

# **Resource Management (Aquaculture Moratorium) Amendment Bill**

Government Bill

As reported from the Primary Production Committee

## **Commentary**

### **Recommendation**

The Primary Production Committee has examined the Resource Management (Aquaculture Moratorium) Amendment Bill and recommends that it be passed with the amendments shown.

### **Background**

The Resource Management (Aquaculture Moratorium) Amendment Bill (the bill) as introduced imposes a moratorium on new aquaculture in coastal marine areas. The moratorium applies retrospectively from 28 November 2001, the date on which the moratorium was announced. The moratorium is for two years following the enactment of the bill, or earlier if the council meets the statutory requirements for early lifting of the moratorium.

A substantive bill addressing the main aquaculture reform will follow this bill (see Appendix 1 for background on the main reform).

The Resource Management Act 1991 (RMA) provides for the development of regional coastal plans to assist councils to manage the effects of aquaculture in coastal areas, including allocating space for aquaculture. For reasons relating to a non prescriptive approach in the law and practice, most regional coastal plans have not comprehensively defined the limits of occupation for aquaculture. Consequently, most consent applications for aquaculture are considered on a case-by-case basis. This makes it difficult to assess and manage the

cumulative effects of the rapid expansion in proposed aquaculture development. Case-by-case consideration of aquaculture consents also leads to uncertainty and added costs for the aquaculture industry and 'submission fatigue' for other interested parties in the community.

Currently, aquaculture development also requires a sequential consent process: first a resource consent must be approved under the RMA, and then a marine farming permit must be granted under the Fisheries Act 1983. This has resulted in a cumbersome and lengthy process for applicants.

### **Purpose of the bill**

The purpose of the moratorium the bill creates is to:

- prevent a rush of applications that would pre-empt defining Aquaculture Management Areas (AMAs). These are zones designed specifically for aquaculture in each region;
- provide an opportunity for councils and central government to properly identify AMAs.

The moratorium period will allow councils, whose plans do not provide strong policies and defined areas for aquaculture, to begin developing these without the risk of there being a significant number of applications that would pre-empt and complicate that process.

### **Introduction**

We received 143 submissions relating to this bill. The majority of commercial submitters opposed the bill, largely because of the impact that it would have on the industry. A small number of individual submitters who have some connection to the aquaculture industry oppose aspects of the bill. Other individual submitters are neutral or in support of the bill. The majority of submissions from community or citizens groups were in favour of the moratorium, or aspects of it. These submitters represented local area groups and national bodies concerned with environmental, amenity or community interests. All Maori groups were opposed to some aspects of the bill. Regional councils had varying points of view, which reflected the differing impacts of aquaculture in marine waters around New Zealand.

We heard from all of the 90 submitters who wanted to speak to their submission. They were given the opportunity to present their perspectives on the moratorium that this bill will impose. We are aware of the competing interests for our valuable coastal resources, and are mindful of the fact that for both the environment and the industry, the issues must be carefully considered in order to ensure a sustainable approach for all coastal users.

### **The ‘cut-off’ point for applicants: section 150B**

Under the RMA, regional councils receive, consider and either approve or decline applications for coastal permits for aquaculture.

On 28 November 2001 there were 234–239 applications for a total of 47,807 –51,807 ha in the application process (see Appendix 2 for application status breakdown). The bill only exempts applications from the moratorium that were in a hearing, or further along the process, at that date. Retaining this ‘cut-off’ date means the following would proceed during the moratorium:

- six applications for about 72 ha which were being heard on 28 November:
- 72 applications for over 800 ha which are under appeal:
- 168 applications for 633 ha that already have RMA consents but are still under consideration under the subsequent Fisheries Act process.

This approach minimises the impact of existing applications on the future establishment of AMAs. It was supported by some 40 percent of the submitters.

Many submitters expressed concern about the impact on existing applications that this ‘cut-off’ point has imposed.

### **Categories of concerns**

The concerns raised by submitters about the identified ‘cut-off’ date fall into three general categories.

#### *Natural justice / retrospective legislation*

Many applicants have made a significant financial investment in preparing applications. They consider they had a legitimate expectation that their applications would advance and be heard under the law as it was when they applied.

*Impact on aquaculture*

Submitters expressed concerns about the effect of the moratorium on developing aquaculture and regional employment. There is also a risk of loss of premium export markets if New Zealand is unable to meet demand and competitors fill the 'vacuum'. These concerns relate especially to the effective length of the moratorium.

*Disproportionate impact on Maori*

We received thirty-four submissions from organisations and individuals representing Maori interests. Also included were submissions from partners in iwi joint ventures for aquaculture development.

The following key issues were raised:

- negative impacts on Maori development
- Maori ownership of the foreshore and seabed
- the water within their rohe
- adverse effects on existing Treaty settlements
- lack of consultation by the Crown
- delegation of Crown responsibilities to regional councils
- lack of jurisdiction (Parliament has no right to govern)

In recent times iwi have taken the initiative to become involved in the business of aquaculture. Iwi have interests in 40 percent of the area currently under application. The majority of submitters had major concerns about the moratorium and its effect on their ongoing economic and social development. Some submitters claim that the moratorium is inconsistent with Treaty of Waitangi obligations to protect customary rights, including the use of marine resources, and preserving tribal relationships with coastal resources. A number of submissions from those representing Maori interests were supportive of the moratorium to the extent it would allow a more planned approach to the location of aquaculture and the management of its interface with fishing.

**Shifting the 'cut-off' point to notification**

We received submissions proposing alternatives to the 'cut-off' point.

We have given careful consideration to the proposed 'cut-off' point and the alternatives suggested by submitters. We believe that the

'cut-off' point should be shifted so that the moratorium exempts applications that were publicly notified before 28 November 2001, or accepted by a regional council (s94 decision) as completed non-notified applications before 28 November 2001. Applications that had not been notified before 28 November, or non-notified applications that were incomplete at 28 November, would be put on hold and considered once the moratorium had expired.

This is an arbitrary date, but we consider that by changing this 'cut-off' point the policy objectives of the moratorium can be achieved while allowing notified applications to proceed.

We were advised that any further shifting of the 'cut-off' date to earlier in the application process than notification was likely to frustrate the intent of the reform by delaying development of new coastal plans as well as pre-empting the establishment of AMAs.

We acknowledge the concern expressed by many submitters about the retrospective legislation and issues of natural justice. We are also aware that, if marine farmers had been consulted about the possibility of a moratorium, such discussion would have without doubt increased the number of applications, and compounded the problem the reform aims to address.

With the 'cut-off' point moved to notification, the following would proceed during the moratorium in addition to those that will proceed under the bill as introduced:

- 110 applications for 14,456 ha that were publicly notified before 28 November 2001:
- 3 applications for 52 ha that had been accepted by regional councils as completed non-notified before 28 November 2001.

The number of hectares of marine farming currently authorised is 4725.

### **Ad hoc exemptions**

The bill does not allow for any exemptions to the moratorium, other than the status of the application on 28 November 2001. Advisers told us that exemptions would duplicate the early lifting provisions of the bill that enable councils to apply for early lifting where they feel their plans are sufficiently robust.

Many of the industry and other submissions that opposed the moratorium's nation-wide coverage did so on the grounds it was a blunt instrument. The following three broad classes of exemption were suggested in submissions:

### **Species exemption**

Species exemption was sought partly on the grounds the problem is for mussel farming with only limited demand for space for other species, such as oysters, marine finfish and experimental marine farms. We have been advised that most of the conflict is, however, more about occupation of sheltered clean sea space. This applies to finfish farming as well as mussels. The situation is complicated as many existing farms and applications are for several species.

### **Regional exemption**

Some submitters suggested the moratorium be imposed regionally. For example, the Marlborough District Council suggested that their plan has significant prohibited areas within the Marlborough Sounds and therefore has an effective management plan. Conversely, the West Coast Regional Council did not want to be subject to the moratorium. It said there is no demand on that coast and does not want to have the expense of a plan change in the future.

We consider regional exemptions can be managed through the early lifting provisions in the bill. The early uplifting process allows councils time to examine their plans critically and uplift them as part of plan development.

### **Research exemptions**

Some submitters stated the moratorium should not put a stop to genuine research and development proposals. Examples of research cited include finfish, new species, such as sponges, and marine farming in open water.

We were advised it is difficult to define experimental farming for the purpose of the moratorium. Marine farming is a new industry and many of the existing and proposed ventures are, in part, experimental. There are a number of applications, which have not reached notification stage, that are using the same design for their research proposal. To allow all of these applications as experimental projects

would defeat the purpose of the moratorium. Experimental aquaculture could be considered within AMAs, either defined for particular experiments or in an AMA where continuing research and development takes place.

We consider ad hoc exemptions are not an appropriate alternative. If regions of low demand were exempt and the moratorium was in place in other regions, it is likely that low demand regions would soon experience their own rush of applications. An exemption for marine farming in open water is also not supported because the thrust of reform requires councils to explicitly consider, when defining AMAs, the impacts on fishing.

### **Effective length of the moratorium**

Many submitters questioned the timeframe for the moratorium. The proposed two-year period was seen by both those supporting and opposing the moratorium as being unrealistic, given the time it currently takes to prepare plans or plan variations under the RMA. The designation of AMAs will require plan variations that must go through the public participation procedure set out in the First Schedule of the RMA. The intent of the bill is to end the moratorium after the two-year period. However, many commented that the effects of the moratorium could extend for six to ten years.

A key component of aquaculture reform is to ensure that the community has had adequate input into identifying areas suitable for aquaculture. The extent to which public access in the coastal marine area may be limited is also a significant issue. While the public process is lengthy, we believe all interests need the opportunity to be considered when a council is making judgements between competing interests.

Key aspects to speed up the process of developing regional coastal plans include:

- access to good, timely information:
- pro-active engagement of all parties facilitated and supported by relevant Government departments.

The Department of Conservation (DoC) has advised us it is to prepare a new Coastal Policy Statement. We have been advised that the minimum time necessary to complete it would be 8 to 10 months with the worst-case scenario being 18 months to two years. DoC and the Ministry for the Environment will provide information and

guidelines to help councils identify proposed AMAs and the Ministry of Fisheries will provide information about fishing.

Regional councils are currently able to establish zones for aquaculture and zones where aquaculture is prohibited. However, councils cannot yet take into account the impact of aquaculture on fishing, particularly access to fisheries. We believe that council resources can be used more efficiently if zones take into account fisheries matters from the beginning. This is preferable to a two-stage process of establishing zones and then, when the main legislation is enacted, changing plans to take into account fisheries matters.

We consider any progress a council can make during the moratorium towards determining appropriate zones for aquaculture will be helpful as even proposed plans have some weight in decision-making for consents. To make use of the moratorium, therefore, councils need to start defining AMAs as soon as possible. It would be useful to clarify the meaning of an AMA in this bill as this will enable councils to begin discussions with fishers and other parts of the community about proposed AMAs.

Therefore, we recommend that the bill be amended to:

- empower councils to create AMAs:
- include a definition of an AMA that requires councils to address the adverse effects (including cumulative effects) of aquaculture on the environment and other uses of the coastal marine area, including fishing:
- define an AMA to provide that, within the AMA, aquaculture can only be a controlled or discretionary activity.

### **Early lifting mechanism—new section 150C**

New section 150C provides for lifting the moratorium earlier than it would otherwise expire. This is to ensure development is only constrained where necessary in a particular region or part of a region. The recommendation for approval for early lifting of the moratorium is the responsibility of the Minister of Conservation (the Minister). The Minister is required to make a recommendation to the Governor-General in Council. The Order in Council may apply to a region or part of a region.

The early lifting procedures are intended to apply to areas where:



- current plans already contain aquaculture zones that approximate what AMAs might look like in the final regime (although these will not have considered impacts on fishing):
- councils are able to amend their plans during the period of the moratorium in accordance with the new planning framework signalled in the bill.

### **Issues of concern**

Submitters raised concerns about the provision for lifting the moratorium in four areas:

#### *Flexibility and responsiveness of the lifting the moratorium process and criteria*

Most submitters favoured a more simple process for lifting the moratorium than set out in the bill and sought more explicit criteria. We agree. There is a risk that the current provisions in the bill as introduced could be inflexible and slow and could defeat its purpose. The moratorium and its lifting mechanism are temporary methods designed to provide a breathing space until the main reforms are finalised.

We consider planning provisions must provide greater certainty on the circumstances in which aquaculture will be allowed or not before lifting the moratorium. Lifting the moratorium should only occur in those areas where the plan explicitly makes aquaculture a discretionary or controlled activity. It would not be possible to lift the moratorium in areas where aquaculture activities are non-complying or prohibited. In an area where the moratorium has been uplifted any aquaculture development will require both resource consents and marine farming permits.

A council will need to make an application for lifting the moratorium, setting out how the proposed lifting meets these criteria. It may choose to do so across an entire zone in the plan, part of that zone, or just the area covered by one application so long as it takes into account the cumulative effects of aquaculture on the environment.

We did not accept the argument from submissions for the lifting of the moratorium on marine farms of limited size or for specific species. Such lifting might create the opportunity for aquaculture activities to circumvent the moratorium.

There may be some need to adjust the boundaries of uplifted areas following the enactment of the second aquaculture bill. These transitional issues will need to be addressed in the reform bill.

### **Time taken for lifting the moratorium**

Other submitters were concerned about the time taken for any procedure lifting the moratorium. We agree that government processes can be slow and it is important that there be a time limit for the Minister's decision on a regional council's request. We consider that the Minister of Conservation must make a recommendation within 20 working days of the council sending in a request based on the requirements of the bill as reported back.

### *Ability of regional councils to lift the moratorium*

Some submitters wanted councils to have the flexibility to lift the moratorium for their regions or parts of their region where they considered that appropriate. This could be done by requiring regional councils to consult with their communities on the way that aquaculture is provided for in their regional coastal plans. It was suggested councils use the Local Government Act 1974 special consultative procedure and take some formal action such as public notice to lift the moratorium.

We disagree. We consider the Order in Council mechanism for lifting the moratorium is constitutionally appropriate. Councils, that are satisfied that their plans are robust in relation to managing aquaculture, can initiate the lifting of the moratorium in their regions by requesting the Minister to make a recommendation. Such requests can be made in respect of operative regional coastal plans or in association with requests to the Minister to approve new regional coastal plans or plan changes.

### *Dual role of the Minister of Conservation*

Some submitters suggested that the Minister for the Environment could be responsible for making the recommendation rather than the Minister of Conservation. This would make a clear distinction between approval of coastal plans and lifting of the moratorium. If the dual role remained with the Minister of Conservation, it could place her in a difficult situation. On the one hand, she may have submitted on a proposed regional council plan and approved the

final plan. This would indicate that she is satisfied that the plan promotes the purposes of the RMA (sustainable management of natural and physical resources). On the other hand she may wish to refuse to lift the moratorium in some regions because the proposed plan does not adequately provide for aquaculture.

We believe there should be a check in the system to ensure that the Minister of Conservation has information about the adequacy of the proposed plan before making a recommendation to the Governor-General.

We consider the Minister of Conservation should recommend the lifting of the moratorium because of her role in the coastal marine area under the RMA. It is important that her decisions are separate and that the criteria for lifting the moratorium are clear so that no conflict of interest or apparent conflict of interest may arise.

We recommend that lifting the moratorium can occur if:

- Regional councils request the Minister of Conservation to recommend lifting the moratorium for specific areas.
- The Minister of Conservation decides whether to make a recommendation after taking into account the following criteria:
  - (a) aquaculture is a controlled or discretionary activity in the area requested:
  - (b) the request is for an area that is of a size and location that, taking into account the relevant provisions of the 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:
  - (c) the early lifting of the moratorium would not prejudice the ability of the regional council to create aquaculture management areas in future planning processes.

### **Order of consideration of pending applications— section 150D**

Section 150D provides that, after the moratorium ends, the applications that were put on hold during the moratorium shall be considered under the new rules in force at that time. They will be dealt with in the order in which they were made to the regional council.

This is to ensure that plans and rules reflecting the overall direction of the reform dealing with held-over applications.

The RMA currently requires councils to deal with applications on a first-in first-served basis. However, councils actually process applications in the order in which applicants provide all the necessary information to the council. To do otherwise would mean that a dilatory early applicant could hold up the processing of later applications indefinitely.

Clarity was sought by one submission about whether greater weight is to be given to the proposed regional coastal plan in place at the end of the moratorium. We believe it would be beneficial to emphasise to give greater weight to proposed plans where there are rules classifying aquaculture activities as prohibited. We also consider in respect of section 150D(b) that there are already RMA practices that deal with the order of considering applications.

We recommend that:

- section 150D be clarified so that the consent authority must resume processing an application, and it must do so under the existing and proposed rules as they stand at the end of the moratorium. This includes any rule prohibiting an activity:
- a provision be included enabling the council to resolve to treat a rule in a proposed plan as having no effect until the plan is operative:
- section 150D(b) be deleted.

### **Transitional provisions—section 150E**

Councils are obliged to continue to receive, process and determine applications for coastal permits from 28 November 2001 until the bill is enacted. Section 150E applies once the moratorium is lifted or expires. The section applies to permits resulting from the applications caught by the moratorium under section 150B(1) and (3), but which the relevant council processed and granted before the bill is enacted. At the end of the moratorium the council may review any of these permits, and revise its conditions according to the coastal plan that has been developed. A permit relating to an area outside an AMA may be cancelled.

We received submissions suggesting that subsection (1)(a) should be redrafted to refer to applications for aquaculture generally or that

existing areas should not be able to change in character, scale or intensity during the moratorium.

We recommend that section 150E be simplified for clarity, and amended as a consequence of the changes to section 150B regarding the ‘cut-off’ point in the moratorium.

### **Compensation—section 150F**

Section 150F provides that no compensation will be payable by the Crown to any person for loss or damage arising from the moratorium. The provision was included to ensure the Crown was not subjected to claims for compensation, although it was considered unlikely that any such claims would succeed.

Some submitters likened the effect of the moratorium to the confiscation of property without compensation while others suggested the Crown would owe compensation for loss of business opportunities. Two submissions sought the extension of this provision to regional councils.

Compensation may be presumed to be payable for confiscation of property but loss of business opportunities does not amount to a confiscation of property rights. Councils are not covered by this provision as they have no duty to compensate when merely complying with their legal obligations.

We, therefore, do not recommend changes to this provision.

### **Business compliance cost statement**

We consider that the business compliance cost statement in the explanatory note of the bill as introduced, is inaccurate, unhelpful and unsatisfactory.<sup>1</sup>

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<sup>1</sup> It states “*there are no business compliance costs associated with the imposition of the moratorium on new marine farm developments.*”

## Appendix 1

### Background on main reform as supplied to the committee by the Ministry for the Environment

#### Need for main reform

The reform is intended to address problems that have been identified for the developing industry, regional councils and community impact. The Government has agreed to policy for new legislation that will:

- change the interface between the RMA and fisheries legislation so that regional councils are required to consider all environmental effects, including the impact that marine farming has on the aquatic environment and the use and sustainability of fisheries resources, when they are providing for aquaculture in RMA coastal plans:
- streamline the application and environmental assessment process for new marine farms by providing a single-permit approval process to be operated under the RMA:
- clarify the existing presumption against allowing occupation of coastal space to ensure that occupation of coastal space is controlled properly by plan provisions:
- provide regional councils with greater powers to manage and control (including staging) development within zones:
- require marine farm developments to take place within clearly defined 'Aquaculture Management Areas' (AMAs):
- provide for experimental aquaculture in AMAs tailored for that purpose:
- provide regional councils with additional rule-making powers to deal with competition for coastal space by all activities, including power to limit the coastal space that can be applied for in individual applications and power to determine appropriate mechanisms to allocate individual sites within zones, including AMAs:
- provide tendering provisions for regional councils to tender for the right to apply for coastal permits for space, including those for individual marine farm sites within each AMA, and as the default mechanism for the allocation of coastal space for aquaculture. Regional councils will retain 50 percent of the tender money:

- grandparent leases and licences under the Marine Farming Act into the new regime.

To support this new approach the Government will:

- provide policy guidance on the allocation of coastal space through a coastal policy statement, supported by the powers of the Minister of Conservation under the RMA and through involvement in the RMA processes; this will involve the Ministry of Fisheries and other agencies providing more input at the start of the planning process when identifying AMAs:
- improve coordination of Crown involvement in marine research and coastal planning to provide regional councils with guidance, support and information needed to implement the new approach to coastal planning.

## Appendix 2

**Table 1. Applications status at 28 November 2001**  
(Prepared on the basis of information supplied by councils and Department of Conservation)

|                          | Formally received but<br>no other action<br># | ha   | Publicly notified<br># | ha    | Non-notified<br>applications<br># | ha | Given a hearing<br>date in writing<br># | ha   | Being heard<br># | ha                      | Under appeal<br># | ha |
|--------------------------|---|------|------------------------|-------|-----------------------------------|----|---|------|------------------|-------------------------|-------------------|----|
| Environment<br>Waikato   | 1   | 400  | 1                      | 5     | 2                                 | 52 |   |      | 1                | 13 (exten-<br>sion)     |                   |    |
| West Coast RC            |   |      |                        |       |                                   |    |   |      | 4                | 115                     |                   |    |
| Chathams                 |   |      |                        |       |                                   |    |   |      |                  |                         |                   |    |
| Wellington RC            |   |      |                        |       |                                   |    |   |      |                  |                         |                   |    |
| Taranaki RC              |   |      |                        |       |                                   |    |   |      |                  |                         |                   |    |
| Manawatu-<br>Wanganui RC |   |      |                        |       |                                   |    |   |      |                  |                         |                   |    |
| Otago RC                 |   |      |                        |       |                                   |    |   |      |                  |                         |                   |    |
| Gisborne DC              | 1   | 4000 |                        |       |                                   |    |   |      |                  |                         |                   |    |
| Southland RC             | 1   | 4    | 1                      | Small |                                   |    |   |      | 3                | 60 (all 1<br>applicant) |                   |    |
| Auckland RC              | 22  | 6577 | 2                      | 1000  |                                   |    | 1                                       | 3    | 1                | 30                      |                   |    |
| Northland RC             | 11  | 182  | 7                      | 40    | 1                                 | NA |   |      | 1                | 2                       |                   |    |
| Bay of Plenty RC         |   |      | 2                      | 8579  |                                   |    |   |      |                  |                         |                   |    |
| Hawkes Bay RC            |   |      |                        |       |                                   |    | 1                                       | 2800 |                  |                         |                   |    |



|                | Formally received but<br>no other action<br># | ha                | Publicly notified<br># | ha    | Non-notified<br>applications<br># | ha | Given a hearing<br>date in writing<br># | ha   | Being heard<br># | ha | Under appeal<br># | ha  |
|----------------|---|-------------------|------------------------|-------|-----------------------------------|----|---|------|------------------|----|-------------------|-----|
| Canterbury RC  | 4   | 10872             | 4                      | 243   |                                   |    |   |      | 2                | 64 | 2                 | 80  |
| Marlborough DC | 11  | 3918              | 93                     | 4589  |                                   |    | 7                                       | 21   | 4                | 8  | 60 (now<br>68)    |     |
| Tasman DC      | 35-40   | 6000-10000        |                        |       |                                   |    |   |      |                  |    |                   |     |
| Total          | 86 to 91                                      | 31953 to<br>35953 | 110                    | 14456 | 3                                 | 52 | 9                                       | 2824 | 6                | 72 | 72 (now<br>80)    | 300 |

Additional applications received since 28 November, Marlborough 4, Otago 1, Canterbury 2

Total number of applications in 'process', excluding those under appeal: 240-245

Total hectares under applications in 'process', excluding those under appeal: 47789 - 51789 ha

## Appendix 3

### Committee process

The Resource Management (Aquaculture Moratorium) Amendment Bill was referred to the committee on 18 December 2001. The closing date for submissions was 8 February 2002. We received and considered 143 submissions from interested groups and individuals. We heard 90 submissions orally, which included holding hearings in Auckland. We also conducted a site visit to the Marlborough Sounds. Hearing evidence took thirty-two hours and forty-five minutes and consideration took nineteen hours and fourteen minutes.

We received advice from the Ministry for the Environment, Department of Conservation, and the Ministry of Fisheries.

### Committee membership

Damien O'Connor (Chairperson)

Gavan Herlihy (Deputy Chairperson)

Shane Ardern

Clayton Cosgrove

Ian Ewen-Street

Martin Gallagher

Phil Heatley

Mark Peck

Mita Ririnui

R Doug Woolerton

Shane Ardern was replaced by Hon Georgina te Heuheu

Phil Heatley was replaced by Hon Doug Kidd

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (majority)

Subject to this Act,

Text struck out by a majority

#### New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

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## 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
- (b) to provide regional councils with the opportunity, during the moratorium, to *<include rules>* *<provide>* in their regional coastal plans *<and proposed regional coastal plans>* *<to provide>* for—
  - (i) *<zones>* *<aquaculture management areas>* where aquaculture *<activities>* can be undertaken *<with a coastal permit>* *<only as a controlled or discretionary activity>*; and
  - (ii) *<zones>* *<areas>* where aquaculture is prohibited; and

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#### New (majority)

- (c) to make consequential amendments to fisheries legislation.

## Part 2

### Aquaculture *<moratorium>* *<activities>*

#### New (majority)

#### 4AA 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

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New (majority)

“**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 5

“(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)**— 10

“(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 15

“(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 20

“**spat catching** means the taking of spat

“**taking**, in relation to spat catching, has the same meaning as in the Fisheries Act 1996”. 25

**4AAB 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** 30

“(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.

**New (majority)**

|  |          |
|--|----------|
| “(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   | 5        |
| “(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—   | 10       |
| “(a) the rule is subject to a resolution under <b>subsection (1)</b> ; and   |          |
| “(b) the resolution has not been rescinded.”   |          |
| <b>4AAC New section 68A inserted</b>   | 15       |
| The principal Act is amended by inserting, after section 68, the following section:  |          |
| <b>“68A Aquaculture activities</b>   |          |
| “(1) A regional coastal plan and a proposed regional coastal plan may include—   | 20       |
| “(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.” | 25<br>30 |

|  |    |
|--|----|
| <b>4 New section 87AA inserted</b>   |    |
| The principal Act is amended by inserting, before section 87, the following section: | 35 |

**“87AA This Part subject to Part 6A**  
This Part applies subject to **Part 6A.**”

**New (majority)**

**4A Description of type of activity to remain the same**  
Section 88A of the principal Act is amended by adding the  
following subsection: 5  
“(3) This section applies subject to **section 150D.**”

**5 New Part 6A inserted**  
The principal Act is amended by inserting, after section 150,  
the following part:

**“Part 6A** 10  
**“Aquaculture moratorium**

**“150A Interpretation**  
In this Part, unless the context otherwise requires,—

**Struck out (majority)**

**“application—**  
“(a) means an application for a coastal permit to occupy a 15  
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

**New (majority)**

**“application** means an application for a coastal permit for 20  
aquaculture activities

**Struck out (majority)**

**“aquaculture activities** includes marine farming and spat  
catching  
**“marine farming—**



**Struck out (majority)**

- “(a) means breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest; but
- “(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 5
- “(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 10

- “**moratorium** means the period—
- “(a) beginning on 28 November 2001; and
- “(b) ending on the close of— 15
- “(i) the date that is 2 years after the commencement of the **Resource Management (Aquaculture Moratorium) Amendment Act 2001**; or
- “(ii) in relation to a coastal marine area described in an order made under **section 150C**, the date specified in the order. 20

**Struck out (majority)**

- “**occupy** has the same meaning as in section 12(4)
- “**region**, in relation to a unitary authority, means district
- “**regional council** includes a unitary authority to the extent it has regional functions under the Resource Management Act 1991 25
- “**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 30
- “**spat catching**—
- “(a) means the taking of spat; and
- “(b) includes the holding or ongrowing of spat after it is taken.

“150B Moratorium

“(1) **Subsection (2)** applies ~~<if>~~ ~~<to>~~—

**Struck out (majority)**

- “(a) an application is made to a regional council before the moratorium; and
- “(b) the council has not, before the moratorium,— 5
- “(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.

**New (majority)**

- “(a) an application that requires notification if it is made to a consent authority before the moratorium and the consent authority has not, before the moratorium, notified the application: 10
- “(b) an application that does not require notification if— 15
- “(i) it is made to a consent authority before the moratorium; and
- “(ii) the consent authority has not, before the moratorium, decided not to notify the application under section 94.
- “(2) The ~~<regional council>~~ ~~<consent authority>~~ must not ~~<consider and decide whether to approve>~~ ~~<process or determine>~~ the application until the moratorium has expired in relation to the area that the application relates to. 20
- “(3) **Subsection (4)** applies if an application is made to a ~~<regional council>~~ ~~<consent authority>~~ during the moratorium. 25
- “(4) The ~~<regional council>~~ ~~<consent authority>~~—
- “(a) must not ~~<consider>~~ ~~<process>~~ the application; and
- “(b) must not ~~<approve>~~ ~~<determine>~~ the application; and
- “(c) must return the application, and any fee accompanying it, to the applicant as soon as practicable. 30

**Struck out (majority)**

“(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.

**New (majority)**

“(5) This section does not apply to an application if— 5  
 “(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 10  
 “(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 2001** as the date on which the moratorium ends in relation to a coastal marine area described in the order. 15 20

“(2) The Minister must not make a recommendation unless—  
 “(a) the regional council concerned has requested the Minister to make the recommendation; and

**Struck out (majority)**

“(b) the Minister has taken into account— 25  
 “(i) the purpose of the moratorium; and  
 “(ii) the provisions in the relevant regional coastal plan, including rules providing for the size and location of zones in which aquaculture activities are allowed or prohibited.

**New (majority)**

- “(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 5
  - “(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 10
  - “(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. 15
- “(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. 20
- “(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** 25

**Struck out (majority)**

“A regional council that resumes consideration of an application under **section 150B(2)** must—

**New (majority)**

“On expiry of the moratorium, a consent authority must—  
“(aa) resume processing an application that **section 150B(2)** applies to; and

“(a) *<consider and decide whether to approve>* *<process and determine>* the application under rules in the regional coastal plan *<in force>*, and *<in>* any proposed regional coastal plan *<under consideration>*, *<as>* at the end of the moratorium. 5

**Struck out (majority)**

“(b) deal with the application, in relation to other applications, in the order in which the application was made to the regional council. 10

**“150E Transitional provision****Struck out (majority)**

“(1) This section applies to coastal permits—  
“(a) to occupy a coastal marine area for aquaculture activities; and 15  
“(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. 20

**New (majority)**

“(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 2001**; or 25

New (majority)

“(b) the consent authority decided, during the moratorium but before the commencement of the **Resource Management (Aquaculture Moratorium) Amendment Act 2001**, 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 <lawfully occupied by the holder for aquaculture activities> <subject to—> 5

New (majority)

“(a) a coastal permit; or  
“(b) a marine farming lease or licence under the Marine Farming Act 1971. 10

“(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— 15  
“(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)**. 20

“(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 25  
“(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— 30  
“(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.”

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**New (majority)**

**Part 3**

**Consequential amendments to fisheries legislation**

**6 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).”

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**7 Lapse, cancellation, and surrender of permit**

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

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“(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.”

**8 New section 67OA inserted**

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

20

“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.”

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**9 Review of marine farming permit conditions**

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

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

**New (majority)**

“(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.”

- 10 Authority to catch spat** 5  
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)”.
- 11 Duration of spat catching permit** 10  
Section 67S(2) of the Fisheries Act 1983 is amended by omitting the words “Sections 69K and 67O”, and substituting the words “Sections 67K, 67O, and **670A**”.
- 12 Application of Resource Management Act 1991** 15  
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.”

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**Legislative history**

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|------------------|--|
| 10 December 2001 | Introduction (Bill 181-1)                                  |
| 18 December 2001 | First reading and referral to Primary Production Committee |

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