

House of Representatives

Supplementary Order Paper

Thursday, 4 August 2011

Aquaculture Legislation Amendment Bill (No 3)

Proposed amendments

Hon Phil Heatley, in Committee, to move the following amendments:

Clause 13: new section 25A

Subsections (9) and (10): to omit these subsections (lines 19 to 28 on page 21) and substitute the following subsections:

- “(9) The chief executive must decline the application, if the applicant does not lodge—
 - “(a) an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under section 186ZI(2) of the Fisheries Act 1996; or
 - “(b) a compensation declaration with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under **section 186ZIA(2)** of the Fisheries Act 1996.
- “(10) The chief executive must grant the application and issue the permit if the applicant lodges—
 - “(a) an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under section 186ZI(2) of the Fisheries Act 1996; or
 - “(b) a compensation declaration with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under **section 186ZIA(2)** of the Fisheries Act 1996.

Subsection (13): to insert after “agreements” (line 38 on page 21) “and compensation declarations”.

Subsection (14): to insert the following definition after the definition of **commercial fishing** (after line 7 on page 22):

“**compensation declaration** means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in **Schedule 2**”

Clause 15: new section 26A

Subsections (9) and (10): to omit these subsections (lines 33 to 37 on page 25 and lines 1 to 5 on page 26) and substitute the following subsections:

“(9) The chief executive must decline the application, if the applicant does not lodge—

“(a) an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under section 186ZI(2) of the Fisheries Act 1996; or

“(b) a compensation declaration with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under **section 186ZIA(2)** of the Fisheries Act 1996.

“(10) The chief executive must grant the application and issue the permit if the applicant lodges—

“(a) an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under section 186ZI(2) of the Fisheries Act 1996; or

“(b) a compensation declaration with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under **section 186ZIA(2)** of the Fisheries Act 1996.

Subsection (13): to insert after “agreements” (line 15 on page 26) “and compensation declarations”.

Subsection (14): to insert the following definition after the definition of **commercial fishing** (after line 22 on page 26):

“**compensation declaration** means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in **Schedule 2**”

Clause 20

New section 44(2)(b): to omit “is not lodged with the chief executive within 6 months from the date of the notice” (lines 4 and 5 on page 30) and substitute “or compensation declaration is not lodged with the chief executive in accordance with section 186ZI (as applied by **subsection (3)**) or **section 186ZIA** (as applied by **subsection (3A)**), as the case may require”.

New section 44(3A): to insert the following subsection after *subsection (3)* (after line 14 on page 30):

“(3A) Subpart 4 of Part 9A of the Fisheries Act 1996 applies to a compensation declaration referred to in **subsection (2)(b)**, with the following modifications:

- “(a) **section 186ZN** applies to the persons who are quota owners as at 5 pm on the date on which public notice is given under **subsection (2)(b)**; and
- “(b) **section 186ZIA(1)(b)** applies as if it referred to 6 months after the date of the notice under **subsection (2)(b)**.

New section 44(4): to insert after “aquaculture agreement” (line 20 on page 30) “compensation declaration”.

New section 44(5): to insert after “aquaculture agreement” in both places where it appears (lines 25 and 29 on page 30) “compensation declaration”.

Clause 21

New section 44I(2): to omit this subsection (lines 1 to 6 on page 37) and substitute the following subsection:

- “(2) The only person who may apply for a coastal permit to occupy the agreed space or identified space for aquaculture activities is the holder of—
 - “(a) an authorisation for the space, being an authorisation allocated under **section 44D(2)(b) or 44E**; and
 - “(b) either—
 - “(i) an aquaculture agreement registered under section 186ZH of the Fisheries Act 1996; or
 - “(ii) a compensation declaration registered under **section 186ZHA** of the Fisheries Act 1996.

New section 44J(4): to insert after “aquaculture agreement” (line 30 on page 37) “or a compensation declaration”.

New section 44J(5A): to insert the following subsection after *subsection (5)* (after line 6 on page 38):

“(5A) Subpart 4 of Part 9A of the Fisheries Act 1996 applies to a compensation declaration referred to in **subsection (4)**, with the following modifications:

- “(a) **section 186ZN** applies to the persons who are quota owners as at 5 pm on the date on which public notice is given under **section 44(2)(b)**; and
- “(b) **section 186ZIA(1)(b)** applies as if it referred to 6 months after the date of the notice under **section 44(2)(b)**.

Heading to new section 44K: to insert after “agreement” (line 8 on page 38) “or compensation declaration”.

New section 44K(2): to add “or to provide compensation in accordance with **sections 186ZN and 186ZQ** of the Fisheries Act 1996 on behalf of all the iwi aquaculture organisations” (line 24 on page 38).

New section 44K(6): to insert the following subsection after *subsection (5)* (after line 6 on page 39):

“(6) Subpart 4 of Part 9A of the Fisheries Act 1996 applies to a compensation declaration referred to in **subsection (5)**, with the following modifications:

“(a) **section 186ZN** applies to the persons who are quota owners as at 5 pm on the date on which public notice is given under **section 44(2)(b)**; and

“(b) **section 186ZIA(1)(b)** applies as if it referred to 6 months after the date of the notice under **section 44(2)(b)**.

New section 44L(2)(b): to insert after “agreement” (line 18 on page 39) “or compensation declaration”.

Clause 23

New section 47(2A)(b): to insert after “aquaculture agreement” (line 16 on page 43) “or compensation declaration”.

New section 47A(2A)(b): to insert after “aquaculture agreement” (line 1 on page 45) “or compensation declaration”.

Clause 27: new section 50A

Subsections (9) and (10): to omit these subsections (lines 1 to 10 on page 52) and substitute the following subsections:

“(9) The chief executive must decline the application, if the applicant does not lodge—

“(a) an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under section 186ZI(2) of the Fisheries Act 1996; or

“(b) a compensation declaration with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under **section 186ZIA(2)** of the Fisheries Act 1996.

“(10) The chief executive must grant the application and issue the permit if the applicant lodges—

“(a) an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under section 186ZI(2) of the Fisheries Act 1996; or

“(b) a compensation declaration with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time under **section 186ZIA(2)** of the Fisheries Act 1996.

Subsection (13): to insert after “agreements” (line 20 on page 52) “and compensation declarations”.

Subsection (14): to insert the following definition after the definition of **commercial fishing** (after line 27 on page 52):

“**compensation declaration** means a statutory declaration that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in **Schedule 2**”

New clause 38A

To insert the following clause after *clause 38* (after line 5 on page 64):

38A Heading to subpart 4

The heading to subpart 4 of Part 9A is amended by adding “and compensation declarations”.

Clause 39: new section 186ZD

To insert the following definition after the definition of **aquaculture agreement** (after line 13 on page 64):

“**compensation declaration** means a statutory declaration to the effect that compensation has been provided, in accordance with **sections 186ZN and 186ZQ**, to all affected quota owners”

Clause 40

To omit this clause (lines 17 to 23 on page 64) and substitute the following clause:

40 New section 186ZE substituted

Section 186ZE is repealed and the following section substituted:

“**186ZE Registers of aquaculture agreements, pre-request aquaculture agreements, and compensation declarations**”

“(1) The chief executive must keep—

“(a) a register of aquaculture agreements; and

“(b) a register of pre-request aquaculture agreements; and

“(c) a register of compensation declarations.

“(2) Sections 186K(2) to (6), 186L, and 186M apply, with all necessary modifications, to each register.”

Clause 41: new section 186ZF

Subsection (1): to omit this subsection (lines 29 to 32 on page 64) and substitute the following subsection:

“(1) An aquaculture agreement lodged with the chief executive for registration must—

“(a) contain the consents required under **subsection (2)** to the aquaculture activities begin undertaken in the area concerned; and

- “(b) be accompanied by information showing that each registered quota owner has had a reasonable opportunity to consider whether to consent.

New clause 42B

To insert the following clause after *clause 42A* (after line 29 on page 65):

42B New section 186ZHA inserted

The following section is inserted after section 186ZH:

“186ZHA Lodging compensation declarations with chief executive for registration

- “(1) If a compensation declaration lodged with the chief executive for registration does not comply with this subpart, the chief executive must—
 - “(a) return the declaration to the person who lodged it or another person whom the chief executive considers is entitled to receive it; and
 - “(b) provide reasons to the person to whom the declaration is returned as to why the declaration has not been registered.
- “(2) If a compensation declaration lodged with the chief executive for registration complies with this subpart, the chief executive must—
 - “(a) register the declaration in the register of compensation declarations kept by the chief executive; and
 - “(b) notify the person who lodged it, or another person whom the chief executive considers is entitled to receive notification, that the declaration has been registered.
- “(3) In deciding whether to register a compensation declaration, the chief executive is entitled to rely on the information in the declaration as sufficient evidence that compensation has been provided to quota owners in accordance with **sections 186ZN and 186ZQ**, unless the chief executive has notice of evidence to the contrary.”

New clause 43A

To insert the following clause after *clause 43* (after line 12 on page 66):

43A New section 186ZIA inserted

The following section is inserted after section 186ZI:

“186ZIA Period within which compensation declaration must be lodged for registration

- “(1) A compensation declaration must be lodged with the chief executive for registration—
 - “(a) on the approved form and be accompanied by the prescribed fees; and

- “(b) within 6 months after the date of the notification of the reservation under **section 186H(2)(a)** in relation to the coastal permit concerned.
- “(2) However, the chief executive may give a person a further 3 months to lodge a compensation declaration if the chief executive is satisfied that—
 - “(a) the person has taken reasonable steps to provide compensation to quota owners in accordance with **sections 186ZN and 186ZQ**; and
 - “(b) the person requires further time to provide the compensation.
- “(3) An extension of time may be granted under **subsection (2)** only—
 - “(a) once to a person in respect of aquaculture activities in the same area; and
 - “(b) if the person concerned applies in writing to the chief executive not later than 1 month before the expiry of the 6-month period specified in **subsection (1)(b)**.
- “(4) The period of 6 months referred to in **subsection (1)(b)** does not include—
 - “(a) any extension of time granted under **subsection (2)**; and
 - “(b) the period beginning on the day on which the person submitted a request to an arbitrator under **section 186ZO** and ending on the day on which the arbitrator makes a decision or determination under **section 186ZP**; and
 - “(c) the period beginning with the day on which proceedings are brought seeking judicial review of the chief executive’s decision to register the compensation declaration and ending on the day on which the proceedings are finally disposed of.”

Clause 44

To omit “ ‘, 186ZI, or **186ZM**’ ” (line 15 on page 66) and substitute “ ‘, **186ZHA**, 186ZI, or **186ZM**’ ”.

New clause 44A

To insert the following clause after *clause 44* (after line 15 on page 66):

44A Chief executive must notify regional council of certain matters

Section 186ZK(2) is amended by adding the following paragraph:

- “(g) the name of the person who made a compensation declaration registered by the chief executive and the area the declaration relates to.”

Clause 45

To insert the following subclauses after *subclause (3)* (after line 28 on page 66):

- (3A) Section 186ZL(3)(b) is amended by inserting “, or compensation declaration,” after “aquaculture agreement”.
- (3B) Section 186ZL(3)(c) is amended by inserting “or a declaration” after “agreement”.

Clause 46

Heading to clause 46: to omit “**heading and section 186ZM**” (line 8 on page 67) and substitute “**headings and sections 186ZM to 186ZR**”.

New heading and sections 186ZN to 186ZR: to insert the following heading and sections after *new section 186ZM* (after line 37 on page 68):

“Compensation

“186ZN Compensation to be provided by coastal permit holder to affected quota owners if aquaculture agreement not lodged

- “(1) This section applies if—
 - “(a) the chief executive has, in relation to a coastal permit, made a reservation in relation to commercial fishing of quota management stock; and
 - “(b) the holder of the coastal permit has not lodged an aquaculture agreement in respect of the stock before the expiry of the period specified in **section 186ZI(1)(b)** or any extension of that period under **section 186ZI(2)**.
- “(2) If the holder of the permit wishes to undertake aquaculture activities authorised by the permit, the holder must provide to each affected quota owner compensation for the loss of value of the owner’s affected quota as determined by an arbitrator appointed in accordance with **section 186ZO**.
- “(3) In **subsection (2)**, **quota owner** means a person who is a quota owner as at 5 pm on the date on which the relevant reservation is notified in the *Gazette* under **section 186H(2)(a)**.

“186ZO Submission to arbitration

- “(1) The holder of a coastal permit may submit to an arbitrator a request to determine the amount of compensation to be provided under **section 186ZN** and the provisions of the Arbitration Act 1996 (other than those relating to the appointment of an arbitrator) apply as if this section were an arbitration agreement.
- “(2) For the purposes of the arbitration, an arbitrator is to be appointed—
 - “(a) by agreement between the holder of the coastal permit and all the quota owners; but

- “(b) if they cannot agree, then by the President of the Arbitrators and Mediators Institute of New Zealand Incorporated or a person authorised by the President.

“**186ZP Arbitrator to determine preliminary question about economic value of proposed aquaculture activities**

- “(1) Before determining the compensation to be provided to quota owners or a class of quota owners, an arbitrator must first determine the question in **subsection (2)**.
- “(2) The question is: which of the following is of materially greater economic value to New Zealand:
 - “(a) the proposed aquaculture activities; or
 - “(b) the fishing in relation to which the chief executive has made a reservation.
- “(3) The arbitrator must determine the question on the basis of data and analysis provided by—
 - “(a) the holder of the coastal permit; and
 - “(b) the quota owners concerned.
- “(4) In determining the question, the arbitrator must follow the methodology specified in any regulations made under **section 186ZR(1)(a)**.
- “(5) The arbitrator must determine the compensation payable to quota owners if the arbitrator determines the question in favour of the proposed aquaculture activities.
- “(6) The arbitrator must not determine the compensation payable to quota owners if the arbitrator—
 - “(a) determines the question in favour of the fishing in relation to which the chief executive has made a reservation; or
 - “(b) decides that the question cannot be determined one way or the other.

“**186ZQ Determination of compensation**

- “(1) In determining the compensation to be awarded to quota owners, an arbitrator must follow the methodology specified in any regulations made under **section 186ZR(1)(b)**.
- “(2) For the purposes of **section 186ZR(3)(a)(ii)**, the holder of the coastal permit and quota owners may submit proposals to the arbitrator that set out the maximum extent to which complementary use may be made of the site concerned for particular quota stocks and aquaculture activities.
- “(3) The level of compensation provided under **subsection (1)** must be the same for each quota share for each quota stock.
- “(4) The compensation awarded under **subsection (1)** must—

- “(a) be provided to the persons holding quota for the fish stock subject to the reservation; and
 - “(b) be provided only to the persons who held quota for the fish stock subject to the reservation on the day that the reservation was made.
- “(5) If, after the arbitrator has made an award, the holder of the coastal permit decides not to proceed with the aquaculture activities, then the holder of the permit must pay the quota owners’ reasonable costs and expenses, as determined by the arbitrator, for participating in the arbitration.

“**186ZR Regulations relating to compensation**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing,—
- “(a) for the purposes of **section 186ZP**, a methodology for determining whether the proposed aquaculture activities or the fishing in respect of which the chief executive has made a reservation is of greater economic value to New Zealand; and
 - “(b) for the purposes of **section 186ZQ**, a methodology for calculating the loss in value of affected quota due to the aquaculture activities authorised by a coastal permit.
- “(2) The methodology prescribed under **subsection (1)(a)** must set out the type of data and analysis required for determining whether the proposed aquaculture activities or the fishing in respect of which the chief executive has made a reservation is of greater economic value to New Zealand.
- “(3) The methodology prescribed under **subsection (1)(b)** must—
- “(a) provide for compensation to be calculated in proportion to the impact on fishing, including—
 - “(i) increased fishing costs and any consequential disruption costs as a result of the proposed aquaculture activities, including a sum by way of solatium to fishing interests for any adjustments required as a result of the impact of the aquaculture activities; and
 - “(ii) any complementary uses that might exist for the site in accordance with any submissions made under **section 186ZQ(2)**; and
 - “(iii) the loss in value of affected quota, but only in relation to that part of the relevant average annual catch that is estimated to have been reduced by the chief executive’s aquaculture decision; and

- “(b) provide for the calculation of compensation to be based on the size of the affected quota holding and the corresponding loss of quota value, including by reference to any recent transfers of the quota or associated annual catch entitlement.

Clause 82: new section 116A

Subsection (4): to omit *paragraph (c)* (lines 25 to 28 on page 84) and substitute the following paragraph:

- “(c) notify the applicant that the permit will not commence in the area affected by the reservation, unless—
 - “(i) an aquaculture agreement is registered in accordance with section 186ZH of the Fisheries Act 1996; or
 - “(ii) a compensation declaration has been registered under **section 186ZHA** of the Fisheries Act 1996.

Subsection (5): to insert after “Fisheries Act 1996” (line 32 on page 84) “, or a compensation declaration has been registered under **section 186ZHA** of that Act,”.

Schedule 1: new Schedule 2

Heading to new Schedule 2: to add “**and compensation declarations**” (line 2 on page 143).

New cross-heading: to insert the following cross-heading above *paragraph 1* (above line 3 on page 143):

Aquaculture agreements

Paragraph 1: to omit “this schedule” (line 6 on page 143) and substitute “**paragraphs 2 to 7**”.

New paragraph 2A: to insert the following paragraph after *paragraph 2* (after line 21 on page 143):

- 2A Section 186ZF(3) applies as if the words “the coastal permit to which they relate” were omitted, and the words “any deemed coastal permit that relates to the marine farming permit or spat catching permit to which the consent and aquaculture agreement relate were substituted”.

New cross-heading and paragraphs 8 and 9: to insert the following cross-heading and paragraphs after *paragraph 7* (after line 15 on page 144):

Compensation declarations

- 8 Subpart 4 of Part 9A of the Fisheries Act 1996 applies in relation to compensation declarations made for the purposes of **sections 25A, 26A, and 50A** of this Act subject to the modifications in **paragraph 9**.
- 9 In **sections 186ZN to 186ZR**,—

affected quota owner or **quota owner** is to be read as if it means a person who is the registered quota owner of the relevant quota management stock as at 5 pm on the date on which the chief executive gives public notification under **section 35A(8), 26A(8), or 50A(8)**, as the case may require

permit holder is to be read as if it means the applicant who made the application to which **section 25A, 26A, or 50A** applies, as the case may require.

Schedule 1A

New clause 18A(2)(c): to add (line 24 on page 145) “or a compensation declaration”.

New clause 18A(2)(d): to add (line 25 on page 145) “or a compensation declaration”.

New clause 18A(2)(e): to insert after “aquaculture agreement” (line 27 on page 145) “, a compensation declaration,”.

Schedule 1B

To insert the following regulation after *regulation 10* (after line 29 on page 146):

“10A Information to be entered in compensation declarations register

The chief executive must enter the following information in the compensation declarations register:

- “(a) the name and address of the regional council in whose region the area is situated that the compensation declaration relates to:
- “(b) a description of the space in the coastal marine area that the compensation declaration relates to:
- “(c) the name, address, email address (if any), and client number of the person who has requested the registration of the compensation declaration; and the name and client number of, and stocks held by, each quota owner who has been provided with compensation:
- “(d) the stocks that the compensation declaration relates to:
- “(e) the date on which the compensation declaration was registered:
- “(f) the coastal permit number or coastal permit application number which the compensation declaration relates to:
- “(g) the expiry date of the coastal permit that the compensation declaration relates to.

Explanatory note

This Supplementary Order Paper amends the Aquaculture Legislation Amendment Bill (No 3).

The principal and significant amendment is to *clause 46* to insert *new clauses 186ZN to 186ZR* into the Fisheries Act 1996. The new sections provide for arbitrated compensation to be provided to affected quota owners if the chief executive under the Fisheries Act 1996 (the **chief executive**) has made a reservation, in relation to a coastal permit for aquaculture activities, in respect of commercial fishing of quota stock, and the holder of the coastal permit has not registered an aquaculture agreement in respect of the stock.

The holder of the coastal permit may submit a request to an arbitrator to determine the compensation to be provided to quota owners. The person who is to be the arbitrator is to be agreed by the holder of the coastal permit and all quota owners or, failing agreement, by the President of the Arbitrators and Mediators Institute of New Zealand Incorporated.

Before proceeding to determine the compensation to be provided to quota owners, the arbitrator must determine a preliminary question. The question is which is of greater economic value to New Zealand: the proposed aquaculture activities or the fishing in relation to which the chief executive has made a reservation. If the arbitrator decides in favour of the fishing or cannot decide one way or the other, the process of arbitrated compensation comes to an end. If the arbitrator decides in favour of the aquaculture activities, the arbitrator must then proceed to determine the compensation to be provided to quota owners. The arbitrator must, in making the determination, follow the methodology specified in any regulations made under *new section 186ZR*.

After the arbitrator has determined the compensation and the holder of the coastal permit has provided the compensation to the quota owners, the holder of the coastal permit can register a statutory declaration (**compensation declaration**) with the chief executive to that effect. On completion of that, the coastal permit commences in relation to the area affected by the reservation.

The other amendments in this Supplementary Order Paper are directly related to this process of arbitrated compensation. For example—

- *clauses 13, 15, 20, and 27* are amended to apply the process to *new sections 25A, 26A, 44, 44I, 44J, 44K, and 50A* of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004:
- *clause 40* is amended to provide for a register of compensation declarations:
- *new clauses 42B and 43A* provide parallel provisions relating to the registration of compensation declarations:

- *clause 82* is amended to require the applicant for a coastal permit that is subject to a reservation in relation to quota stock to be notified that the permit does not commence until either an aquaculture agreement or a compensation declaration is registered.
-