

Resource Management (Aquaculture Moratorium) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill imposes a moratorium on new aquaculture activities in coastal marine areas. The moratorium applies retrospectively from 28 November 2001, the date on which the moratorium was announced. The moratorium expires on the date that is 2 years after the commencement of the Bill. The purpose of the moratorium is to provide time for the development and implementation of wider aquaculture reforms through legislation and regional coastal plans.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent. However, because of the terms of certain clauses, the amendments in the Bill will have effect from 28 November 2001.

Clause 3 provides that the purpose of the Bill is—

- to impose a moratorium on the granting of coastal permits authorising the occupation of coastal marine areas for aquaculture activities; and
- to provide regional councils with the opportunity, during the moratorium, to include rules in their regional coastal plans to provide for—

- zones where aquaculture can be undertaken with a coastal permit; and
- zones where aquaculture is prohibited.

Part 2

Aquaculture moratorium

Clause 4 inserts *new section 87AA* into the principal Act to clarify that Part VI of the principal Act applies subject to the *new Part 6A* inserted by *clause 5*.

Clause 5 inserts *new Part 6A* into the principal Act, comprising *new sections 150A to 150F*.

New section 150A defines terms used in the new Part. **Moratorium** is a fundamental term in the new Part and is defined to mean the period—

- beginning on 28 November 2001; and
- ending on the close of—
 - the date that is 2 years after the commencement of the Bill; or
 - in relation to a coastal marine area described in an order made under *section 150C*, the date specified in the order.

Clause 150B imposes a moratorium on certain applications for coastal permits to occupy a coastal marine area for aquaculture activities. If an application is made before the moratorium and a regional council has not begun to hear the application before the moratorium, then the council must not consider the application nor make a decision on it until the moratorium expires. If an application is made during the moratorium, then a regional council must not only not consider it and not make a decision, but also return the application to the applicant. The new section does not apply to an application relating to a coastal marine area that, immediately before the moratorium, was lawfully occupied by the applicant for aquaculture activities.

New section 150C authorises the Governor-General, by Order in Council, to specify a date earlier than the date that is 2 years after the commencement of the Bill as the date on which the moratorium ends in relation to a coastal marine area described in the order.

New section 150D provides that a regional council resuming consideration of an application under *new section 150B(2)* must—

- consider and decide whether to approve the application under rules in the regional coastal plan in force, and any proposed regional coastal plan under consideration, at the end of the moratorium; and
- deal with the application, in relation to other applications, in the order in which the applications were made to the regional council.

New section 150E is a transitional provision. It applies to coastal permits—

- to occupy a coastal marine area for aquaculture activities; and
- applications for which were made to a regional council before or during the moratorium; and
- the hearings for which began after 28 November 2001 or, if hearings were not required, the decisions on which were made after that date.

However, the new section does not apply to a coastal permit that relates to a coastal marine area that, immediately before the moratorium, was lawfully occupied by the holder for aquaculture activities.

No person may do anything under a coastal permit until the moratorium has expired in relation to the area that the permit relates to. At the end of the moratorium, the regional council may review the conditions in the coastal permit and amend them so that they comply with the rules that apply at the end of the moratorium. Also, at the end of the moratorium,—

- no person may carry on any aquaculture activities under a coastal permit in any area in which aquaculture is prohibited; and
- the coastal permit ceases to have any effect and is deemed to be cancelled.

New section 150F provides that no compensation is payable by the Crown to any person for any loss or damage arising from the application of *new Part 6A*.

Regulatory impact and compliance cost statement

Statement of the public policy objectives

The purpose of the Bill is to impose a moratorium on applications for new marine farms while the main reforms are put in place and to allow regional councils and unitary authorities time to develop provisions for inclusion in their regional coastal plans.

The main aquaculture reforms will provide for better management of the coastal marine area and promote long-term efficiency. The ability to prevent new applications for coastal space from being received and determined before aquaculture zones are in place is consistent with the intent of the reforms and will increase their effectiveness.

Statement of problem and the need for action

The purpose of the main reform is to enable aquaculture to increase the contribution it makes to the national economy, while not undermining the regime established to manage fisheries sustainably, undermining Treaty settlements, or allowing adverse effects on the environment. In the absence of a moratorium, it would be likely that applications received and determined pending the enactment of the main reforms could cover most of the potential aquaculture areas, rendering the reforms largely ineffective.

The magnitude of the problem is significant in that many regional councils and unitary authorities are unable to cope with the “gold rush” for coastal space that has already started.

Statement of options for achieving the desired objectives

Regulatory measures

Three variations were considered for a moratorium on applications for new coastal permits for the occupation of space for aquaculture. The options were:

- option 1: impose an immediate nationwide moratorium by legislation prior to the enactment of the main aquaculture reforms:
- option 2: implement the main aquaculture reforms without imposing a moratorium:

- option 3: provide councils with the ability to implement local moratoria as part of the enactment of the main aquaculture reforms.

Preferred option

Only option 1 would enable councils to develop appropriate provisions in their regional coastal plans to address the demand for coastal space for aquaculture activities, by preventing further applications for the occupation of coastal space for aquaculture from being received and determined with effect from the date of announcement of the moratorium and therefore pre-empting the aquaculture reforms.

Statement of the net benefit of this proposal

Benefits

An immediate nationwide moratorium will allow the full net benefit to be realised from implementing the new regime for aquaculture. This is because the moratorium will restrict the amount of coastal space that can be allocated for new marine farm development before the new regime for aquaculture is put in place. In summary, imposing a national moratorium will allow the benefits from the main reform to be more fully realised.

The benefit of integrating planning under 1 Act is that decisions will be made using all relevant information. This should result in better outcomes. There should also be significant cost savings to applicants, who will need to obtain a consent from only 1 agency. In addition, most of the conflicts that have previously resulted in lengthy individual resource consent processes will, in future, be addressed through the generic planning process during the establishment of zones for aquaculture in regional coastal plans. This should lead to greater certainty about where aquaculture may be undertaken and therefore significantly reduce the business compliance costs for aquaculture developers. There will also be cost savings for other interested parties who will also only be required to provide submissions and input into 1 planning process rather than numerous individual resource consent processes.

Compliance regime

There are high costs associated with managing aquaculture under 5 different regimes. The costs of administering different regimes imposes costs on the Ministry of Fisheries, while some farmers are required to comply with more than 1 set of requirements. These ongoing costs should reduce under an integrated regime.

Existing marine farming approvals

Simplifying the transition of existing marine farm approvals to the new regime should also reduce costs.

Costs

The main cost associated with introducing a national moratorium on new applications for coastal permits for aquaculture will be the cost to applicants of not being able to proceed with their applications until the moratorium is lifted. The other key cost will be the cost of potential development that is lost or delayed due to the moratorium being put in place. It is difficult to estimate the amount of lost development as not all consent applications would be granted and, as aquaculture expands, it is increasingly likely that marine farm and spat catching permit applications made under the Fisheries Act 1983 will be declined. Under the current regime, marine farms and spat catching operations require both a coastal permit under the Resource Management Act and a marine farming or spat catching permit under the Fisheries Act 1983.

Statement of the consultation undertaken

Consultation with Government agencies has been restricted to the Ministry of Fisheries, Treasury, Department of Conservation, and Department of Justice due to the sensitivity of the proposals.

In August 2000, the Ministry of Fisheries and the Ministry for the Environment released a joint discussion document as the basis for public consultation. Its purpose was to identify the preferred options on the future management of aquaculture. A total of 242 submissions were received. The discussion document did not make any reference to the imposition of moratoria. However, a number of submissions did ask for the imposition of a national moratorium on new marine farm applications.

No public consultation has taken place on the policy contained in the Bill.

Business compliance cost statement

There are no business compliance costs associated with the imposition of a moratorium on new marine farm developments. As the moratorium prevents any new developments taking place, this precludes the generation of costs for existing and new marine farming business.

Hon Marian Hobbs

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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 **2001**.
- (2) In this Act, the Resource Management Act 1991¹ is called “the principal Act”.

¹ 1991 No 69

Part 1

Preliminary provisions

2 Commencement

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

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3 Purpose

The purpose of this Act is—

- (a) to impose a moratorium on the granting of coastal permits authorising the occupation of a coastal marine area for aquaculture activities; and 5
- (b) to provide regional councils with the opportunity, during the moratorium, to include rules in their regional coastal plans to provide for—
 - (i) zones where aquaculture can be undertaken with a coastal permit; and 10
 - (ii) zones where aquaculture is prohibited.

Part 2

Aquaculture moratorium

4 New section 87AA inserted

The principal Act is amended by inserting, before section 87, the following section: 15

“87AA This Part subject to Part 6A

This Part applies subject to **Part 6A.**”

5 New Part 6A inserted

The principal Act is amended by inserting, after section 150, the following part: 20

“Part 6A

“Aquaculture moratorium

“150A Interpretation

In this Part, unless the context otherwise requires,— 25

“application—

- “(a) means an application for a coastal permit to occupy a coastal marine area for aquaculture activities; and**
- “(b) includes an application for a certificate under section 139 in relation to aquaculture activities in a coastal marine area** 30

“aquaculture activities includes marine farming and spat catching

“marine farming—

- “(a) means breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest; but** 35

- “(b) 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 5
 - “(iii) if the fish, aquatic life, or seaweed cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed
- “**moratorium** means the period— 10
- “(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 2001**; or 15
 - “(ii) in relation to a coastal marine area described in an order made under **section 150C**, the date specified in the order
- “**occupy** has the same meaning as in section 12(4)
- “**region**, in relation to a unitary authority, means district 20
- “**regional council** includes a unitary authority to the extent it has regional functions under the Resource Management Act 1991
- “**spat** means any lifecycle stage or size-range of any fish, aquatic life, or seaweed that is declared by the Director-General by notice in the *Gazette* to be spat for the purposes of the Fisheries Act 1983 25
- “**spat catching**—
- “(a) means the taking of spat; and
 - “(b) includes the holding or ongrowing of spat after it is taken. 30
- “**150B Moratorium**
- “(1) **Subsection (2)** applies if—
 - “(a) an application is made to a regional council before the moratorium; and 35
 - “(b) the council has not, before the moratorium,—
 - “(i) begun to hear the application under section 101; or

- “(ii) if a hearing is not required, made a decision on the application under section 105.
- “(2) The regional council must not consider and decide whether to approve the application until the moratorium has expired in relation to the area that the application relates to. 5
- “(3) **Subsection (4)** applies if an application is made to a regional council during the moratorium.
- “(4) The regional council—
- “(a) must not consider the application; and
 - “(b) must not approve the application; and 10
 - “(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 relating to a coastal marine area that, immediately before the moratorium, was lawfully occupied by the applicant for aquaculture activities. 15
- “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 2001** as the date on which the moratorium ends in relation to a coastal marine area described in the order. 20
- “(2) The Minister must not make a recommendation unless— 25
- “(a) the regional council concerned has requested the Minister to make the recommendation; and
 - “(b) the Minister has taken into account—
- “(i) the purpose of the moratorium; and
 - “(ii) the provisions in the relevant regional coastal 30 plan, including rules providing for the size and location of zones in which aquaculture activities are allowed or prohibited.
- “150D **Pending applications to be considered under rules as at end of moratorium** 35
- A regional council that resumes consideration of an application under **section 150B(2)** must—

- “(a) consider and decide whether to approve the application under rules in the regional coastal plan in force, and any proposed regional coastal plan under consideration, at the end of the moratorium; and
 - “(b) deal with the application, in relation to other applications, in the order in which the application was made to the regional council 5
- “150E **Transitional provision**
- “(1) This section applies to coastal permits—
 - “(a) to occupy a coastal marine area for aquaculture activities; and 10
 - “(b) applications for which were made to a regional council before or during the moratorium; and
 - “(c) the hearings for which began after 28 November 2001 or, if hearings were not required, the decisions on which were made after that date. 15
 - “(2) However, this section does not apply to a coastal permit that relates to a coastal marine area that, immediately before the moratorium, was lawfully occupied by the holder for aquaculture activities. 20
 - “(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 25
 - “(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)**. 30
 - “(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 35 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)**. 5
- “(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.” 10