in Part 2 of Schedule 2.
- (5) Subsection (6) applies if, before the expiry of the period specified in subsection (3)(b) or section 44J or 44K, an applicant for a coastal permit to undertake aquaculture activities in the area, an iwi aquaculture organisation, or the trustee, as the case may be, lodges an aquaculture agreement or compensation declaration in respect of an area in relation to which the chief executive made a reservation in relation to commercial fishing for stocks subject to the quota management system.
- (6) If this subsection applies, the chief executive must, as soon as practicable after the aquaculture agreement or compensation declaration is lodged, publish a notice in the *Gazette* that describes and defines the area that the aquaculture agreement or compensation declaration relates to as an aquaculture area.

Section 44: substituted, on 1 October 2011, by section 23 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Allocation of authorisations to trustee

Heading: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44A Overview of sections 44B to 44L

- (1) The purpose of sections 44B to 44L is to provide a process for allocation to the trustee of authorisations in respect of 20% of any space in an interim aquaculture management area in respect of which the chief executive has made a determination or a reservation relating to commercial fishing for stocks subject to the quota management system.
- (2) Sections 44B to 44D provide a negotiating period for the persons specified in section 44B(2) to try to reach an agreement about the allocation of authorisations in respect of the space.

- (3) Sections 44E to 44H provide a process for allocation of authorisations in respect of the space, if the persons specified in section 44B(2) have failed to reach agreement.
- (4) Sections 44E to 44H apply only to the extent that an agreement is not entered into by the persons specified in section 44B(2) within the required period.
- (5) Sections 44I to 44L deal with the lodging of aquaculture agreements or compensation declarations and when authorisations allocated to the trustee lapse.

Section 44A: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44B Notifications of period to negotiate and enter into agreement about 20% space

- (1) A regional council that is required to comply with this section must notify the persons specified in subsection (2) that they have the period specified in subsection (3) to negotiate to enter into an agreement identifying 20% of the space referred to in section 44A(1) for allocation to the trustee.
- (2) The persons who must be notified under subsection (1) are—
 - (a) the trustee; and
 - (b) any person who has applied for a coastal permit in relation to the space referred to in section 44A(1).
- (3) The period for negotiation is 6 months beginning on the day after the date on which the persons specified in subsection (2) are notified under subsection (1).
- (4) The period of 6 months specified in subsection (3) may, before the period expires, be extended by the regional council for a further 3 months if the regional council is satisfied that—
 - (a) reasonable steps have been taken to reach an agreement; and
 - (b) more time is required to reach an agreement.

Section 44B: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44C Trustee to notify iwi aquaculture organisations of notice received from regional council

- (1) The trustee must, as soon as practicable after receiving a notice under section 44B, notify iwi aquaculture organisations (in accordance with subsection (2) or (3), as the case may require) that it has received the notice.
- (2) If the notice received by the trustee relates to a regional coastline or harbour in respect of which the trustee has not made its determination as to settlement assets allocation entitlements under the Maori Commercial Aquaculture Claims Settlement Act 2004, then, in the notice given under subsection (1), the trustee must undertake to negotiate, on behalf of the iwi aquaculture organisations for all the iwi in relation to the regional coastline or harbour to which the space referred to in section 44A(1) belongs, an agreement (subject to their subsequent

approval) with the other persons specified in section 44B(2) on the 20% of the space referred to in section 44A(1) in respect of which authorisations are to be issued to the trustee.

- (3) If the notice received by the trustee relates to a regional coastline or harbour in respect of which the trustee has made its determination as to settlement assets allocation entitlements under the Maori Commercial Aquaculture Claims Settlement Act 2004, then, in the notice given under subsection (1), the trustee must seek instructions from all the iwi aquaculture organisations with an interest in the authorisations in accordance with the determination of settlement assets allocation entitlements as to whether—
 - (a) the iwi aquaculture organisations themselves intend to negotiate an agreement; or
 - (b) the iwi aquaculture organisations authorise the trustee to negotiate on their behalf.

Section 44C: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44D Position at conclusion of negotiations

- (1) If, at the conclusion of the period for negotiations, there is no agreement, the regional council must proceed to comply with section 44E.
- (2) If, at any time before the conclusion of the period for negotiations, there is an agreement that is in writing, signed by the parties to it, and delivered to the regional council, then the regional council—
 - (a) is not required to comply with section 44E; and
 - (b) must allocate to the trustee authorisations for the agreed space, in accordance with the agreement, as soon as practicable after receiving the agreement.
- (3) In subsection (2), **parties** means,—
 - (a) where the trustee has not made its determination as to settlement assets allocation entitlements,—
 - (i) the trustee in order to confirm that the agreement has been entered into by the iwi aquaculture organisations for all the iwi in relation to the regional coastline or harbour to which the space referred to in section 44A(1) belongs; and
 - (ii) the iwi aquaculture organisations referred to in subparagraph (i); and
 - (iii) any applicant for a coastal permit in the space referred to in section 44A(1):
 - (b) where the trustee has made its determination as to settlement assets allocation entitlements,—

- (i) the trustee in order to confirm that the agreement has been entered into by all the iwi aquaculture organisations with an interest in the authorisations, in accordance with the determination of settlement assets allocation entitlements; and
 - (ii) the iwi aquaculture organisations referred to in subparagraph (i); and
 - (iii) any applicant for a coastal permit in the space referred to in section 44A(1).
- (4) For the purposes of this section, any space referred to in section 44A(1) must be treated as available for allocation of authorisations under the agreement.
- (5) An application to which section 47A of this Act or section 150B(2) of the principal Act applies is cancelled to the extent that the space to which it applies is agreed space, on and from the date of the agreement.

Section 44D: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44E Allocation of authorisations to trustee

- (1) A regional council that is required to comply with this section under section 44D(1) must, by public notice, identify 20% of the space referred to in section 44A(1) for allocation to the trustee.
- (2) The identified space must be representative of all the space in the space referred to in section 44A(1).
- (3) The regional council must allocate to the trustee authorisations for the identified space as soon as practicable after the date on which the space is identified.
- (4) For the purposes of this section, any space in the space referred to in section 44A(1) must be treated as available for allocation of authorisations.
- (5) If the space referred to in section 44A(1) includes space that is subject to a reservation relating to commercial fishing for stocks subject to the quota management system, the representative space allocated to the trustee must include 20% of the space that is subject to the reservation and that is representative of all the space referred to in section 44A(1) that is subject to the reservation.
- (6) In identifying whether space is representative for the purposes of this section, a regional council must have regard to—
- (a) the overall productive capacity of the space referred to in section 44A(1); and
 - (b) the provisions of any regional coastal plan or proposed regional coastal plan that relate to the space referred to in section 44A(1).
- (7) An application to which section 47A of this Act or section 150B(2) of the principal Act applies is cancelled, to the extent that the space to which it applies is identified space, on and from the date the identified space was publicly notified under subsection (1).

- (8) This section applies subject to sections 44F and 44G.

Section 44E: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44F Space to be allocated must be of economic size

- (1) The space identified under section 44E must be of an economic size.
- (2) However, if it is not possible for a regional council to comply with subsection (1), the regional council must identify space that is of an economic size even though the space is not representative.
- (3) However, if it is not possible for a regional council to comply with subsection (2), the regional council must identify space that comprises a single area.
- (4) Space identified under subsection (2) or (3) must not have less than average productive capacity compared with the space referred to in section 44A(1) that it was originally intended to be representative of.

Section 44F: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44G Allocation of authorisations to trustee in relation to staged developments and harbours

- (1) For the purposes of section 44E, if the space referred to in section 44A(1) includes space in a staged development or a harbour, then,—
 - (a) to comply with section 44E(1), the public notice given by the regional council must identify 20% of the space referred to in section 44A(1) separately for each stage of the staged development or harbour; and
 - (b) to comply with section 44E(2), that space must be representative of space referred to in section 44A(1) available at each stage of the staged development or harbour; and
 - (c) to comply with section 44E(3), the regional council must allocate to the trustee authorisations for that space.

- (2) The identification of space in a staged development under section 44E(1) is to be treated as an interim identification, and any necessary adjustments may be made at the time that authorisations for the space for that stage are made available for applications for coastal permits or allocation of authorisations.

- (3) If the space to which a staged development applies is not made available for the allocation of authorisations or applications for coastal permits, the regional council must not allocate authorisations for that space to the trustee.

- (4) In this section,—

harbour means a harbour listed in Schedule 2 of the Maori Commercial Aquaculture Claims Settlement Act 2004

staged development means provision in a regional coastal plan or the principal Act for space to become available for application for coastal permits or alloca-

tion of authorisations on a date later than the operative date of the regional coastal plan.

Section 44G: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44H Appeal to Environment Court against regional council's decision

- (1) The following persons may appeal to the Environment Court against a decision of a regional council under any of sections 44E, 44F, and 44G:
 - (a) an applicant for a coastal permit in the identified space:
 - (b) the trustee:
 - (c) an iwi aquaculture organisation or recognised iwi organisation for an iwi in relation to the regional coastline or harbour to which the space referred to in section 44A(1) relates.
- (2) An appeal under this section must be filed within 15 working days after the public notice is given under section 44E(1).
- (3) The Environment Court may confirm, amend, or cancel the decision of the regional council appealed against.

Section 44H: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44I Application for coastal permits for occupation of space referred to in section 44A(1) subject to reservation relating to commercial fishing for stocks subject to quota management system

- (1) This section applies to agreed space or identified space if—
 - (a) authorisations for the space have been allocated to the trustee under section 44D(2)(b) or 44E; and
 - (b) the agreed or identified space is subject to a reservation relating to commercial fishing for stocks subject to the quota management system.
- (2) The only person who may apply for a coastal permit to occupy the agreed space or identified space for aquaculture activities is the holder of—
 - (a) an authorisation for the space, being an authorisation allocated under section 44D(2)(b) or 44E; and
 - (b) either—
 - (i) an aquaculture agreement registered under section 186ZH of the Fisheries Act 1996; or
 - (ii) a compensation declaration registered under section 186ZHA of the Fisheries Act 1996.

Section 44I: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44J Time within which iwi aquaculture organisation may lodge aquaculture agreement or compensation declaration if trustee not authorised to enter into aquaculture agreement or provide compensation

- (1) This section applies if—
 - (a) authorisations for space have been allocated to the trustee under section 44D(2)(b) or 44E; and
 - (b) the space is subject to a reservation relating to commercial fishing for stocks subject to the quota management system; and
 - (c) the trustee has not been authorised to enter into an aquaculture agreement or provide compensation under section 44K.
- (2) The trustee must notify in writing the chief executive of the Ministry of Fisheries as soon as practicable after—
 - (a) the trustee has recognised iwi aquaculture organisations for all the iwi with an interest in the authorisations; and
 - (b) the trustee has determined the entitlements for all those iwi in relation to the regional coastline or harbour to which the space referred to in section 44A(1) belongs.
- (3) The chief executive must, as soon as practicable after receiving the notice under subsection (2), notify in writing the trustee and every iwi aquaculture organisation and the regional council concerned of the receipt of the notice.
- (4) An iwi aquaculture organisation must lodge an aquaculture agreement or a compensation declaration in respect of any agreed or identified space that is subject to a reservation in relation to commercial fishing for stocks subject to the quota management system within 6 months after the date of the notice given by the chief executive under subsection (3).
- (5) Subpart 4 of Part 9A of the Fisheries Act 1996 applies to an aquaculture agreement or compensation declaration referred to in subsection (4), subject to the modifications set out in Part 3 of Schedule 2.

Section 44J: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44K Time within which trustee may lodge aquaculture agreement or compensation declaration on behalf of all recognised iwi aquaculture organisations concerned

- (1) This section applies if—
 - (a) authorisations for space have been allocated to the trustee under section 44D(2)(b) or 44E; and
 - (b) the agreed or identified space is subject to a reservation relating to commercial fishing for stocks subject to the quota management system.
- (2) The trustee must notify in writing the chief executive of the Ministry of Fisheries as soon as practicable after—

- (a) the trustee has recognised iwi aquaculture organisations for all the iwi in relation to the regional coastline or harbour to which the aquaculture space belongs; and
 - (b) all the iwi aquaculture organisations referred to in paragraph (a) have authorised the trustee to enter into an aquaculture agreement on behalf of all the iwi aquaculture organisations or to provide compensation in accordance with sections 186ZN and 186ZQ of the Fisheries Act 1996 on behalf of all the iwi aquaculture organisations.
- (3) The chief executive must, as soon as practicable after receiving the notice, notify in writing the trustee and every iwi aquaculture organisation and the regional council concerned of the receipt of the notice.
- (4) An aquaculture agreement or compensation declaration in respect of any of the agreed or identified space that is subject to a reservation in relation to commercial fishing for stocks subject to the quota management system must be lodged within 6 months after the date of the notice given by the chief executive under subsection (3).
- (5) Subpart 4 of Part 9A of the Fisheries Act 1996 applies to an aquaculture agreement or compensation declaration referred to in subsection (4), subject to the modifications set out in Part 3 of Schedule 2.

Section 44K: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44L When authorisations allocated to trustee lapse

- (1) Section 165T of the principal Act does not apply to authorisations allocated under this Act.
- (2) However, an authorisation allocated under this Act does lapse if—
 - (a) a regional coastal plan provides that all aquaculture activities are prohibited activities in the space that is subject to the authorisation; or
 - (b) the authorisation is for space that is subject to a reservation relating to commercial fishing for stocks subject to the quota management system and no aquaculture agreement or compensation declaration is lodged in respect of the space within the time required by section 44J or 44K, as the case may be.
- (3) If an authorisation allocated under this Act is transferred and (as a result of the transfer) it ceases to be a settlement asset, the authorisation lapses 2 years after the date on which the holder gives a notice of transfer of the authorisation to the regional council under section 165S of the Resource Management Act 1991.

Section 44L: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Gazetted aquaculture areas

Heading: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44M Areas that became aquaculture management areas before commencement of Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 become *Gazetted* aquaculture areas

- (1) An area of the coastal marine area that became an aquaculture management area under section 44 as in force before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 is deemed to be a *Gazetted* aquaculture area.
- (2) To avoid doubt, sections 44 and 44A to 44L do not apply to an area described in subsection (1).
- (3) As soon as practicable after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the chief executive must, by notice in the *Gazette*, identify and describe all the aquaculture management areas deemed to be *Gazetted* aquaculture areas by this section.
- (4) Subsection (1) does not apply to an area of the coastal marine area—
 - (a) in relation to which the chief executive of the Ministry of Fisheries granted an application for a marine farming permit under section 67J of the Fisheries Act 1983; and
 - (b) which became an aquaculture management area under section 52(3).
- (5) To avoid doubt, subsection (4) does not affect the application of section 186GA(a) of the Fisheries Act 1996 or section 107F(2)(a) of the Resource Management Act 1991 to the area referred to in that subsection.
- (6) This section applies subject to section 44O.

Section 44M: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44N Further provisions relating to *Gazetted* aquaculture areas

- (1) A regional council must amend a regional coastal plan or proposed regional coastal plan—
 - (a) to remove any interim aquaculture management area or any space from an interim aquaculture management area that is subject to a reservation for—
 - (i) customary fishing, recreational fishing, or commercial fishing for stocks that are not subject to the quota management system:
 - (ii) commercial fishing for stocks that are subject to the quota management system and an aquaculture agreement or compensation declaration has not been lodged within the required time:

- (b) to change any references to any space in an interim aquaculture management area that becomes a *Gazetted* aquaculture area to clarify that the space is now space in a *Gazetted* aquaculture area:
 - (c) if an aquaculture management area is deemed by section 44M to be a *Gazetted* aquaculture area, to change any references to the aquaculture management area to refer to a *Gazetted* aquaculture area:
 - (d) if an aquaculture management area has not been deemed by section 44M to be a *Gazetted* aquaculture area, to remove any reference to the area being an aquaculture management area.
- (2) The regional council must notify the chief executive before a proposed regional coastal plan becomes operative under the principal Act if the plan provides that all aquaculture activities are prohibited activities in any space in a *Gazetted* aquaculture area.
- (3) As soon as practicable after receiving a notice under subsection (2), the chief executive must publish a notice in the *Gazette* that—
- (a) amends the *Gazetted* aquaculture area by removing any area in which all aquaculture activities will be prohibited activities (or if aquaculture activities will be prohibited activities in the whole *Gazetted* aquaculture area, notifies that the *Gazetted* aquaculture area no longer exists); and
 - (b) takes effect from the operative date of the plan.
- (4) Schedule 1 of the principal Act does not apply to an amendment made under subsection (1).

Section 44N: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

44O Special provisions in relation to regional coastal plan of Waikato Regional Council

- (1) This section applies in relation to space in the coastal marine area of the region of the Waikato Regional Council if—
- (a) the space is in an area that is deemed to be a *Gazetted* aquaculture area under section 44M; and
 - (b) the Waikato Regional Council has not, under section 9(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004 as it was before the commencement of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011, identified 20% of the space for allocation to the trustee.
- (2) Before space becomes available for aquaculture activities, the Waikato Regional Council must comply with sections 44B to 44D and, if necessary, section 44E in respect of the space and, for that purpose, sections 44B to 44L apply—
- (a) with any necessary modifications; and

- (b) as if references to space referred to in section 44A(1) were references to the space proposed to become available for aquaculture activities.
- (3) For the purposes of subsection (2), space in a *Gazetted* aquaculture area is to be treated as becoming available for aquaculture activities,—
 - (a) if, at the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the Waikato Regional Coastal Plan provides for authorisations in relation to aquaculture activities that are to be offered in the space, on the date on which the offer of authorisations is made; or
 - (b) if, at the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the Waikato Regional Coastal Plan does not provide for aquaculture activities in the space, on the date that a rule that would allow for aquaculture activities to be carried out in the space in accordance with a coastal permit becomes operative.

Section 44O: inserted, on 1 October 2011, by section 24 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Deemed aquaculture management areas

45 Status of former deemed aquaculture management areas

- (1) To avoid doubt, on and from the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, deemed aquaculture management areas cease to exist.
- (2) Subsection (3) applies to a coastal permit that relates to a deemed aquaculture management area that ceases to exist under subsection (1).
- (3) The coastal permit is not to be treated as invalid because—
 - (a) the area to which it relates was not in an aquaculture management area in a regional coastal plan at the time it was granted; or
 - (b) it relates to a species of fish or aquatic life, or contains conditions, that are different from those that applied to a deemed coastal permit under section 10, 20, or 21 that related to the same area.

Section 45: substituted, on 1 October 2011, by section 25 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Existing applications and coastal permits

46 Pending applications where moratorium ends before 31 December 2004

- (1) This section applies to an application—
 - (a) that section 150B(2) of the principal Act applies to; but
 - (b) only to the extent that it relates to an area that an Order in Council made under section 150C(1) of the principal Act applies to.
- (2) At the end of the moratorium, a consent authority must—

- (a) resume processing an application; and
 - (b) process and determine the application under rules in the regional coastal plan, and in any proposed regional coastal plan, as at the end of the moratorium.
- (3) For the purposes of subsection (1), rules in a proposed regional coastal plan include any rule prohibiting an activity if the plan has been notified under clause 5 of Schedule 1 of the principal Act.
- (4) Subsection (3) applies subject to section 20 of the principal Act.

47 Pending applications where moratorium ends on close of 31 December 2004

- (1) This section applies to an application—
- (a) that section 150B(2) of the principal Act applies to; but
 - (b) only to the extent that it relates to an area for which the moratorium expires on the close of 31 December 2004.
- (2) After the end of the moratorium, a consent authority must resume processing the application, but only if and to the extent that—
- (a) the application does not relate to an aquaculture activity that is a prohibited activity in the area of the coastal marine area that the application relates to; and
 - (b) if the application relates to an area in relation to which an aquaculture decision was required to be made under section 38, the area has become a *Gazetted* aquaculture area.
- (3) A consent authority must cancel the application if and to the extent that the application relates to an area in respect of which the chief executive was required to make an aquaculture decision under section 38 and the chief executive—
- (a) made a reservation relating to—
 - (i) the sustainability of fisheries resources or effects on customary or recreational fishing; or
 - (ii) commercial fishing for stocks not subject to the quota management system; or
 - (b) made a reservation relating to commercial fishing for stocks subject to the quota management system and the applicant has not lodged an aquaculture agreement or compensation declaration within the time specified in section 44(3)(b).
- (4) The application is deemed to be cancelled on and from 31 December 2014 to the extent that, by that date,—

- (a) it has been unable to be processed because it relates to an aquaculture activity that is a prohibited activity in the area of the coastal marine area that the application relates to; and
 - (b) a regional coastal plan continues to provide that the aquaculture activity that the application relates to is a prohibited activity in the area that the application relates to; and
 - (c) no proposed regional coastal plan has been notified under clause 5 of Schedule 1 of the principal Act in which the aquaculture activity the application relates to is not specified as a prohibited activity.
- (5) An application that is not cancelled under subsection (4) because a proposed regional coastal plan has been notified in which the aquaculture activity that the application relates to is not prohibited is cancelled,—
- (a) if the proposed plan is withdrawn, on the date on which the plan is withdrawn; or
 - (b) if the proposed plan is amended to provide that aquaculture is a prohibited activity, on the date on which the decision is made that results in the amendment.
- (6) Subsections (2) to (5) are subject to subsection (7).
- (7) If the application is one that is referred to in Schedule 3 (whether or not the application is one referred to in subsection (1)), the consent authority must not resume processing the application until 1 January 2015 unless—
- (a) the applicant requests the consent authority to resume processing the applicant's application before that date; and
 - (b) either—
 - (i) processing of the other applications referred to in Schedule 3 that were lodged before the applicant's application has already resumed; or
 - (ii) any earlier applications, in relation to which processing has not resumed, have been withdrawn.

Section 47: substituted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

47A Applications made from 1 January 2005 to 10 May 2006

- (1) This section applies to an application for a coastal permit for the occupation of space in the coastal marine area for the purpose of aquaculture activities made on or after 1 January 2005 but before 10 May 2006.
- (2) After the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, a consent authority must resume processing the application, but only if and to the extent that—

- (a) the application does not relate to an aquaculture activity that is a prohibited activity in the area of the coastal marine area that the application relates to; and
 - (b) if the application relates to an area in relation to which an aquaculture decision was required to be made under section 38, the area has become a *Gazetted* aquaculture area.
- (3) A consent authority must cancel the application if and to the extent that the application relates to an area in respect of which the chief executive was required to make an aquaculture decision under section 38 and the chief executive—
 - (a) made a reservation relating to—
 - (i) the sustainability of fisheries resources or effects on customary or recreational fishing; or
 - (ii) commercial fishing for stocks not subject to the quota management system; or
 - (b) made a reservation relating to commercial fishing for stocks subject to the quota management system and the applicant has not lodged an aquaculture agreement or compensation declaration within the time specified in section 44(3)(b).
- (4) The application is deemed to be cancelled on and from 28 September 2018 to the extent that, by that date,—
 - (a) it has been unable to be processed because it relates to an aquaculture activity that is a prohibited activity in the area of the coastal marine area that the application relates to; and
 - (b) a regional coastal plan continues to provide that the aquaculture activity that the application relates to is a prohibited activity in the area that the application relates to; and
 - (c) no proposed regional plan has been notified under clause 5 of Schedule 1 of the principal Act in which the aquaculture activity that the application relates to is not specified as a prohibited activity.
- (5) An application that is not cancelled under subsection (4) because a proposed regional coastal plan has been notified in which the aquaculture activity that the application relates to is not prohibited is cancelled,—
 - (a) if the proposed plan is withdrawn, on the date on which the plan is withdrawn; or
 - (b) if the proposed plan is amended to provide that aquaculture is a prohibited activity, on the date on which the decision is made that results in the amendment.

Section 47A: inserted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

47B Processing of applications that sections 47 and 47A apply to

- (1) This section applies to applications that sections 47 and 47A apply to.
- (2) Applications that can be processed under section 47(2) or 47A(2) must be processed and determined—
 - (a) under the provisions in the principal Act and in the regional coastal plan and any proposed regional coastal plan applying at the time the consent authority resumes processing the application; but
 - (b) from the stage they had reached immediately before their processing and determination were prevented under the principal Act.
- (3) For the purposes of subsection (2)(b), the provisions of the principal Act apply subject to the following:
 - (a) any action taken under a provision of the principal Act that has been amended since the date of the action is to be treated as having occurred under any corresponding provision in the principal Act in force at the time that processing of an application resumes:
 - (b) the period during which the application was unable to be processed is excluded from any period of time in a provision of the principal Act:
 - (c) section 36AA and any regulations made under section 360(1)(hj) do not apply in respect of the application:
 - (d) the following periods are excluded from any applicable provision listed in section 88B(2):
 - (i) if a request for further information under section 92(1) was made before the commencement of this section, the period starting on the day on which the request was made and ending on the earlier of the day on which the information is provided or the day that is 12 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011:
 - (ii) if a request for further information under section 92(1) is made within 12 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 and is the first request made after that commencement, the period starting on the day on which the request is made and ending on the earlier of the day on which the information is provided or the day that is 12 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011:
 - (e) if the consent authority requests or has requested further information under section 92(1) and the information is provided within the applicable period specified in paragraph (d)(i) or (ii), section 95 does not prevent the consent authority from notifying the application within 10 working days after the date on which the application would have lapsed under

paragraph (f) had the applicant not provided the information within the applicable period under paragraph (d):

- (f) the application lapses if—
 - (i) the consent authority has requested further information under section 92(1) and the applicant does not comply with the request within 12 months after—
 - (A) the date of the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, if the request was made before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; or
 - (B) the date on which the request is made, if the request is the first request made after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; or
 - (ii) the consent authority requests subsequent information under section 92(1) within 12 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 and the applicant does not comply with the request within 10 working days after the expiry of 12 months from the date of the first request made under section 92(1) after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (4) To avoid doubt, section 159 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 does not apply to applications that sections 47 and 47A apply to.

Section 47B: inserted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

47C Some applications for coastal permits must be cancelled

A consent authority must cancel an application for a coastal permit for the occupation of space in the coastal marine area for the purpose of aquaculture activities if the application is made after 9 May 2006, but before the commencement of the Resource Management Amendment Act 2008.

Compare: 1991 No 69 s 165BB

Section 47C: inserted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

47D Applications for coastal permits for aquaculture activities in deemed aquaculture management area made before but not finally disposed of at commencement of Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011

- (1) Subsection (2) applies to an application for a coastal permit under the principal Act to undertake aquaculture activities in a deemed aquaculture management area made before, but not finally disposed of at, the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (2) The application is to be determined under the principal Act as if the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 had not been enacted except that the application—
 - (a) does not have to relate to an aquaculture management area in a regional coastal plan; and
 - (b) is not limited by the fish, aquatic life, or seaweed referred to in the deemed coastal permit under section 10, 20, or 21 to which the deemed aquaculture management area relates.
- (3) For the purposes of this section, an application is not finally disposed of until—
 - (a) the application is determined; and
 - (b) either—
 - (i) any appeals from the determination are completed; or
 - (ii) the time for lodging an appeal against the determination has expired.

Section 47D: inserted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

47E Applications for coastal permits for aquaculture activities in aquaculture management area being processed at commencement of Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011

- (1) This section applies to an application for a coastal permit for the occupation of space in the coastal marine area for the purpose of aquaculture activities if—
 - (a) the application is an application referred to in section 47(1) or 47A(1) and the consent authority has resumed processing the application before, but has not determined the application at the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; or
 - (b) the application is not an application referred to in section 47(1) or 47A(1) and has been made before but not determined at the commencement of that Act.

- (2) The application is to be determined as if the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 and the Resource Management Amendment Act (No 2) 2011 had not been enacted.

Section 47E: inserted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

47F Processing of certain applications deferred

- (1) This section applies to an application for a coastal permit for the occupation of space for the purpose of aquaculture activities that is made on or after the date of commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 and that relates to space that is subject to an application listed in Schedule 3.
- (2) A consent authority must not process or determine the application until the time that processing of all the applications referred to in Schedule 3 has resumed, or the applications have been withdrawn.

Section 47F: inserted, on 1 October 2011, by section 26 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

48 Certain coastal permits granted during moratorium not to be exercised until end of moratorium

- (1) This section applies to a coastal permit if—
- (a) the application for the permit was notified during the moratorium but before the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002; or
 - (b) the consent authority decided, during the moratorium but before the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002, not to notify the application for the permit.
- (2) However, this section does not apply to a coastal permit for aquaculture activities that relates to a coastal marine area that, immediately before the moratorium, was subject to—
- (a) a coastal permit; or
 - (b) a marine farming lease or licence under the Marine Farming Act 1971.
- (3) No person may do anything under a coastal permit until the moratorium has expired in relation to the area that the permit relates to.
- (4) At the end of the moratorium, a regional council may—
- (a) review the conditions in a coastal permit; and
 - (b) amend the conditions so that they comply with the rules in the regional coastal plan and any proposed regional coastal plan that apply at the end of the moratorium.
- (5) If a coastal permit relates to a restricted coastal activity, section 119A of the principal Act applies in relation to the amendment of conditions under subsection (4)(b).

- (6) At the end of the moratorium,—
- (a) no person may carry on any aquaculture activities under a coastal permit in any area in which aquaculture is prohibited; and
 - (b) the coastal permit ceases to have any effect and is deemed to be cancelled.
- (7) For the purposes of section 125 of the principal Act, the commencement date of a coastal permit is the later of—
- (a) the day after the date on which the moratorium ceases to apply to the coastal permit; or
 - (b) the day after the date on which the regional council notifies the holder of the permit of the result of a review under subsection (4).
- (8) Sections 357A, 357C, 357D, and 358 of the principal Act apply to a decision by a regional council to amend conditions under subsection (4).

Section 48(8): amended, on 1 October 2011, by section 27 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

49 Preferential right for deemed permit holder to apply for coastal permit for occupation

- (1) Subsection (2) applies if—
- (a) a person holds a lease or licence that is deemed to be a coastal permit by section 10; and
 - (b) *[Repealed]*
 - (c) the person is giving effect to the deemed coastal permit.
- (2) No person, other than the permit holder, may apply for a coastal permit to occupy the area that the deemed coastal permit relates to.
- (3) However, subsection (2) does not apply if—
- (a) the permit holder consents in writing to the application; or
 - (b) the coastal permit has expired and—
 - (i) the holder of the permit has not applied for a new coastal permit to occupy the same area to undertake an aquaculture activity; or
 - (ii) the holder of the permit has applied for a new coastal permit for the same area and the application has been refused and all appeals against the refusal have been withdrawn or dismissed; or
 - (c) the coastal permit has lapsed under section 125 of the principal Act; or
 - (d) the coastal permit has been cancelled under section 126 of the principal Act; or
 - (e) the coastal permit has been surrendered under section 138 of the principal Act.
- (4) This section does not limit or affect section 165ZH of the principal Act.

Section 49(1)(b): repealed, on 1 October 2011, by section 28(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 49(4): amended, on 1 October 2011, by section 28(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Pre-moratorium and pre-commencement applications for coastal permits

50 Pre-moratorium and pre-commencement applications for coastal permits not subject to moratorium

- (1) Subsection (2) applies to an application for a coastal permit under the principal Act to occupy a coastal marine area for aquaculture activities if the application—
 - (a) was made before the commencement of this Act; and
 - (b) is not subject to section 150B(2) of the principal Act; and
 - (c) has not been determined or withdrawn before the commencement of this Act.
- (2) An application to which this subsection applies must be determined under the principal Act as it was before the commencement of this Act.
- (3) A person who has made an application that subsection (2) applies to may apply, or continue with an application, for a marine farming permit under section 67J of the Fisheries Act 1983 or a spat catching permit under section 67Q(2) of that Act if the application under that Act relates to all or part of the area, and 1 or more of the species of fish, aquatic life, or seaweed, that the application that subsection (2) applies to relates to.
- (4) An application under subsection (3) lapses if the application to which subsection (2) applies is—
 - (a) withdrawn; or
 - (b) declined and any appeal in relation to the declined application has been unsuccessful or withdrawn; or
 - (c) granted and any appeal in relation to the granted application is successful.
- (5) If an application that subsection (2) applies to is granted, the application under subsection (3) must be determined under Part 4A of the Fisheries Act 1983 which applies as it was before the commencement of this Act.
- (5A) Subsection (5) applies subject to section 50A.
- (6) If the application is for a marine farming permit and the application is granted, section 20 applies to the permit as if every reference in that section to the commencement of this Act were a reference to the date on which the application was granted.
- (7) If the application is for a spat catching permit and the application is granted, section 21 applies to the permit as if every reference in that section to the com-

mencement of this Act were a reference to the date on which the application was granted.

- (8) Subsections (9) and (10) apply to a person who has—
- (a) made an application that subsection (2) applies to, whether or not that application has been granted; and
 - (b) previously made an application for a marine farming permit or spat catching permit that met the criteria in subsection (3), but which was declined.
- (9) The person may make 1 further application for a marine farming permit or spat catching permit in accordance with subsection (3) before the date that is 12 months after the date of commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (10) However, if the person has made a subsequent application for a marine farming permit or spat catching permit in accordance with subsection (3) before the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, but which has not been determined before the commencement of that Act, the person may not make a further application in accordance with subsection (3).

Section 50(2): amended, on 1 October 2011, by section 29(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(4)(b): amended, on 1 October 2011, by section 29(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(4)(c): added, on 1 October 2011, by section 29(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(5): substituted, on 1 October 2011, by section 29(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(5A): inserted, on 1 October 2011, by section 29(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(8): added, on 1 October 2011, by section 29(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(9): added, on 1 October 2011, by section 29(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50(10): added, on 1 October 2011, by section 29(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

50A Assessment of effect on fishing of applications to which section 50(3) applies

- (1) This section applies to an application under section 67J or 67Q(2) of the Fisheries Act 1983 referred to in section 50(3)—
- (a) whether the application is made before, on, or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
 - (b) which, if made before the commencement of that Act, has not been determined as at the commencement of that Act.

- (2) The chief executive may, in addition to seeking information from the applicant under section 67J(7) of the Fisheries Act 1983, seek information relevant to the application from—
 - (a) any fisher whose interests may be affected if the application is granted; and
 - (b) persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected if the application is granted.
- (3) The chief executive—
 - (a) may set a date by which information must be provided and may grant 1 or more extensions of that date if he or she considers it necessary to do so; and
 - (b) is not required to consider or take into account any information received after that date or extended date (as the case may be).
- (4) The chief executive must—
 - (a) grant the application under section 67J or 67Q of the Fisheries Act 1983 (as the case may require) if the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing; but
 - (b) decline the application under section 67J or 67Q of the Fisheries Act 1983 (as the case may require) if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing.
- (5) However, the chief executive must defer making a decision whether to grant or decline the application under section 67J or 67Q of the Fisheries Act 1983 (as the case may require) if—
 - (a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing other than commercial fishing; but
 - (b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing.
- (6) To avoid doubt, subsections (4) and (5) apply in place of section 67J(8) of the Fisheries Act 1983.
- (7) If subsection (4) applies but subsection (5) does not, the chief executive must give a notice to the applicant and give public notification—
 - (a) stating that the application is granted or declined; and
 - (b) giving the chief executive's reasons for granting or declining the application.

- (8) If subsection (5) applies, the chief executive must give a notice to the applicant and give public notification accordingly. The notice and public notification must also—
- (a) specify—
 - (i) the area concerned; and
 - (ii) the stocks subject to the quota management system in the area that are the reason for the chief executive’s view under subsection (5)(b); and
 - (b) specify the chief executive’s reasons for deciding subsection (5) applies; and
 - (c) contain a copy, or statement to the effect, of subsections (9) and (10).
- (9) The chief executive must decline the application, if the applicant does not lodge—
- (a) an aquaculture agreement with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZI(4) of the Fisheries Act 1996; or
 - (b) a compensation declaration with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZIA(4) of the Fisheries Act 1996.
- (10) The chief executive must grant the application and issue the permit if the applicant lodges—
- (a) an aquaculture agreement with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZI(4) of the Fisheries Act 1996; or
 - (b) a compensation declaration with the chief executive within 6 months after the date of the public notice or before the expiry of any extension of time under section 186ZIA(4) of the Fisheries Act 1996.
- (11) For the purposes of this section, the references in section 67J(10) of the principal Act to adverse effects on fishing or the sustainability of any fisheries resource must be read as if it were a reference to adverse effects on fishing.
- (12) Any person wishing to seek, under the Judicial Review Procedure Act 2016, judicial review of a decision under this section must do so within 30 working days after the public notification of the decision.
- (13) The provisions of Part 1 of Schedule 2 have effect in relation to aquaculture agreements and compensation.
- (14) In this section,—
- aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 1 of Schedule 2

commercial fishing means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of stocks subject to the quota management system

compensation declaration means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in Part 1 of Schedule 2

public notification has the same meaning as in section 2 of the Fisheries Act 1996.

Section 50A: inserted, on 1 October 2011, by section 30 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 50A(12): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

50B Information and matters to be considered in relation to applications to which section 50A applies

- (1) In making a decision under section 50A(4) or (5), the chief executive must have regard to any—
 - (a) information held by the Ministry of Fisheries; and
 - (b) information supplied by the applicant; and
 - (c) information supplied to the chief executive by the persons referred to in section 50A(2), whether before or after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011; and
 - (d) other information that the chief executive has requested and obtained.
- (2) In considering for the purposes of section 50A(4) and (5) whether granting the application will have an undue adverse effect on fishing, the chief executive must have regard only to the following matters:
 - (a) the location of the area that the application relates to in relation to areas in which fishing is carried out;
 - (b) the likely effect of the granting of the permit on fishing of any fishery, including the proportion of any fishery likely to become affected;
 - (c) the degree to which the granting of the permit in the area that the application relates to will lead to the exclusion of fishing;
 - (d) the extent to which fishing for a species in the area that the application relates to can be carried out in other areas;
 - (e) the extent to which the granting of the permit will increase the cost of fishing;
 - (f) the cumulative effect on fishing of any authorised aquaculture activities, including any structures authorised before the introduction of any relevant stock to the quota management system.
- (3) This section applies subject to section 50A(3).

Section 50B: inserted, on 1 October 2011, by section 30 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

51 Regional council must request aquaculture decision if application for coastal permit declined or withdrawn

- (1) This section applies to—
- (a) an application for a coastal permit to occupy a coastal marine area for aquaculture activities if the application—
 - (i) is made before the commencement of this Act; and
 - (ii) is not subject to section 150B(2) of the principal Act; and
 - (iii) relates to part of an interim aquaculture management area; and
 - (iv) has been declined or withdrawn:
 - (b) a coastal permit if—
 - (i) it was granted under an application to which paragraph (a)(i) to (iii) applies; and
 - (ii) no marine farming permit or spat catching permit has been issued in relation to the coastal permit; and
 - (iii) the coastal permit—
 - (A) lapses under section 125 of the principal Act; or
 - (B) expires and the holder of the permit is not entitled under section 124 of the principal Act to continue to operate under the coastal permit; or
 - (C) is cancelled under section 126 of the principal Act; or
 - (D) is surrendered under section 138 of the principal Act.
- (2) The regional council to which the application was made or which granted the coastal permit must request an aquaculture decision for the part of the interim aquaculture management area concerned.
- (3) Sections 38 to 44 apply to the request.

Section 51(1)(a)(iii): amended, on 28 September 2008, by section 5(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 51(2): amended, on 28 September 2008, by section 5(2)(a) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 51(2): amended, on 28 September 2008, by section 5(2)(b) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 51(3): substituted, on 28 September 2008, by section 5(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

52 Areas excluded from interim aquaculture management area

[Repealed]

Section 52: repealed, on 1 October 2011, by section 31 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

*Review of off-site farms***53 Off-site farms**

- (1) This section applies to a deemed coastal permit under any of sections 10, 20, or 21 for which the actual space is not the authorised space.
- (2) The holder of a deemed coastal permit may apply in writing to the consent authority to amend the permit to reflect the actual space.
- (2A) An application under subsection (2) must be made not later than 12 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011.
- (2B) Subsection (2A) applies subject to subsections (2C) and (2D).
- (2C) If section 16(1) applies, an application under subsection (2) must be made within 12 months after the date on which the application referred to in that subsection is determined.
- (2D) If section 16(2) applies, an application under subsection (2) must be made within 12 months after the date on which the forfeiture referred to in that subsection is discontinued.
- (3) An application under this section must include—
 - (a) the description, to a standard approved by the consent authority, of the actual space; and
 - (b) the description of the authorised space; and
 - (c) an assessment of the adverse effects on the environment of the activity in the actual space, and of moving the activity to the authorised space (including the effects of moving the activity and the effects of the activity in the authorised space); and
 - (d) the reasons for and against amending the permit to reflect the actual space.
- (4) Section 92 of the principal Act applies, with all necessary modifications, to an application under this section as if it were an application for a resource consent.
- (4A) Before deciding whether to amend a deemed coastal permit under this section, the consent authority must consider—
 - (a) the matters referred to in subsection (3)(c) and (d); and
 - (b) where the actual space is located compared to the location of the authorised space; and
 - (c) how the activities to which the deemed coastal permit relate came to be carried out in the actual space; and
 - (d) if aquaculture activities are prohibited activities in the actual space, the reasons for that; and
 - (e) any other matters the consent authority considers relevant.

- (5) After considering an application under this section and consulting the chief executive about it, the consent authority must—
- (a) amend the deemed coastal permit as requested by the consent holder; or
 - (b) decline to amend the permit and require the consent holder to move the activity to the authorised space.
- (5A) The consent authority may amend the deemed coastal permit to reflect the actual space even though aquaculture is specified in a regional coastal plan or proposed regional coastal plan as a prohibited activity in all or part of the actual space.
- (5B) Subsection (5C) applies if a deemed coastal permit is amended to reflect the actual space in respect of which aquaculture is specified in a regional coastal plan or proposed regional coastal plan as a prohibited activity.
- (5C) The actual space is subject to the provisions of the regional coastal plan or proposed regional coastal plan that applied to the authorised space, subject to any subsequent amendment or replacement of those provisions by any enactment or under Schedule 1 of the principal Act.
- (6) Sections 120 and 121 of the principal Act applies to a decision of the consent authority under subsection (5) as if the decision were a decision on a review of consent conditions.
- (7) A deemed coastal permit amended under this section must not authorise the holder of the permit to occupy a space greater than the authorised space.
- (8) A consent authority must advise the chief executive of its decision under subsection (5).
- (9) As soon as practicable after receiving the advice under subsection (8), the chief executive must amend the fish farmer registration that the advice relates to.
- (10) The holder of the deemed coastal permit may object to the consent authority about any decision under subsection (5)(b), and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.
- (11) Section 36 of the principal Act applies to the functions of the consent authority under this section as if an application to amend a deemed coastal permit were an application for resource consent.
- (11A) The amendments made to this section by the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 apply to applications made before the commencement of that Act if they have not been determined at the commencement of that Act.
- (12) In this section,—
- actual space** means the space in relation to which the deemed coastal permit is being exercised

authorised space means the space specified in the deemed coastal permit.

Section 53(2): amended, on 1 October 2011, by section 32(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(2A): inserted, on 1 October 2011, by section 32(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(2B): inserted, on 1 October 2011, by section 32(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(2C): inserted, on 1 October 2011, by section 32(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(2D): inserted, on 1 October 2011, by section 32(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(4A): inserted, on 1 October 2011, by section 32(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(5A): inserted, on 1 October 2011, by section 32(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(5B): inserted, on 1 October 2011, by section 32(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(5C): inserted, on 1 October 2011, by section 32(4) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(6): amended, on 1 October 2011, by section 32(5) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(10): substituted, on 1 October 2011, by section 32(6) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 53(11A): inserted, on 1 October 2011, by section 32(7) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

54 Consent authority may initiate review of off-site farms

- (1) This section applies to deemed coastal permits to which section 53 applies.
- (2) A consent authority may review a deemed coastal permit to the same extent and within the same time as if the holder of the permit had applied under section 53(2).
- (3) For the purposes of subsection (2), section 53(4A) to (12) applies with all necessary modifications.

Section 54(3): amended, on 1 October 2011, by section 33 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

General

55 Transitional provision relating to requirements to keep records and returns

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Fisheries, make regulations cancelling, on any coastal permit authorising the occupation of the coastal marine area for an aquaculture activity, conditions requiring the holder of the coastal permit to keep or provide accounts, records, returns, and information.

- (2) Regulations made under subsection (1) apply only to coastal permits to which this Act applies.
- (3) In subsection (1), **Minister of Fisheries** has the same meaning as Minister in the Fisheries Act 1996.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 55(3): added, on 1 October 2011, by section 34 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Section 55(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

56 Restriction on erection of structures in coastal marine area

- (1) This section applies to a person who—
 - (a) is the holder of a coastal permit or certificate of compliance under the Resource Management Act 1991 to occupy a coastal marine area for marine farming or spat catching; and
 - (b) makes or has made an application or is entitled to make an application for a marine farming permit or spat catching permit, as provided for by section 25, 26, or 50(3).
- (2) The person must not erect a structure for the purpose of an aquaculture activity unless—
 - (a) the application referred to in subsection (1)(b) is granted; and
 - (b) the structure is to be erected in an area covered by—
 - (i) the marine farming permit or the spat catching permit; and
 - (ii) the coastal permit or certificate of compliance.

Section 56: substituted, on 1 October 2011, by section 35 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

57 Regulations

[Expired]

Section 57: expired, on 1 January 2007, by section 58.

58 Expiry of section 57

Section 57 expires on the close of the earlier of the following dates:

- (a) on a date to be appointed by the Governor-General by Order in Council;
or
- (b) 31 December 2006.

Schedule 1

Marine Farming Permit 364 (Waikato Communal Area)

s 20A

Schedule 1: added, on 1 October 2011, by section 36 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Coastal Permit Conditions

Term

- 1 This resource consent expires on 31 December 2033.

Activities authorised

- 2 This resource consent authorises:
- (i) the marine farming of Green Mussels (*Perna canaliculus*) and Pacific Oysters (*Crassostrea gigas*);
 - (ii) the occupation of 22.5 hectares of space in the Waikato Communal Area (as defined in section 20A(8) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004);
 - (iii) any associated existing structures; and
 - (iv) any associated discharges, and
 - (v) any associated disturbance of, and deposition on, the seabed;
- (see advice note 7).

Note: Conventional marine farming structures include longlines and associated structures described in the marine farming chapters of the Waikato Regional Coastal Plan.

Notification

- 3 Within 2 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the consent holder shall provide Maritime New Zealand (hereinafter referred to as “MNZ”) and Land Information New Zealand with written notice of the details of the marine farm authorised by this resource consent, including its geographic location and details of navigation lighting and marking.
- 4 Within 2 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the consent holder shall provide the Waikato Regional Council with a structures plan showing the details of the existing marine farming structures within the space authorised by this resource consent, and details of navigation lighting and marking.

Boundary definition

- 5 The consent holder shall, if requested by the Waikato Regional Council in writing, provide the following:
- (a) a survey plan prepared in accordance with the Rules for Cadastral Survey 2010 promulgated by the Surveyor-General that defines the boundary of the marine farm and/or
 - (b) coordinates of the corner points of the marine farm suitable for use with a global navigation satellite system such as Global Positioning System (to an accuracy of at least plus or minus 10 metres).

This information shall be provided to the Waikato Regional Council as soon as is practicable but no later than one (1) month from the date of receipt of that request.

Code of Practice

- 6 The marine farm shall be operated in general accordance with the mussel farming code of practice document titled Mussel Industry Environmental Code of Practice, New Zealand Mussel Industry Council Limited, dated 1999 (or any subsequent update to that document) to the satisfaction of the Waikato Regional Council.

Where any conflict exists between the Code of Practice and the conditions of this resource consent, the conditions shall prevail.

Marking and lighting

- 7 Each corner of the marine farm and the middle of each of the seaward-most and landward-most longlines shall be marked with an orange marker buoy of a minimum diameter of 500 millimetres.
- 8 The marine farm shall be clearly marked with the consent holder's name and consent number or former marine farming permit number on at least one of the four orange corner marker buoys, unless otherwise agreed in writing by the Waikato Regional Council.
- 9 The consent holder shall ensure that the marine farming structures authorised by this resource consent are marked and lit in accordance with the navigation safety requirements of MNZ and the Harbourmaster or their delegate. This condition will be satisfied by complying with the document titled Guideline for Aquaculture Management Areas and Marine Farms, Maritime New Zealand, dated December 2005 (or any subsequent update to that document).

Navigation safety and structural integrity

- 10 The consent holder shall maintain all structures authorised by this resource consent to ensure that they are restrained, secure and in working order at all

times so as to not create a navigational hazard, and take whatever steps are reasonably necessary to ensure structural integrity is maintained.

Note: A separate resource consent may be required as a result of the need to undertake further works. Any such consent shall be obtained by the consent holder at their sole expense prior to any works being undertaken.

- 11 Should any part of the structures authorised by this resource consent be lost into the marine environment that is of a size that could constitute a navigation hazard, the consent holder shall inform the Waikato Regional Council as soon as practicable. The consent holder shall also undertake all necessary steps where practicable to find the lost part and once found shall undertake such actions as are necessary to ensure it does not constitute a navigation hazard.

Waste removal

- 12 The consent holder shall ensure that non-biodegradable material lost or removed from the structures authorised by this resource consent, including but not necessarily limited to, anchors, lines, droppers, ties, buoys, cages and timber, shall be removed as soon as practicable from the seabed, water column or foreshore and disposed of on land to the satisfaction of the Waikato Regional Council.

Removal of unused and/or abandoned structures

- 13 The consent holder shall inform the Waikato Regional Council as soon as practicable should the marine farming operation cease within all or part of the space authorised by this resource consent. Unless otherwise agreed in writing by the Waikato Regional Council, the structures authorised by this resource consent shall be removed and suitably disposed of on land to the satisfaction of the Waikato Regional Council at the consent holder's expense within six (6) months of the date of ceasing to farm this area, or at the expiry or lapse or cancellation or surrender of this resource consent.

Note: Removal upon expiry shall not apply where the consent holder has applied to the Waikato Regional Council pursuant to section 165ZH of the Resource Management Act 1991 to replace this resource consent and a final decision on the application has not been determined.

Discharges

- 14 The consent holder shall ensure that there are no unauthorised discharges of contaminants such as oil, diesel, or petrol, to surface water or the coastal marine area as a result of the exercise of this resource consent.
- 15 The consent holder shall not introduce artificial feed or antibiotics to the water column unless authorised by a separate resource consent.

Monitoring

- 16 The consent holder shall, within two (2) months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, submit an environmental monitoring plan for the approval of the Chief Executive of the Waikato Regional Council, to effectively monitor the environmental effects of the existing marine farm. The consent holder shall adhere to the monitoring requirements set out in the approved monitoring plan or any subsequent plan that is submitted by the consent holder and approved in writing by the Chief Executive of the Waikato Regional Council.

Bond

- 17 Within 2 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, unless otherwise agreed in writing by the Waikato Regional Council, the consent holder shall provide a bond to secure compliance with condition [13] of this resource consent to the satisfaction of the Waikato Regional Council.
- 18 Unless the Waikato Regional Council agrees to an earlier release, the consent holder shall maintain the bond in favour of the Waikato Regional Council until two (2) years after the expiry of this resource consent. Where the consent holder has applied to the Waikato Regional Council pursuant to section 165ZH of the Resource Management Act 1991 to replace this resource consent, the consent holder shall maintain the bond in favour of the Waikato Regional Council until one (1) year after the decision and any subsequent appeals on that decision.
- 19 The bond shall be in a form approved by the Waikato Regional Council and shall be on the terms required by the Waikato Regional Council. Unless the bond is a cash deposit, the performance of the bond shall be guaranteed by a guarantor which is acceptable to the Waikato Regional Council. The guarantor shall bind itself to pay for, or undertake, the work necessary for the carrying out and completion of any works to ensure compliance with condition [13] in the event of any default of the consent holder. Alternatively, the bond requirement may be met by a legally enforceable industry pooled fund and/or security scheme which has been approved by the WRC.
- 20 Within 2 months after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, the consent holder shall propose a bond quantum for the Waikato Regional Council's consideration. The bond shall be fixed by the Waikato Regional Council after taking into account any calculations or other matters submitted by the consent holder which are relevant to the determination of the bond quantum. Failure to propose a bond quantum by this date will result in the bond quantum being fixed by the Waikato Regional Council without such consideration.

- 21 The bond shall make provision so that every third year, beginning 1 March 2014, the quantum of the bond shall be adjusted for inflation.
- 22 The bond may be varied or cancelled at any time by agreement in writing between the consent holder and the Waikato Regional Council.
- Note: The Waikato Regional Council may include in any written agreement cancelling the bond a stipulation that the requirement for the bond shall be reinstated at any time if it is deemed necessary by the Waikato Regional Council following consultation with the consent holder.
- 23 The transfer of this resource consent is subject to the transferee providing a bond on the same terms as the existing bond, unless this requirement is provided for by an industry security scheme approved by the Waikato Regional Council. In the case of any transfer in part or in whole to another person, the bond lodged by the transferor shall be retained until any outstanding work at the date of transfer is completed to ensure compliance with condition [13] of this resource consent.
- Note: The Waikato Regional Council will not unreasonably retain the bond if it is satisfied that adequate or alternative provisions have been made in this regard.
- 24 The consent holder shall pay all reasonable costs incurred by the Waikato Regional Council in relation to the preparation, administration and execution of the bond.

Review

- 25 The Waikato Regional Council may, within two (2) months either side of 1 March 2012, and at five yearly periods thereafter, serve notice on the consent holder under section 128(1) of the Resource Management Act 1991, of its intention to review the conditions of this resource consent. The review will be for the following purposes:
- (i) to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions; and/or
 - (ii) if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove, or reduce, adverse effects on the environment resulting from the exercise of this resource consent; and/or
 - (iii) to review the adequacy of and the necessity for monitoring (including, but not limited to, environmental monitoring and biosecurity monitoring) undertaken by the consent holder.

Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Administration

- 26 The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under section 360 of the Resource Management Act 1991.

Advice notes

General

1. The consent holder is responsible for all sub-contracted operations related to the exercise of this consent.
2. The consent holder may apply to change the conditions of this resource consent under section 127 of the Resource Management Act 1991.
3. In accordance with section 126 of the Resource Management Act 1991, if this resource consent has been exercised in the past, but has not been exercised during the preceding five (5) years, it may be cancelled by the Waikato Regional Council.
4. The consent holder is advised that they have a general duty under section 17(1) of the Resource Management Act 1991 to avoid, remedy or mitigate any adverse effect on the environment arising from the marine farming activity.
5. The consent holder is required to comply with all relevant provisions of the Building Act 2004.

Aquaculture reforms

6. This resource consent provides for activities previously authorised by a marine farming permit. This resource consent was created on 1 October 2011 by the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 and expires on 31 December 2033 (section 20A of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004). The consent holder has a right to apply for a replacement resource consent pursuant to section 165ZH of the Resource Management Act 1991.

Extent of occupation

7. This resource consent does not grant exclusive occupation rights to the consent holder. The consent holder may not occupy the coastal marine area outside the space authorised by this resource consent.

Biosecurity

8. Under section 44 of the Biosecurity Act 1993 every person has a duty to inform the Ministry of Agriculture and Forestry (MAF), as soon as practicable, of the presence of an organism not normally seen or otherwise detected in New Zealand.

Under section 46 of the Biosecurity Act 1993 every person is required, without unreasonable delay, to notify the Chief Technical Officer of the presence or possible presence of notifiable organisms (under MAF policy all notifiable organisms are also unwanted organisms).

Marine mammals

9. In the event a marine mammal is entangled or stranded within the farm structures the consent holder should, as soon as practicable, contact the nearest office of the Department of Conservation. This is a legal requirement under the Marine Mammals Protection Act 1978.
10. In the event that a protected species other than a marine mammal is entangled, that is protected under the Wildlife Act 1953 (for example, sea turtles) the consent holder should as soon as practicable, contact the nearest office of the Department of Conservation or the Ministry of Fisheries. This is a legal requirement under the Wildlife Act 1953, in respect of permits issued under the Fisheries Act 1983.

Administration

The reasonable costs incurred by the Waikato Regional Council arising from supervision and monitoring of this resource consent will be charged to the consent holder (section 36 of the Resource Management Act 1991). This may include, but not be limited to, routine inspection by the Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the marine farm, and review and assessment of compliance with the conditions of consent.

Schedule 2

Aquaculture agreements and compensation declarations

ss 25A, 26A, 44, 44J, 44K, 50A

Schedule 2: added, on 1 October 2011, by section 36 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Part 1

Sections 25A, 26A, and 50A

- 1 Subpart 4 of Part 9A of the Fisheries Act 1996 applies in relation to aquaculture agreements and compensation declarations entered into for the purposes of sections 25A, 26A, and 50A of this Act subject to the exclusions and modifications in paragraphs 2 to 10.
- 2 Section 186ZF applies as if subsection (2) were repealed and the following subsection substituted:
 - (2) The consents required are, for each stock specified in the chief executive's notice under section 25A(8), 26A(8), or 50A(8) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, as the case may be,—
 - (a) the consents of registered quota owners of the stock holding not less than 75% of the quota shares for the stock; and
 - (b) to the extent that the consents referred to in paragraph (a) are given by persons holding 75% or more but less than 100% of the quota shares for the stock, the consent of the High Court in relation to the persons who did not consent.
- 3 Section 186ZF(3) applies as if the words “the coastal permit to which they relate” were omitted and the words “any deemed coastal permit that relates to the marine farming permit or spat catching permit to which the consent and aquaculture agreement relate” substituted.
- 4 Section 186ZF applies as if subsection (4) were repealed and the following subsection substituted:
 - (4) For the purposes of this section, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which public notification is given under section 25A(8), 26A(8), or 50A(8) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, as the case may be.
- 5 Section 186ZI(1) applies as if paragraph (b) of that subsection were repealed and the following paragraph substituted:
 - (b) within 6 months after the date of the public notification under section 25A(8), 26A(8), or 50A(8) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

- 6 Section 186ZIA(1) applies as if paragraph (b) of that subsection were repealed and the following paragraph substituted:
- (b) within 6 months after the date of public notification under section 25A(8), 26A(8), or 50A(8) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- 7 Sections 186ZK and 186ZM do not apply.
- 8 Section 186ZL applies as if subsections (1) and (2) were repealed and the following subsection substituted:
- (1) If the chief executive gives notice under section 25A(8), 26A(8), or 50A(8) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, the chief executive must, on the date of the public notification, ensure that a memorial is recorded in the appropriate register against all quota for the stocks specified in the notice.
- 9 Section 186ZL(3) applies as if paragraph (a) were repealed and the following paragraph substituted:
- (a) the chief executive has determined that section 25A(5), 26A(5), or 50A(5) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applies; and
- 10 In sections 186ZN to 186ZR,—
- affected quota owner** or **quota owner** is to be read as if it means a person who is the registered quota owner of the relevant quota management stock as at 5 pm on the date on which the chief executive gives public notification under section 25A(8), 26A(8), or 50A(8), as the case may require
- coastal permit** is to be read as if it means, as the case may require, the application under section 65J, 65K, or 65Q of the Fisheries Act 1983, or the permit that may be granted or amended in relation to that application
- permit holder** is to be read as if it means the applicant who made the application to which section 25A, 26A, or 50A applies, as the case may require.

Part 2

Section 44

- 11 Subpart 4 of Part 9A of the Fisheries Act 1996 applies in relation to aquaculture agreements and compensation declarations referred to in section 44(3)(b) subject to the exclusion and modifications in paragraphs 12 to 17.
- 12 Section 186ZF applies as if subsection (2) were repealed and the following subsection substituted:

- (2) The consents required are, for each stock specified in the chief executive's notice under section 41 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 in relation to the space to which the application relates,—
- (a) the consents of registered quota owners of the stock holding not less than 75% of the quota shares for the stock; and
 - (b) to the extent that the consents referred to in paragraph (a) are given by persons holding 75% or more but less than 100% of the quota shares for the stock, the consent of the High Court in relation to the persons who did not consent.
- 13 Section 186ZF applies as if subsection (4) were repealed and the following subsection substituted:
- (4) For the purposes of this section, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which public notification is given under section 44(3)(b) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- 14 Section 186ZI(1) applies as if paragraph (b) of that subsection were repealed and the following paragraph substituted:
- (b) within 6 months after the date of the public notice under section 44(3)(b) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- 15 Section 186ZIA(1) applies as if paragraph (b) of that subsection were repealed and the following paragraph substituted:
- (b) within 6 months after the date of the public notice under section 44(3)(b) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- 16 Section 186ZM does not apply.
- 17 In sections 186ZN to 186ZR,—
- affected quota owner** or **quota owner** is to be read as if it means a person who is the registered quota owner of the relevant quota management stock as at 5 pm on the date of the public notice under section 44(3)(b) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004
- coastal permit** is to be read as if it means, as the case may require, the application for a coastal permit, or the permit that may be granted in relation to that application
- permit holder** is to be read as if it means the applicant who made the application for a coastal permit.

Part 3
Sections 44J and 44K

- 18 Subpart 4 of Part 9A of the Fisheries Act 1996 applies in relation to aquaculture agreements and compensation declarations referred to in sections 44J and 44K subject to the exclusion and modifications in paragraphs 19 to 25.
- 19 Section 186ZF applies as if subsection (2) were repealed and the following subsection substituted:
- (2) The consents required are, for each stock specified in the chief executive's notice under section 41 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 in relation to the agreed or identified space,—
- (a) the consents of registered quota owners of the stock holding not less than 75% of the quota shares for the stock; and
- (b) to the extent that the consents referred to in paragraph (a) are given by persons holding 75% or more but less than 100% of the quota shares for the stock, the consent of the High Court in relation to the persons who did not consent.
- 20 Section 186ZF(3) applies as if the words “the coastal permit to which they relate” were omitted, and the words “any coastal permit that relates to the area to which the consent and aquaculture agreement relate” were substituted.
- 21 Section 186ZF applies as if subsection (4) were repealed and the following subsection substituted:
- (4) For the purposes of this section, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which notice is given by the chief executive under section 44J(3) or 44K(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, as the case may be.
- 22 Section 186ZI(1) applies as if paragraph (b) of that subsection were repealed and the following paragraph substituted:
- (b) within 6 months after the date of the notice under section 44J(3) or 44K(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, as the case may be.
- 23 Section 186ZIA(1) applies as if paragraph (b) of that subsection were repealed and the following paragraph substituted:
- (b) within 6 months after the date of the notice under section 44J(3) or 44K(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, as the case may be.
- 24 Section 186ZM does not apply.

25 In sections 186ZN to 186ZR,—

affected quota owner or **quota owner** is to be read as if it means a person who is the registered quota owner of the relevant quota management stock as at 5 pm on the date on which the chief executive gives notice under section 44J(3) or 44K(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, as the case may require

aquaculture activities authorised by the permit is to be read as if it means aquaculture activities in the relevant agreed or identified space

coastal permit is to be read as if it means the relevant agreed or identified space

permit holder is to be read as if it means the trustee or an iwi aquaculture organisation, as the case may require.

Schedule 3

Deferred applications

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Schedule 3: added, on 1 October 2011, by section 36 of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67).

Auckland Regional Council consent application number	Waikato Regional Council consent application number (if applicable for transferred applications)	Acceptance date
24873		19/02/01
25068		21/03/01
24875		19/02/01
25408	122631	29/05/01
25376		21/05/01
25376	122626	21/05/01
25730		31/08/01
25341	122620	14/05/01
25343	122622	14/05/01
25345		14/05/01
25345	122624	14/05/01
25534		06/07/01
25536	122632	06/07/01
25538	122634	06/07/01
24420		04/10/00
24661	122618	27/11/00
24694		07/12/00
24696		07/12/00
24698		07/12/00
25979		16/10/01

Notes

1 *General*

This is a consolidation of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Secondary Legislation Act 2021 (2021 No 7): section 3

Judicial Review Procedure Act 2016 (2016 No 50): section 24

Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2013 (2013 No 107)

Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011 (2011 No 67)

Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92)

Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (2004 No 109): section 58