



Resource Management (Aquaculture Moratorium) Amendment Act 2002

Public Act 2002 No 5
Date of assent 25 March 2002
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Resource Management (Aquaculture Moratorium) Amendment Act 2002.

- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

Part 1 Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to impose a moratorium on the granting of coastal permits for aquaculture activities; and
- (b) to provide regional councils with the opportunity, during the moratorium, to provide in their regional coastal plans and proposed regional coastal plans for—
 - (i) aquaculture management areas where aquaculture activities can be undertaken only as a controlled or discretionary activity; and
 - (ii) areas where aquaculture activities are prohibited; and
- (c) to make consequential amendments to fisheries legislation.

Part 2 Aquaculture activities

4 Interpretation

Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**aquaculture activities** means marine farming or spat catching or both

“**aquaculture management area** means an aquaculture management area included in a regional coastal plan or proposed regional coastal plan under section 68A

“marine farming—

- “(a) means breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest; and
- “(b) includes any operation in support of, or in preparation for, marine farming; but
- “(c) does not include any of the things in paragraph (a)—
 - “(i) done under regulations made under section 301 of the Fisheries Act 1996; or
 - “(ii) if the fish, aquatic life, or seaweed are not within the exclusive and continuous possession or control of the holder of a marine farming permit; or
 - “(iii) if the fish, aquatic life, or seaweed cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed

“spat means any lifecycle stage or size-range of any fish, aquatic life, or seaweed that is declared by the chief executive of the Ministry of Fisheries by notice in the *Gazette* to be spat for the purposes of the Fisheries Act 1983

“spat catching means the taking of spat

“taking, in relation to spat catching, has the same meaning as in the Fisheries Act 1996”.

5 New section 20A inserted

The principal Act is amended by inserting, after section 20, the following section:

“20A Certain rules in proposed regional coastal plans not to have effect

- “(1) A regional council may, before publicly notifying a proposed regional coastal plan, resolve that any rule in the plan relating to aquaculture activities does not have effect until the plan becomes operative.
- “(2) Public notification of the plan must include the resolution.
- “(3) If the resolution is rescinded, the regional council must, as soon as possible, publicly notify—
 - “(a) the rescission; and
 - “(b) the resolution it relates to; and
 - “(c) the date of the rescission.

- “(4) A rule that a rescinded resolution relates to has effect as a rule in the plan for all purposes on and from the day after the date on which the rescission is publicly notified.
- “(5) A reference in this Act (except in the First Schedule) and in any regulations to a proposed regional coastal plan excludes a rule in the plan if—
- “(a) the rule is subject to a resolution under subsection (1); and
 - “(b) the resolution has not been rescinded.”

6 New section 68A inserted

The principal Act is amended by inserting, after section 68, the following section:

“68A Aquaculture activities

- “(1) A regional coastal plan and a proposed regional coastal plan may include—
- “(a) aquaculture management areas in which aquaculture activities may be undertaken only as a controlled or discretionary activity; and
 - “(b) areas in which aquaculture activities are prohibited.
- “(2) A regional council must not include an aquaculture management area in a regional coastal plan or a proposed regional coastal plan unless the regional council is satisfied that the provisions of the plan (including the size and location of the area) will avoid, remedy, or mitigate the adverse effects (including the cumulative effects) of aquaculture activities on the environment, including fishing and other uses of the coastal marine area.”

7 New section 87AA inserted

The principal Act is amended by inserting, before section 87, the following section:

“87AA This Part subject to Part 6A

This Part applies subject to Part 6A.”

8 Description of type of activity to remain the same

Section 88A of the principal Act is amended by adding the following subsection:

- “(3) This section applies subject to section 150D.”

9 New Part 6A inserted

The principal Act is amended by inserting, after section 150, the following part:

**“Part 6A
“Aquaculture moratorium**

“150A Interpretation

In this Part, unless the context otherwise requires,—

“application means an application for a coastal permit for aquaculture activities

“moratorium means the period—

“(a) beginning on 28 November 2001; and

“(b) ending on the close of—

“(i) the date that is 2 years after the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002; or

“(ii) in relation to a coastal marine area described in an order made under section 150C, the date specified in the order.

“150B Moratorium

“(1) Subsection (2) applies to—

“(a) an application that requires notification if it was made to a consent authority before the moratorium and the consent authority had not, before the moratorium, notified the application:

“(b) an application that does not require notification if—

“(i) it was made to a consent authority before the moratorium; and

“(ii) the consent authority had not, before the moratorium, *decided not to notify the application under section 94.*

“(2) The consent authority must not process or determine the application until the moratorium has expired in relation to the area that the application relates to.

“(3) Subsection (4) applies if an application is made to a consent authority during the moratorium.

“(4) The consent authority—

“(a) must not process the application; and

“(b) must not determine the application; and

- “(c) must return the application, and any fee accompanying it, to the applicant as soon as practicable.
- “(5) This section does not apply to an application if—
 - “(a) the application relates to a coastal marine area that, immediately before the moratorium, was subject to—
 - “(i) a coastal permit; or
 - “(ii) a marine farming lease or licence under the Marine Farming Act 1971; and
 - “(b) the application is for a new coastal permit for the same activities in the same area.

“150C Earlier expiry of moratorium in relation to specified areas

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Conservation, specify a date earlier than the date that is 2 years after the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 as the date on which the moratorium ends in relation to a coastal marine area described in the order.
- “(2) The Minister must not make a recommendation unless—
 - “(a) the regional council concerned has requested the Minister to make the recommendation; and
 - “(b) the Minister is satisfied, based on information and explanations provided by the regional council, that—
 - “(i) a regional coastal plan or proposed regional coastal plan provides for aquaculture activities as a controlled activity or discretionary activity in the area that the regional council’s request relates to; and
 - “(ii) the area is of a size and location that, taking into account the provisions of the plan or proposed plan, will avoid, remedy, or mitigate the adverse effects (including cumulative effects) of aquaculture activities on the environment and on other uses of the coastal marine area; and
 - “(iii) the ending of the moratorium in relation to the area will not limit or adversely affect the establishment of aquaculture management areas in the future.

- “(3) The Minister must make a recommendation under subsection (1) within 20 working days 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 applies, with all necessary modifications, as if the Minister were acting as a consent authority.

“150D Pending applications to be considered under rules as at end of moratorium

- “(1) On the expiry of the moratorium, a consent authority must—
 - “(a) resume processing an application that section 150B(2) applies to; 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.
- “(2) 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.
- “(3) Subsection (2) applies subject to section 20A.

“150E Transitional provision

- “(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 that apply at the end of the moratorium.
- “(5) If a coastal permit relates to a restricted coastal activity, section 119A 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, 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 357 and 358 apply to a decision by a regional council to amend conditions under subsection (4).

“150F **No compensation**

No compensation is payable by the Crown to any person for any loss or damage arising from the application of this Part.”

Part 3

Consequential amendments to fisheries legislation

10 Marine farming permits

Section 67J(2)(a) of the Fisheries Act 1983 is amended by inserting, after the words “applied for”, the words “(not being a coastal permit to which section 150E(3) or (6) of the Resource Management Act 1991 applies).”

11 Lapse, cancellation, and surrender of permit

Section 67O of the Fisheries Act 1983 is amended by inserting, after subsection (2), the following subsection:

“(2A) A marine farming permit is deemed to be cancelled if the coastal permit to which it relates is deemed to be cancelled by section 150E of the Resource Management Act 1991.”

12 New section 67OA inserted

The Fisheries Act 1983 is amended by inserting, after section 67O, the following section:

“67OA Effect of moratorium on coastal permits on marine farming permits

No person may do anything under the authority of a marine farming permit while the coastal permit that the marine farming permit relates to is subject to section 150E(3) of the Resource Management Act 1991.”

13 Review of marine farming permit conditions

(1) Section 67P(1)(b) of the Fisheries Act 1983 is amended by adding the expression “; or”.

(2) Section 67P(1) of the Fisheries Act 1983 is amended by adding the following paragraph:

“(c) if the marine farming permit relates to a coastal marine area that is subject to a coastal permit the conditions of which have been amended under section 150E(4) of the Resource Management Act 1991.”

14 Authority to catch spat

Section 67Q(2)(a)(i) of the Fisheries Act 1983 is amended by inserting, after the word “activity”, the words “(not being a coastal permit to which section 150E(3) or (6) of the Resource Management Act 1991 applies)”.

15 Duration of spat catching permit

Section 67S(2) of the Fisheries Act 1983 is amended by omitting the words “Sections 67K and 67O”, and substituting the words “Sections 67K, 67O, and 67OA”.

16 Application of Resource Management Act 1991

Section 6 of the Fisheries Act 1996 is amended by adding the following subsection:

“(4) However, in relation to section 68A of the Resource Management Act 1991, the definition of fishing sector applies as if paragraph (d) were repealed.”

Legislative history

10 December 2001	Introduction (Bill 181-1)
18 December 2001	First reading and referral to Primary Production Committee
8 March 2002	Reported from Primary Production Committee (Bill 181-2)
19 March 2002	Second reading
20 March 2002	Committee of the whole House (Bill 181-3)
21 March 2002	Third reading
25 March 2002	Royal assent

This Act is administered in the Ministry for the Environment.
