

Law

KG

310

W

S No. 179

1



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 30 April 1996

RESOURCE MANAGEMENT AMENDMENT BILL (NO. 3)

Proposed Amendments

Hon. SIMON UPTON, in Committee, to move the following amendments:

New clause 18A: To insert after line 25 on page 10 the following new clause:

18A. Notification of applications—Section 93 (1) (d) of the principal Act is hereby amended by omitting the words “the Marine Farming Act 1971, or”.

Clause 72: To omit all the words in line 18 on page 31, and substitute the following words:

“carry on those activities;—
but nothing in this subsection authorises any activity that would contravene the provisions of Part IVA of the Fisheries Act 1983.”

New heading inserted: To insert before *clause 82* the following heading:

Repeal of Marine Farming Act 1971

New clauses 84 to 98: To add after line 29 on page 36 the following new clauses and heading:

84. Consequential amendments—(1) The enactments specified in the **Schedule** to this Act are hereby amended in the manner indicated in that Schedule.

(2) Regulation 2 of the Freshwater Fish Farming Regulations 1983 is hereby amended by omitting from the definition of “transfer” the words “a leased or licensed area within the meaning of the Marine Farming Act 1971”, and substituting the words “an area subject to a marine farming permit issued under the Fisheries Act 1983”.

85. Marine farming leases and licences deemed to be marine farming permits under Fisheries Act 1983—

(1) Every lease or licence executed under section 8 of the Marine Farming Act 1971 (in this section called a “marine

farming lease or licence”) shall on the commencement of this section be deemed—

- (a) To be a marine farming permit issued under section 67J of the Fisheries Act 1983; and
- (b) To have been issued on the same terms and conditions (including those set out in any enactment, whether or not repealed or revoked by this Act, except to the extent that they are inconsistent with Part IV_A of the Fisheries Act 1983) as applied to the marine farming lease or licence immediately before the commencement of this section.

(2) Notwithstanding **subsection (1)** of this section, where an application under section 13 of the Marine Farming Act 1971 for extension of term or variation of a marine farming lease or licence has been made but not determined before the commencement of this section,—

- (a) That Act shall continue to apply in respect of that application; and
- (b) On the date that an extension or variation is granted pursuant to any such application, **subsection (1)** of this section shall apply in respect of the lease or licence so extended or varied as if references in that subsection to the commencement of this section were references to the date the extension or variation was granted.

(3) Nothing in this section authorises the holder of a lease or licence that is deemed to be a marine farming permit to carry out any activity that would contravene any of sections 12, 14, and 15 of the principal Act.

86. Marine farm lessees and licensees deemed to hold spat catching permit—(1) Every person who immediately before the commencement of this section was the holder of a lease or licence executed under section 8 of the Marine Farming Act 1971 shall, subject to **subsection (3)** of this section, be deemed to hold a spat catching permit issued under section 67Q of the Fisheries Act 1983.

(2) The spat catching permit shall—

- (a) Be deemed to have been issued for a period of 5 years commencing with the date of commencement of this section; and
- (b) Subject to **subsection (3)** of this section, apply in respect of spat of the species of fish, aquatic life, or seaweed specified in the lease or licence immediately before the commencement of this section (or, where appropriate, on the date a variation of the kind referred to in **section 85 (2)** of this Act is granted); and
- (c) Apply only in respect of the area within which marine farming was authorised under the lease or licence.

(3) Where a lease or licence that is deemed by **section 85** of this Act to be a marine farming permit authorised the farming of a species specified in **section 67L (1) (c)** of the Fisheries Act 1983, the holder of the lease or licence shall not be deemed to hold a spat catching permit in respect of spat of that species.

Amendments to Fisheries Act 1983

87. Sections to be read with Fisheries Act 1983—This section and **sections 88 to 98** of this Act shall be read together with and deemed part of the Fisheries Act 1983 (in those sections referred to as the principal Act).

88. Marine farming permit—Section 67J of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) The Director-General may require the applicant to supply, within such time as the Director-General may specify,—

“(a) Such plans or survey information relating to the proposed permit area as the Director-General may specify; and

“(b) Such other additional information as the Director-General thinks fit,—

and the Director-General may postpone the processing or final determination of the application until the information or plans are received.”

89. Effect of marine farming permit—(1) Section 67L (1) of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is hereby amended by omitting from paragraph (b) (ii) the expression “permit—”, and substituting the expression “permit; and”.

(2) Section 67L (1) is hereby further amended by inserting, after paragraph (b), the following paragraph:

“(c) Subject to **subsection (4)** of this section,—

“(i) To take from within the permit area any spat of blue mussel *Mytilus galloprovincialis*, green mussel *Perna canaliculus*, rock oyster *Saccostrea glomerata*, Pacific oyster *Crassostrea gigas*, or scallop *Pecten novaezelandiae*; and

“(ii) To sell, transfer, or dispose of that spat to any of the persons specified in section 67R (2) of this Act,—”.

(3) Section 67L is hereby further amended by inserting at the beginning of subsection (3) the words “Except as provided in **subsection (1) (c)** of this section,”.

(4) Section 67L is hereby further amended by adding the following subsection:

“(4) **Subsection (1) (c)** of this section applies to authorise the taking and the sale, transfer, and disposal of spat only to the extent that—

“(a) The spat is of a species authorised to be farmed under the marine farming permit; and

“(b) The spat has settled out of the water column while in the larval stage and has become attached to farm structures or introduced spat catching materials.”

90. Amendment of description of permit area—The principal Act is hereby amended by inserting, after section 67P (as inserted by section 6 of the Fisheries Amendment Act 1993), the following section:

“67PA. (1) If the Director-General is not satisfied that the description of the permit area in any marine farming permit is reasonably sufficient to identify the area, the Director-General may prepare and endorse on or attach to the holder’s copy of the permit and the copy retained by the Director-General an amended description of the permit area consented to by the permit holder.

“(2) Where the Director-General has, by notice in writing to the permit holder, requested consent to an amendment of the description of the permit area, and no reply to that request has been received by the Director-General from the permit holder within 3 months after the giving of the notice, the permit holder’s consent to the amended description shall not be necessary.

“(3) Where an amended description of the permit area is endorsed on or attached to any instrument pursuant to **subsection (1)** of this section, that description shall for all purposes be deemed to be the correct description of the permit area.”

91. Authority to catch spat—Section 67Q(1) of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is hereby amended by inserting, after the words “spat catching permit issued under this section”, the words “or under the authority of a marine farming permit to the extent specified in **section 67L (4)** of this Act”.

92. New sections inserted—The principal Act is hereby amended by inserting, after section 67s (as inserted by section 6 of the Fisheries Amendment Act 1993), the following sections:

“**67T. Marine farm closing orders**—(1) If at any time the Minister is satisfied on reasonable grounds that the whole or any part of a marine farming permit area used in the farming of fish, aquatic life, or seaweed, or any area in respect of which a spat catching permit has been issued, is—

“(a) Diseased; or

“(b) Infected by marine pests; or

“(c) Contaminated or likely to be contaminated by sewage or other cause—

to such an extent as to render fish, aquatic life, or seaweed in the area (whether farmed or not) unfit for human consumption or dangerous to human life, or to such an extent that the farming of fish, aquatic life, or seaweed or the taking of spat in the area is likely to be prejudiced, the Minister may, by notice in writing to the holder of the marine farming permit or spat catching permit, declare the area to be so diseased, infected by marine pests, or contaminated or likely to be contaminated.

“(2) Where the Minister makes a declaration under **subsection (1)** of this section the Minister may also, in the same or a subsequent notice in writing to the permit holder, order that—

“(a) No fish or aquatic life or seaweed be removed from the area while the notice remains in force; or

“(b) Fish or aquatic life or seaweed may be removed from the area only under such conditions as the Minister specifies in the notice; or

“(c) Fish or aquatic life or seaweed must be removed from the area, or be destroyed or disposed of, in such manner and within such time as the Minister specifies in the notice.

“(3) Any such order may require the permit holder to take specified steps for—

“(a) The purification or treatment of fish or aquatic life or seaweed farmed in the permit area:

“(b) The eradication from the permit area of the relevant disease, pests, or cause of contamination:

“(c) The destruction of diseased or contaminated fish or aquatic life or seaweed in the permit area, or its removal from that area and its disposal or destruction in a specified place or places.

“(4) The Minister may rescind or vary any declaration or order made under this section.

“(5) Every permit holder who fails to comply with an order given under this section commits an offence and is liable on conviction to a fine not exceeding \$100,000.

“67U. **No compensation to be paid**—No compensation shall be paid by the Crown to any person for or in respect of the removal or destruction or disposal of any fish, aquatic life, or seaweed pursuant to **section 67T** or **section 80AA** of this Act.”

93. Powers of Fishery Officer—Section 79 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Any Fishery Officer, and any officer in the employment of the Crown authorised by the Director-General, may, at all reasonable times, enter and inspect any marine farming permit area for the purpose of ensuring that the provisions of this Act and the terms and conditions of the marine farming permit are not being contravened.”

94. Powers in relation to diseased and contaminated fish, etc.—The principal Act is hereby amended by inserting, after section 80, the following section:

“80AA. If specifically authorised by the Director-General, a Fishery Officer or other officer in the employment of the Crown who has entered any marine farming permit area may take such actions (including the removal or destruction of any diseased or contaminated fish, aquatic life, or seaweed) as are considered necessary for the purpose of ensuring that the provisions of any order made under **section 67T** of this Act are complied with.”

95. Injury or damage to marine farm or spat catching area—Section 101A of the principal Act (as inserted by section 8 of the Fisheries Amendment Act 1993) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Every person (unless authorised under this Act) commits an offence, and is liable to a fine not exceeding \$5,000, who takes, removes, disturbs, or interferes with the spat of any fish, aquatic life, or seaweed that—

“(a) Is specified in a spat catching permit issued under section 67Q of this Act, or is spat to which **section 64L (4)** of this Act applies; and

“(b) Is in the exclusive and continuous possession or control of the holder of the spat catching permit or marine farming permit within the area to which the permit relates.”

96. Obstructing holder of marine farming or spat catching permit—Section 101B of the principal Act (as inserted by section 8 of the Fisheries Amendment Act 1993) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Every person commits an offence, and is liable to a fine not exceeding \$5,000, who obstructs, hinders, or prevents any person—

“(a) Who holds a spat catching permit issued under section 67Q of this Act, or a marine farming permit that by virtue of **section 67L (1) (c) and (4)** of this Act authorises the taking of spat; or

“(b) Who is employed by or acting under the authority of a person who holds such a permit—

from catching or holding spat of the species specified in the spat catching permit or marine farming permit from the area to which the permit relates.”

97. Removing diseased or contaminated fish, aquatic life, or seaweed—The principal Act is hereby amended by inserting, after section 101B, the following section:

“101c. Every person commits an offence, and is liable on conviction to a fine not exceeding \$100,000, who, without the prior consent in writing of the Director-General,—

“(a) Removes diseased or contaminated fish, aquatic life, or seaweed from one marine farm permit area to another marine farm permit area; or

“(b) Having removed diseased or contaminated fish, aquatic life, or seaweed from any marine farm permit area, places or casts the fish, aquatic life, or seaweed into any tidal water outside the area.”

98. Regulations—(1) Section 89 (1) of the principal Act is hereby amended by inserting, after paragraph (h), the following paragraphs:

“(ha) Providing for the management and control of the well-being of fish, aquatic life, or seaweed in the area farmed under a marine farming permit:

“(hb) Regulating the removal or sale of fish, aquatic life, or seaweed farmed under a marine farming permit:

“(hc) Authorising the Minister to prescribe steps to be taken by any holder of a marine farming permit or spat catching permit to keep the permit area free from disease, infection by marine pests, and contamination by sewage or other cause:

“(hd) Prescribing matters in relation to the design, construction, and positioning of structures, rafts, longlines, and other equipment to be used in any area subject to a marine farming permit or a spat catching permit, or prohibiting the use in any such area of any structure, raft, longline, or other equipment, for the purpose of ensuring any such structure, raft, longline, or other equipment does not affect the sustainability of any fishery or the health of the farmed fish.”

(2) Section 89 of the principal Act is hereby amended by inserting, after subsection (1c), the following subsection:

“(1D) Without limiting anything in **subsection (1)** of this section, any regulations made under any of **paragraphs (ha) to (h)** of that subsection in relation to marine farming or spat catching, or marine farming permits or spat catching permits, may prescribe different fees for different species of fish, aquatic life, or seaweed, and different fees for different areas.”

New Schedule: To insert after *new clause 98* the following Schedule:

Section 84

SCHEDULE

Enactment	Amendment
1971, No. 15—The Marine Reserves Act 1971 (R.S. Vol. 22, p. 751)	By omitting from section 4(1) the words “lease or licence under the Marine Farming Act 1971”, and substituting the words “marine farming permit under the Fisheries Act 1983”.
1974, No. 45—The Farm Ownership Savings Act 1974 (R.S. Vol. 34, p. 497)	By omitting from section 2(2)(c) the words “lease or licence granted under the Marine Farming Act 1971”, and substituting the words “marine farming permit issued under the Fisheries Act 1983”.
1983, No. 14—The Fisheries Act 1983 (R.S. Vol. 27, p. 137)	<p>By adding to the definition of the term “marine farming permit” in section 2(1) (as inserted by section 2(1) of the Fisheries Amendment Act 1993) the words “; and includes a lease or licence deemed by section 85 of the Resource Management Amendment Act 1995 to be a permit issued under section 67J of this Act”.</p> <p>By omitting from section 30(4) the words “leased or licensed area as defined in the Marine Farming Act 1971”, and substituting the words “area subject to a marine farming permit”.</p> <p>By omitting from each of subsections (1), (2), and (2)(ba) of section 67A the words “permit issued under section 67J of this Act, or the holder of a lease or licence under the Marine Farming Act 1971” (as inserted by section 5 of the Fisheries Amendment Act 1993), and substituting in each case the words “marine farming permit”.</p> <p>By omitting from section 67I (as also so inserted) the definition of the term “marine farming lease or licence”.</p> <p>By repealing section 67J(1)(a) (as also so inserted).</p> <p>By omitting from section 67Q(1) (as also so inserted) the words “or under the authority of the Marine Farming Act 1971”.</p> <p>By repealing section 67Q(2)(a)(iii) (as also so inserted).</p> <p>By omitting from section 67Q(5) (as also so inserted) the words “, or under section 14E of the Marine Farming Act 1971”.</p> <p>By repealing section 67R(2)(c) (as also so inserted).</p> <p>By repealing section 88(3).</p> <p>By omitting from section 107EA(1)(a) (as inserted by section 3 of the Fisheries Amendment Act 1994) the words “or the Marine Farming Act 1971”.</p> <p>By repealing section 107EA(2)(f) (as so inserted).</p> <p>By omitting from both subsection (1)(d)(i)(A) and subsection (7)(a) of section 107EC (as also so inserted) the words “or the Marine Farming Act 1971”.</p>

EXPLANATORY NOTE

This Supplementary Order Paper proposes a number of amendments to the Resource Management Amendment Bill (No. 3) in relation to marine farming. The amendments are as follows:

Provisions consequential upon repeal of Marine Farming Act 1971 (clauses 18A and 72, and new clauses 84 to 86):

Clause 82 of the existing Bill proposes to repeal the Marine Farming Act 1971. The existing *clause 72* deals with the transitional resource management aspects of that repeal by deeming marine farming leases and licences granted under the Act to be coastal permits.

The proposed new *clauses 85 and 86* now deal in similar manner with the fisheries aspects of the repeal. They deem marine farming leases and licences to be marine farming permits issued under section 67J of the Fisheries Act 1983, and (except where no spat catching permit is needed for certain species by virtue of the amendment in new *clause 89*) deem holders of such leases and licences to also hold 5-year spat catching permits issued under section 67Q of that Act.

The existing *clause 72* is amended to make it clear that the new *section 426* of the Resource Management Act 1991 does not authorise any activity that would contravene the Fisheries Act 1983.

New *clauses 18A and 84*, and the *Schedule*, deal with purely consequential matters, removing references to the Marine Farming Act 1971 from various enactments.

Provisions amending the marine farming regime in the Fisheries Act 1983 (new clauses 87 to 98):

In this area the Supplementary Order Paper proposes to amend the Fisheries Act 1983 by—

- (a) Providing a limited right to take spat of certain shellfish as an integral part of the activity authorised by a marine farming permit, thereby removing the need to obtain a separate spat catching permit (new *clauses 89 and 91*, and consequentially *clauses 95 and 96*); and
- (b) Inserting a number of provisions that currently exist in the Marine Farming Act 1971 and that are seen as appropriate to the marine farming regime in the Fisheries Act 1983.

These are as follows:

(i) Provisions allowing the Director-General to require an applicant to provide survey information in respect of a marine farm permit area (*clause 88*, taken from section 43 (1) of the Marine Farming Act 1971), and to correct the description of a permit area (*clause 90*, taken from section 18 of the 1971 Act):

(ii) Provision for the Minister to make various declarations and orders where a marine farm or spat catching area is affected by disease or marine pests or contaminated or likely to be contaminated by sewage or other cause (*clause 92*, taken from section 42 of the 1971 Act), and for related inspections and actions (*clauses 92, 93, and 94*, taken from sections 41 and 42 of the 1971 Act):

(iii) A provision that no compensation is to be paid for the removal or destruction or disposal of diseased or contaminated fish, aquatic life, or seaweed pursuant to the provisions referred to in paragraph (ii) above (*clause 92*, new *section 67v*, taken from section 42A of the 1971 Act):

(iv) An offence provision in relation to the removal or disposal of diseased or contaminated fish, aquatic life, or seaweed (*clause 97*, taken from section 33 of the 1971 Act):

(v) Various regulation-making powers in relation to marine farming (*clause 98*, taken from section 48 of the 1971 Act).