

Continuing existing aquaculture: 'Re-consenting'

Aquaculture Legislation Amendment Bill (No 3)

This sheet provides information on:

- » what is currently required if a resource consent holder wants to continue the same aquaculture activity (commonly known as 're-consenting')
- » changes proposed to the Resource Management Act 1991 (the RMA) by the Aquaculture Legislation Amendment Bill (No.3) (the Bill) on the processing of applications to continue existing aquaculture activities.

Further information on planned changes to the way marine-based aquaculture is managed in New Zealand is available on the Ministry of Fisheries' website at www.fish.govt.nz. This includes:

- » Information sheet 1: Aquaculture Legislation Amendment Bill (No 3) – Overview of the reforms
- » Information sheet 2: Planning and consenting
- » Information sheet 3: Undue adverse effects on fishing test
- » Information sheet 4: Delivering the Māori Commercial Aquaculture Settlement
- » Information sheet 5: Implications for existing industry and applicants

Existing process to continue an aquaculture activity

Currently, under the RMA, resource consents in the coastal marine area (known as coastal permits) are issued for a finite period. When a consent is due to expire, the consent holder can apply for a new consent for the same activity. If they do this, they can continue to exercise the existing consent until the relevant council makes a decision to either approve or decline the application (section 124 of the RMA).

Priority given to existing consent holder

If a consent is due to expire and the new consent would be for the same aquaculture activity, then the existing consent holder's

application to occupy that coastal space is given priority by the relevant council. That means no other competing applications can be received for the same space until the council makes a decision on the current consent holder's application.

To trigger the priority status, the existing consent holder must apply for a new consent at least six months before the consent is due to expire (or between three to six months before expiry; at the discretion of the council).

It is important to note that, although the existing consent holder's application has priority, this does not amount to a right of renewal, or even a presumption that the existing consent will be renewed.

Additional matters council must consider before re-consenting an activity

If an application satisfies this time frame and is for the same aquaculture activity, then the regional council must also:

- » 'consider' whether the applicant:
 - complied with the relevant regional coastal plan
 - complied with the resource consent conditions for their current and previous aquaculture activities
 - used current industry good practice for any current aquaculture activities (section 165Z) of the RMA)
- » 'have regard to' the value of the investment of the existing consent holder (section 104(2A) of the RMA).

The council must take into account other relevant matters under the RMA.

Proposed changes to RMA

The proposed changes to re-consenting provisions are part of the wider changes proposed to the law governing aquaculture. These changes are aimed at reducing regulatory costs, delay and uncertainty and promoting investment by providing:

- » a timely, efficient and transparent process for making decisions on aquaculture applications
- » more certainty for investors and other stakeholders
- » improved incentives for aquaculture development.

Less information required

The Bill proposes amendments to section 88 of the RMA. Applicants seeking a new consent for the same aquaculture activity will only need to provide information on environmental effects if these have changed since the original consent was granted, or if there has been a change in the environment. This will make the process of re-consenting simpler and less costly.

Priority given to all consents required – not just to occupy the coastal space

The Bill proposes amendments to ensure that priority is given to processing all consents the applicant requires to carry on the aquaculture activities (that is, all consents required under sections 12 and 15 of the RMA) and not just the existing coastal permit to occupy space (Clause 93 of the Bill).

Removal of requirement for council to consider current industry good practice

Proposed amendments will remove the need for regional councils to consider whether current industry good practice is being applied. What constitutes current industry good practice is unclear, and may create uncertainty and constrain innovation. Instead, the consent conditions will generally refer to the industry codes of practice that must be adhered to (if considered applicable by the council).

No undue adverse effects on fishing decision required

The Bill proposes that a decision about undue adverse effects (UAE) on fishing will not be needed if:

- » the re-consenting process applies (section 165ZH of the RMA)
- » the new consent retains any conditions in the existing coastal permit that are material to the original UAE decision.

This is because the effect on fishing will be unchanged.

Improvements from other legislation – streamlining the RMA consent process

Changes made to the RMA via the Resource Management (Streamlining and Simplifying) Act 2009 will also help achieve quicker decisions from councils. These changes came into effect on 1 October 2009 and will benefit those seeking re-consents, as well as those seeking consents for the first time. The main improvements are:

Limits on ‘stopping the clock’

Councils have to process applications within certain time frames – these are set by law to help ensure things do not drag on. Under

the Resource Management (Streamlining and Simplifying) Act, councils can no longer stop the clock whenever they request further information from an applicant or commission a report. Instead the council can now only stop the clock once before a decision is made whether to notify a resource consent or not, and once after a resource consent has been notified (if it has been notified).

Limits on extending time frames

The use of time extensions by councils has been tightened. A council can now only extend a time frame up to twice the maximum period if special circumstances exist or the resource consent applicant agrees. For time frames to be extended even further, the applicant must agree. The council must have considered the interests of those affected by the extension and its duty to avoid unreasonable delay.

Discount policy regulations

A council must provide a discount on its charges for processing resource consents if its actions mean it breaches the statutory time frames specified in the RMA.

Non-legislative support

In addition to changes to the RMA, the Aquaculture Unit in the Ministry of Fisheries will:

- » develop guidance on best practice for re-consenting aquaculture
- » work with regional councils to ensure that their regional coastal plans support a simplified re-consenting regime.

What next?

The Aquaculture Legislation Amendment Bill (No 3) was introduced to Parliament on 9 November 2010 and has been referred to the Primary Production Committee, which will examine the Bill in more detail.

Information on the Select Committee process, including how to make a submission on the Bill, can be found at www.parliament.nz/en-NZ/PB/.

The closing date for submissions is Friday 11 February 2011.

Where to find out more

Information on the aquaculture reforms, including a link to the Aquaculture Legislation Amendment Bill (No 3) and marked-up copies of the RMA showing the proposed changes, is available at the Ministry of Fisheries’ website www.fish.govt.nz and at www.aquaculture.govt.nz.