

Resource Management (Aquaculture Moratorium) Amendment Bill

Government Bill

As reported from the committee of the whole House

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

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Subject to this Act,

Text inserted

Hon Marian Hobbs

Resource Management (Aquaculture Moratorium) Amendment Bill

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Contents

1	Title		150C Earlier expiry of moratorium in relation to specified areas
	Part 1		
	Preliminary provisions		150D Pending applications to be considered under rules as at end of moratorium
2	Commencement		150E Transitional provision
3	Purpose		150F No compensation
	Part 2		
	Aquaculture activities		
4AA	Interpretation		
4AAB	New section 20A inserted		
	20A Certain rules in proposed regional coastal plans not to have effect	6	Marine farming permits
4AAC	New section 68A inserted	7	Lapse, cancellation, and surrender of permit
	68A Aquaculture activities	8	New section 670A inserted
4	New section 87AA inserted		670A Effect of moratorium on coastal permits on marine farming permits
	87AA This Part subject to Part 6A		
4A	Description of type of activity to remain the same	9	Review of marine farming permit conditions
5	New Part 6A inserted	10	Authority to catch spat
	Part 6A	11	Duration of spat catching permit
	Aquaculture moratorium	12	Application of Resource Manage- ment Act 1991
	150A Interpretation		
	150B Moratorium		

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
- (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 **subsection (1)**; and
 - “(b) the resolution has not been rescinded.”

4AAC New section 68A inserted 15
The principal Act is amended by inserting, after section 68, the following section:

- “68A Aquaculture activities**
- “(1) A regional coastal plan and a proposed regional coastal plan may include— 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
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4 New section 87AA inserted 35
The principal Act is amended by inserting, before section 87, the following section:

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

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:

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“(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
“Aquaculture moratorium

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“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
coastal marine area for aquaculture activities; and

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“(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
aquaculture activities

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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)

“(1) 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.

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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.

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New

“(2) For the purposes of **subsection (1)**, rules in a proposed regional coastal plan include any rule prohibiting an activity if the plan has been notified under clause 5 of Schedule 1.

“(3) **Subsection (2)** applies subject to **section 20A**.

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

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

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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
 - “(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—>

New (majority)

- “(a) a coastal permit; or
 - “(b) a marine farming lease or licence under the Marine Farming Act 1971.
- “(3) No person may do anything under a coastal permit until the moratorium has expired in relation to the area that the permit relates to.
- “(4) At the end of the moratorium, a regional council may—
- “(a) review the conditions in a coastal permit; and
 - “(b) amend the conditions so that they comply with the rules that apply at the end of the moratorium.
- “(5) If a coastal permit relates to a restricted coastal activity, section 119A applies in relation to the amendment of conditions under **subsection (4)(b)**.
- “(6) At the end of the moratorium,—
- “(a) no person may carry on any aquaculture activities under a coastal permit in any area in which aquaculture is prohibited; and
 - “(b) the coastal permit ceases to have any effect and is deemed to be cancelled.
- “(7) For the purposes of section 125, the commencement date of a coastal permit is the later of—

- “(a) the day after the date on which the moratorium ceases to apply to the coastal permit; or
- “(b) the day after the date on which the regional council notifies the holder of the permit of the result of a review under **subsection (4)**. 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

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).” 15
- 7 Lapse, cancellation, and surrender of permit**
Section 67O of the Fisheries Act 1983 is amended by inserting, after subsection (2), the following subsection: 20
- “(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: 25
- “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.” 30

New (majority)

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|--|-----------|
| <p>9 Review of marine farming permit conditions</p> <p>(1) Section 67P(1)(b) of the Fisheries Act 1983 is amended by adding the expression “; or”.</p> <p>(2) Section 67P(1) of the Fisheries Act 1983 is amended by adding the following paragraph:</p> <p>“(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.”</p> | <p>5</p> |
| <p>10 Authority to catch spat</p> <p>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)”.</p> | <p>10</p> |
| <p>11 Duration of spat catching permit</p> <p>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”.</p> | <p>15</p> |
| <p>12 Application of Resource Management Act 1991</p> <p>Section 6 of the Fisheries Act 1996 is amended by adding the following subsection:</p> <p>“(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.”</p> | <p>20</p> |

**Resource Management (Aquaculture
Moratorium) Amendment**

Legislative history

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