

MARINE FARMING AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Marine Farming Act 1971.

Clause 1 relates to the Short Title.

Clause 2 inserts a definition of "shellfish" in the principal Act.

Clause 3 (1) is a metrication provision substituting a reference to hectares for a reference to acreage.

Clause 3 (2) amends section 6 of the principal Act, relating to the advertising of applications for leases or licences. The effect of the amendments is that notices and objections that under the section are to be given or made to the controlling authority are, in cases where the Minister of Agriculture and Fisheries is the controlling authority, to be given or made to the Director-General of Agriculture and Fisheries.

Clause 4 provides that where an objection to the granting of a lease or licence has been upheld in part, any lease or licence granted is to contain such provisions as may be necessary to give effect to the decision on the objection.

Clause 5 inserts new sections 14A to 14D in the principal Act, providing for the issue of research licences and pilot commercial scheme licences. The effect of these sections is as follows:

Section 14A provides that the controlling authority may grant a research licence for the purpose of carrying out research into the requirements and habits of any species of fish (which term includes shellfish) or marine vegetation suitable for cultivation or to enable any species of fish or marine vegetation to be cultivated.

A research licence will be for a maximum period of 5 years, and no licence fee will be payable. Only one raft of a maximum area of 25 square metres (with any associated structures) will be permitted, and the maximum area of the licensed area will be 100 square metres.

The section defines the procedure for applying for a licence, the notices to be given, the consultations to be held, and the matters to be taken into account in dealing with applications.

Section 14B provides that the controlling authority may grant a pilot commercial scheme licence for the purpose of enabling the suitability of any area for farming on a commercial scale of any species of fish or marine vegetation to be determined.

A pilot commercial scheme licence will be for a maximum period of 5 years. Not more than 2 rafts having a total maximum area of 270 square metres (with any associated structures) will be permitted, and the maximum area of the licensed area will be 2,000 square metres.

The section defines the procedure for applying for a licence, the notices to be given, the consultations to be held, and the matters to be taken into account in dealing with applications.

Section 14C provides that if at the expiration of a pilot commercial scheme licence the licensee applies for an ordinary lease or licence of the area and he has complied with all the provisions of the principal Act and the conditions of his pilot commercial scheme licence, the controlling authority may grant him a lease or licence of the area in preference to other applicants.

Section 14D applies, with appropriate modifications, to pilot commercial scheme licences provisions of the principal Act relating to ordinary marine farming licences.

Clause 6 inserts a new *section 14E* in the principal Act providing that specified areas may be declared by the Minister, by notice in the *Gazette*, to be spat-catching areas.

No person will be entitled to moor any raft in any spat-catching area except pursuant to a permit granted by the Director-General of Agriculture and Fisheries and in compliance with any conditions imposed by the permit.

The provisions of the Act relating to rafts on licensed areas, with appropriate modifications, will apply to rafts moored in spat-catching areas declared under this section.

Clause 7: Subclause (1) provides that where the Director-General has requested the consent of the lessee or licensee under a registered lease or licence to an amended description of the leased or licensed area and no reply is received from the lessee or licensee within 3 months, his consent to the amendment will not be necessary.

Subclause (2) is a consequential amendment.

Clause 8: The effect of this clause is that if a lease has expired or been forfeited or surrendered, the person who was the lessee must, if so required by the controlling authority, keep marked the boundaries of the leased area and of any access ways until the rafts and structures and other hazards to navigation have been removed.

Clause 9: The effect of *subclause (1)* is that 4 copies of the plan of any proposed structure to be erected in a leased or licensed area are to be forwarded to the Secretary for Transport. The present requirement is for 2 copies to be sent.

Subclause (2) re-enacts in an amended form *section 31 (2)* of the principal Act, which at present provides that before placing a raft in a leased or licensed area the lessee or licensee is to forward to the Secretary for Transport 2 copies of a plan of the proposed raft, accompanied by a certificate by a competent person that the raft will satisfy the requirements of *section 31 (3)*.

The new subsection (2) requires 4 copies of the plan (instead of 2 copies) to be supplied, and omits the requirement as to that certificate.

Clause 10 re-enacts in an amended form section 43 (1) of the principal Act, which at present provides that the Minister may require the lessee or licensee of a leased or licensed area to supply survey information relating to the area.

The effect of the new subsection is to extend this provision to areas proposed to be leased or licensed, and to authorise the Director-General, instead of the Minister, to require the information to be supplied.

Hon. Mr Moyle

MARINE FARMING AMENDMENT

ANALYSIS

Title	14c. Right of licensee under pilot commercial scheme licence to obtain ordinary lease or licence
1. Short Title	14d. Application of this Act to pilot commercial scheme licences
2. Meaning of "shellfish"	6. Spat-catching areas
3. Advertising of applications	7. Description of leased or licensed area
4. Objections	8. Boundaries of leased areas to be marked
5. New sections (as to research licences and pilot commercial scheme licences) inserted	9. Requirements relating to structures and rafts
<i>Research Licences and Pilot Commercial Scheme Licences</i>	10. Survey information
14A. Research licences	
14B. Pilot commercial scheme licences	

A BILL INTITULED

An Act to amend the Marine Farming Act 1971

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Marine Farming Amendment Act 1975, and shall be read together with and deemed part of the Marine Farming Act 1971* (hereinafter referred to as the principal Act).

*1971, No. 29

2. Meaning of "shellfish"—Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term "raft", the following definition:

"Shellfish" includes every description of molluscs, crustaceans, and echinoderms found in the territorial sea of New Zealand (as defined in section 3 of the Territorial Sea and Fishing Zone Act 1965) or in the internal waters of New Zealand (as defined in section 4 of that Act):".

3. Advertising of applications—(1) Section 6 (2) (b) of the principal Act is hereby amended by omitting the word "acreage", and substituting the words "dimensions in hectares".

(2) Section 6 of the principal Act is hereby further amended—

(a) By omitting from subsection (2) (g) the words "controlling authority", and substituting the words "Director-General, in any case where the Minister is the controlling authority, and to the controlling authority in any other case":

(b) By omitting from subsection (4) (b) the words "controlling authority", and substituting the words "Director-General, in any case where the Minister is the controlling authority, and to the controlling authority in any other case":

(c) By omitting from subsection (5) the words "notify the controlling authority", and substituting the words "notify the Director-General, in any case where the Minister is the controlling authority, and the controlling authority in any other case":

(d) By omitting from subsection (5) the words "to the controlling authority", and substituting the words "to the Director-General, in any case where the Minister is the controlling authority, and to the controlling authority in any other case".

4. Objections—(1) Section 7 (1) of the principal Act is hereby amended by inserting, after the words "pursuant to the application", the words "If the objection is upheld in part, any lease or licence granted pursuant to the application shall contain such provisions as may be necessary to give effect to the decision on the objection."

(2) Section 8 (1) of the principal Act is hereby amended by adding the following proviso:

5 “Provided that where any objection has been upheld in part, the lease or licence shall contain such provisions as may be necessary in order to give effect to the decision on the objection.”

10 **5. New sections (as to research licences and pilot commercial scheme licences) inserted**—The principal Act is hereby further amended by inserting, after section 14, the following heading and sections:

“Research Licences and Pilot Commercial Scheme Licences

15 **“14A. Research licences**—(1) Subject to this section, the controlling authority may from time to time grant in accordance with this section a licence (in this Act referred to as a research licence) for the purpose of carrying out in the area specified in the licence research into the requirements and habits of any specified species of fish or marine vegetation suitable for cultivation or to enable any specified species of fish or marine vegetation to be cultivated.

20 “(2) A research licence may be granted for such period, not exceeding 5 years, as the controlling authority thinks fit, without right of renewal.

25 “(3) The controlling authority shall not grant a research licence unless he or it is satisfied that the applicant has sufficient qualifications, ability, and resources to enable him to carry out the proposed research in a satisfactory manner.

“(4) The area in respect of which a research licence may be granted shall not exceed 100 square metres, and the licensee may maintain in the licensed area—

30 “(a) Only one raft having an area not exceeding 25 square metres, together with one or more associated structures authorised by the licence; or

“ (b) One or more structures authorised by the licence.

35 “(5) No application fee shall be payable in respect of an application for a research licence and no annual fee shall be payable in respect of a research licence.

40 “(6) The following provisions shall apply with respect to every application for a research licence and to every such licence and to the area in respect of which any such licence is granted:

- “(a) Any person of or over the age of 18 years may apply for a research licence:
- “(b) Every such application shall be made on a form supplied for the purpose by the Director-General where the Minister is the controlling authority, and by the principal administrative officer of the controlling authority in any other case, and shall be accompanied by a copy of the notice proposed to be advertised under paragraph (i) of this subsection: 5 10
- “(c) Every such application shall be made—
- “(i) Where the Minister is the controlling authority, to the Director-General, or to a person authorised by him to receive such applications, who shall forthwith forward a copy of the application to the Secretary for Transport: 15
- “(ii) Where a harbour board or local authority is the controlling authority, to the principal administrative officer of the controlling authority or to a person authorised by him to receive such applications: 20
- “(d) The application shall specify the size of the area applied for and of the raft (if any) intended to be used, the number and details of structures intended to be used, and the nature and purpose of the research intended to be undertaken: 25
- “(e) Every such application shall be accompanied by such number of copies, not exceeding 5, as the Director-General or, as the case may be, the principal administrative officer of the controlling authority requires of a map, plan, or aerial photograph clearly defining to his satisfaction the location of the area applied for and its relationship to adjacent land-boundary surveys or approved survey monuments: 30 35
- “(f) The Director-General, or, as the case may be, the principal administrative officer of the controlling authority, may require the applicant to supply, within such time as the Director-General, or, as the case may be, the principal administrative officer, specifies, such other information as may 40

- 5 be necessary to enable the controlling authority to decide whether or not a research licence should be granted to the applicant, and, if that information is not supplied within the time specified, or any extension thereof granted by the Director-General or principal administrative officer, as the case may be, the application shall be deemed to have been withdrawn:
- 10 “(g) Two or more persons may apply for a research licence either as joint tenants or as tenants in common:
- 15 “(h) Every applicant for a research licence shall, if so required by the Director-General, or, as the case may be, by the principal administrative officer of the controlling authority, mark and keep marked the area applied for in such manner and for such period as the Director-General or principal administrative officer may specify by notice to the applicant:
- 20 “(i) After the expiration of 28 days from the receipt of the application or of such shorter period as the controlling authority determines, but before the application is considered, notice of the application shall be published by the applicant at least twice, with an interval of not less than 7 days between each publication of the notice, in a newspaper circulating in the locality where the area applied for is situated, and that notice shall—
- 25 “(i) Specify the name and address of the applicant:
- 30 “(ii) Describe the area applied for so as to enable it to be readily identified:
- 35 “(iii) Indicate the place at which the plans accompanying the application may be seen:
- 40 “(iv) State the species of fish or marine vegetation in respect of which the research is to be carried out:
- “(j) The applicant shall, not later than the date of the first publication of the notice, send a copy of it by registered post to—

Marine Farming Amendment

“(i) The harbour board or local authority (if not the controlling authority) or other person in which any foreshore or foreshore reserve adjoining the area applied for is vested:

“(ii) The proprietor of any land adjoining the area applied for, or, where any such land is a public reserve or a national park, the Minister of Lands and the body administering the reserve (if any) or the board controlling the park, as the case may be: 5 10

“(iii) The holder of any mining interest in the area applied for or in any land adjoining that area:

“(iv) The harbour board, where the area applied for is within the jurisdiction of a harbour board which is not the controlling authority: 15

“(v) The borough, town, or county council whose district adjoins the area applied for:

“(vi) The Secretary for Transport:

“(k) Without limiting the matters that the controlling authority may take into account in considering the application, the controlling authority shall have regard to present and future recreational activities in and adjacent to the area applied for and to the public interest: 20 25

“(l) Where the controlling authority is satisfied that the foregoing provisions of this subsection have been complied with, the controlling authority shall consider the application and, subject to this Act, he or it may, if he or it thinks fit, grant a research licence to the applicant: 30

“Provided that the controlling authority shall not grant a research licence—

“(i) Where the Minister of Agriculture and Fisheries is the controlling authority, except with the concurrence of the Minister of Transport: 35

“(ii) Where the Minister of Agriculture and Fisheries is not the controlling authority, except with the consent of that Minister given with the concurrence of the Minister of Transport. 40

“(7) Subject to this section, the provisions of this Act (except sections 3 to 7, subsections (1) to (3) of section 8, paragraphs (a) and (e) of section 9, and sections 10, 21, 22, 23, 25, and 26), as far as they are applicable and with the

necessary modifications, shall apply with respect to every research licence and to the licensee thereunder and to the licensed area, as if—

5 “(a) The licence had been issued under section 8 of this Act; and

“(b) For the words ‘14 years’ in section 13 (4) there were substituted the words ‘5 years’.

10 **“14B. Pilot commercial scheme licences—**(1) Subject to this section, the controlling authority may from time to time grant in accordance with this section a licence (in this Act referred to as a pilot commercial scheme licence) for the purpose of enabling the suitability of the area specified in the licence for farming on a commercial scale any specified species of fish or marine vegetation to be determined.

15 “(2) A pilot commercial scheme licence may be granted for such period, not exceeding 5 years, as the controlling authority thinks fit, without right of renewal.

20 “(3) The area in respect of which a pilot commercial scheme licence may be granted shall not exceed 2,000 square metres, and the licensee may maintain in the licensed area—

“ (a) Not more than 2 rafts having a total area not exceeding 270 square metres, together with one or more associated structures authorised by the licence; or

25 “ (b) One or more structures authorised by the licence.

“ (4) The following provisions shall apply with respect to every application for a pilot commercial scheme licence and to every such licence and to the area in respect of which any such licence may be granted:

30 “ (a) Any person of or over the age of 18 years may apply for a licence:

35 “ (b) Every such application shall be made on a form supplied for the purpose by the Director-General where the Minister is the controlling authority, and by the principal administrative officer of the controlling authority in any other case, and shall be accompanied by a copy of the notice proposed to be advertised under paragraph (k) of this subsection:

40 “ (c) Every such application shall be made—

“ (i) Where the Minister is the controlling authority, to the Director-General, or to a person authorised by him to receive such applications, who shall forthwith forward a copy of the application to the Secretary for Transport:

“(ii) Where a harbour board or local authority is the controlling authority, to the principal administrative officer of the controlling authority or to a person authorised by him to receive such applications: 5

“(d) Every such application shall be accompanied by—

“(i) An application fee of \$50, or such smaller amount as the controlling authority may from time to time determine, either generally or in any specific case: 10

“(ii) Such number of copies, not exceeding 5, as the Director-General or, as the case may be, the principal administrative officer of the controlling authority requires of a map, plan, or aerial photograph clearly defining to his satisfaction the location of the area applied for and its relationship to adjacent land-boundary surveys or approved survey monuments: 15

“(e) If the application is granted, the application fee shall be refunded to the applicant or, if he so requests, shall be credited towards the fee payable under the licence: 20

“(f) The application shall specify the size of the area applied for and of the rafts (if any) intended to be used, the number and details of structures intended to be used, and the species of fish or marine vegetation intended to be farmed: 25

“(g) The Director-General, or, as the case may be, the principal administrative officer of the controlling authority, may require the applicant to supply, within such time as the Director-General, or, as the case may be, the principal administrative officer, specifies, such other information as may be necessary to enable the controlling authority to decide whether or not a pilot commercial scheme licence should be granted to the applicant, and, if that information is not supplied within the time specified, or any extension thereof granted by the Director-General or principal administrative officer, as the case may be, the application shall be deemed to have been withdrawn: 30 35 40

“(h) Two or more persons may apply for a pilot commercial scheme licence either as joint tenants or as tenants in common:

- 5 “(i) Where the applicant withdraws his application then, unless the controlling authority otherwise directs, the application fee shall be forfeited to the Crown where the Minister is the controlling authority, and to the controlling authority in every other case:
- 10 “(j) Every applicant for a pilot commercial scheme licence shall, if so required by the Director-General, or, as the case may be, by the principal administrative officer of the controlling authority, mark and keep marked the area applied for in such manner and for such period as the Director-General or principal administrative officer may specify by notice to the applicant:
- 15 “(k) After the expiration of 28 days from the receipt of the application or of such shorter period as the controlling authority determines, but before the application is considered, notice of the application shall be published by the applicant at least twice, with an interval of not less than 7 days between
- 20 each publication of the notice, in a newspaper circulating in the locality where the area applied for is situated, and that notice shall—
- “ (i) Specify the name and address of the applicant:
- 25 “ (ii) Describe the area applied for so as to enable it to be readily identified:
- “ (iii) Indicate the place at which the plans accompanying the application may be seen:
- 30 “ (iv) State the species of fish or marine vegetation intended to be farmed in the area in respect of which the licence has been applied for:
- “ (l) The applicant shall, not later than the date of the first publication of the notice, send a copy of it by registered post to—
- 35 “ (i) The harbour board or local authority (if not the controlling authority) or other person in which any foreshore or foreshore reserve adjoining the area applied for is vested:
- 40 “ (ii) The proprietor of any land adjoining the area applied for, or, where any such land is a public reserve or a national park, the Minister of Lands and the body administering the reserve (if any) or the board controlling the park, as the case may be:

- “(iii) The holder of any mining interest in the area applied for or in any land adjoining that area:
- “(iv) The harbour board, where the area applied for is within the jurisdiction of a harbour board which is not the controlling authority: 5
- “(v) The borough, town, or county council whose district adjoins the area applied for:
- “(vi) The Secretary for Transport:
- “(m) Without limiting the matters that the controlling authority may take into account in considering the application, the controlling authority shall have regard to present and future recreational activities in and adjacent to the area applied for and to the public interest: 10
- “(n) Where the controlling authority is satisfied that the foregoing provisions of this subsection have been complied with, the controlling authority shall consider the application and, subject to this Act, he or it may, if he or it thinks fit, grant a pilot commercial scheme licence to the applicant: 20
- “Provided that the controlling authority shall not grant such a licence—
- “(i) Where the Minister of Agriculture and Fisheries is the controlling authority, except with the concurrence of the Minister of Transport: 25
- “(ii) Where the Minister of Agriculture and Fisheries is not the controlling authority, except with the consent of that Minister given with the concurrence of the Minister of Transport.
- “14c. Right of licensee under pilot commercial scheme licence to obtain ordinary lease or licence—Where—** 30
- “(a) On the expiration of a pilot commercial scheme licence the licensee or, where 2 or more persons are licensees as tenants in common or joint tenants under the licence, any one or more of them, make application under section 5 of this Act for a lease or licence of the area; and 35
- “(b) He or they have complied with the provisions of this Act and with the conditions, covenants, and other provisions of the pilot commercial scheme licence,— 40
- then, subject to sections 6 and 7 of this Act and notwithstanding anything in subsections (2) and (3) of section 8 of this Act, the controlling authority, if he or it thinks fit, may offer to the applicant or applicants a lease or licence of the area under section 8 of this Act in preference to any other person who may have applied for a lease or licence of the area. 45

“14D. **Application of this Act to pilot commercial scheme licences**—Subject to sections 14B and 14C of this Act, the provisions of this Act (except section 3, sections 5 to 7, subsections (1) to (3) of section 8, section 21, subsection (1) of section 22, and section 25) as far as they are applicable and with the necessary modifications, shall apply with respect to every pilot commercial scheme licence and to the licensee thereunder and to the licensed area, as if—

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10 “(a) The licence had been issued under section 8 of this Act; and

 “(b) For the words ‘14 years’ in section 13 (4) there were substituted the words ‘5 years’.”

15 **6. Spat-catching areas**—The principal Act is hereby further amended by inserting, after section 14D (as inserted by section 5 of this Act), the following heading and section:

“Spat-catching Areas

20 “14E. (1) The Minister may from time to time, by notice in the *Gazette*, given with the concurrence of the Minister of Transport and, in the case of any area that is within the jurisdiction of a harbour board or local authority, with the consent of the harbour board or local authority, declare any area to be a spat-catching area for the purposes of this section, subject to such conditions as are specified in the notice.

25 “(2) No person shall moor any raft for the purposes of catching spat in any spat-catching area, except pursuant to a permit granted by the Director-General and in compliance with any conditions subject to which the permit was granted.

30 “(3) A permit to moor a raft in a spat-catching area may be granted only to a lessee or licensee under a lease or licence granted pursuant to this Act, including the licensee under a research licence granted pursuant to section 14A of this Act or under a pilot commercial scheme licence granted pursuant to section 14B of this Act.

35 “(4) The provisions of sections 15, 17 (1), subsections (1) and (2) of section 18, and section 19 of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every spat-catching area as if the notice under subsection (1) of this section were a licence, the Director-General were the licensee, and the area were a licensed area.

“(5) The provisions of sections 31, 32, 34, 35, 40, 41, 44, 46, 48, and 49 of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every spat-catching area and to the holder of a permit granted under this section, as if— 5

“(a) The permit were a licence; and

“(b) The holder of the permit were the licensee; and

“(c) The catching of spat by the holder of the permit were marine farming; and

“(d) The spat-catching area were a licensed area. 10

“(6) In this section—

“‘Spat’ means the young or fry or spawn of any fish:

“‘Spat-catching area’ means an area declared to be a spat-catching area pursuant to subsection (1) of this section.” 15

7. Description of leased or licensed area—(1) Section 18 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where the Director-General has, by notice in writing to the lessee or licensee or to any other person having a registered interest in a lease or licence, requested his consent to an amendment under subsection (1) of this section of the description of the leased or licensed area, and no reply to that request has been received by the Director-General from the lessee or licensee or other person within 3 months after the giving of the notice, his consent to the amended description shall not be necessary.” 20 25

(2) Section 19 of the principal Act (as substituted by section 6 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972) is hereby amended by adding the following subsection: 30

“(3) A copy of any lease or licence purported to be certified by the Director-General or by an authorised officer of the Department as being a true copy of the lease or licence containing a description of the leased or licensed area as amended pursuant to section 18 of this Act shall be admitted in evidence without further proof and without production of the original.” 35

8. Boundaries of leased areas to be marked—Section 27 of the principal Act is hereby amended— 40

(a) By inserting in subsection (4), after the words “continue to”, the words “keep marked in accordance

with subsection (1) of this section the boundaries of the leased area and any access way determined under section 25 of this Act and to”:

- 5 (b) By inserting in subsection (6), after the words “fails to”, the words “keep marked the boundaries of the leased area or of any access way or to”.

9. Requirements relating to structures and rafts—

10 (1) Section 30 (2) of the principal Act (as amended by section 6 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972) is hereby further amended by omitting the words “a plan in duplicate”, and substituting the words “4 copies of a plan”.

15 (2) Section 31 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

20 “(2) Before placing a raft in a leased or licensed area, the lessee or licensee, as the case may be, shall deposit pursuant to section 178 of the Harbours Act 1950 at the head office of the Ministry of Transport at Wellington 4 copies of a plan of the raft or proposed raft prepared to the satisfaction of the Secretary for Transport, and shall at the same time forward a copy of the plan to the head office of the Ministry of Agriculture and Fisheries at Wellington. On the deposit of any such plan as aforesaid, all the provisions of the said
25 section 178, as far as they are applicable and with the necessary modifications, shall apply in respect of the raft.”

30 (3) The Second Schedule to the Ministry of Agriculture and Fisheries Amendment Act 1972 is hereby consequentially amended by repealing so much thereof as relates to section 31 (2) of the principal Act.

10. Survey information—Section 43 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

35 “(1) For the purpose of enabling an area intended to be leased or licensed or a leased or licensed area to be charted or its position to be accurately defined for the purposes of registration, the applicant for the lease or licence or, as the case may be, the lessee or licensee shall, if required to do so, supply to the Director-General such survey information
40 relating to the area as may be specified by the Director-General.”