

Information sheet 5

Aquaculture Legislation Amendment Bill (No 3) – Implications for the aquaculture industry and applicants

This information sheet is one of five explaining planned changes to the way marine-based aquaculture is managed in New Zealand. It outlines the implications of the proposed changes for existing marine farms, applications for which processing has not yet been completed, completion of the Tasman and Waikato interim aquaculture management areas (AMAs), and treatment of an area known as the Waikato Communal Area. The other information sheets describe various parts of the Bill in more detail, namely:

- » Information sheet 1: 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

What does the Bill aim to do?

The Aquaculture Legislation Amendment Bill (No 3) proposes changes to:

- » bring existing farms into the new law as smoothly as possible
- » extend the period for consent holders to apply to the council for an off-site farm review (to amend the permit to reflect the actual space being farmed) and enable off-site farm reviews in areas otherwise prohibited for aquaculture
- » provide a process for interim AMAs to become Gazetted aquaculture areas, in which applications will not be subject to a further UAE test
- » enable decisions to be made on outstanding aquaculture applications

- » fix irregularities with the authorisations for the Waikato Communal Area so that it is confirmed as a valid marine farming site under the Resource Management Act 1991 (RMA)
- » extend the period of marine farm leases subject to forfeiture action in Waikare Inlet.

What changes to the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 are proposed?

Existing farms

Existing marine farms will no longer be ‘deemed AMAs’ and will simply revert to being farms with resource consents, with no loss of rights or certainty.

- » existing consent holders (including deemed consent holders) wishing to make a new consent application for the same activity will continue to be given priority over other applicants seeking to farm in that space
- » the UAE test will not be required where the area being farmed remains the same.

Essentially, these provisions preserve the rights of existing marine farmers.

Interim AMAs

The Bill proposes that the two interim AMAs in Tasman and Waikato be completed under a similar process to the current (2004) regime. This recognises that both areas are a long way through the process and allowing them to continue is the simplest and most efficient thing to do.

The Bill proposes a new process to make the interim AMAs legal entities. Instead of relying on the relevant regional council’s

plan to translate an interim AMA into an AMA, a series of Gazette notices will be posted for the areas where aquaculture can be undertaken. These areas will be referred to as ‘Gazetted aquaculture areas’ and no further UAE test will be necessary at the resource consent stage, nor will the consent generate any additional Māori settlement space obligations.

Councils will be required to comply with the settlement obligations as provided for in the Maori Commercial Aquaculture Claims Settlement Act 2004 (but now moved into the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004). An additional amendment provides for the council to uphold any negotiated agreement with iwi and/or the trustee and aquaculture interests on the 20% of space to be allocated to iwi.

Outstanding applications

At present there are more than 60 outstanding consent applications of different types that are either progressing slowly under the pre-2004 law or are effectively ‘frozen’ under the current 2004 law.

Pre-moratorium applications

The Bill will allow processing of the last remaining pre-moratorium applications (applications notified before 28 November 2001) to be completed.

The Bill will amend the assessment made under the Fisheries Act 1983 to align it with the UAE test as it applies to new applications (which removes consideration of fisheries resources from the test) and will allow the applicants to negotiate aquaculture agreements. This will mean applications assessed as having an undue adverse effect on commercial fishing do not automatically have to be declined.

‘Frozen’ applications

The Bill will generally allow ‘frozen’ applications (which were lodged but not notified before the moratorium in 2001) to proceed on commencement of the new law. Frozen applications for space located within interim AMAs (including applications made between 1 January 2005 and 9 May 2006 – known as ‘SMW type’ applications) will be able to proceed once the interim AMA is completed. Applications outside interim AMAs will be considered against the new streamlined UAE test. Frozen applications in areas where aquaculture is prohibited in the relevant regional coastal plan will not be able to proceed unless a plan change is made, and will be cancelled on 31 December 2014.

For processing purposes, all applications for which processing is able to be resumed will be deemed to be lodged on the date of commencement of the new law, but in the order in which the applications were originally received.

Waikato Communal Area

The Waikato Communal Area is a 22.5-hectare marine farming site in the Coromandel Harbour established in 1983. It is used collectively by marine farmers in the area for spat holding and oyster depuration. There are a number of irregularities with the authorisations for this site, largely due to administrative errors.

The Bill fixes these irregularities by validating the area’s marine farming permit and ‘deeming’ the area to hold a coastal permit. The coastal permit authorises all aquaculture activities currently conducted in that area. The Bill includes conditions to this deemed coastal permit via a schedule to the Act. The deemed coastal permit will expire on 31 December 2023 (the date the original marine farming permit expires).

What next?

The Aquaculture Legislation Amendment Bill (No 3) has been introduced to Parliament and is expected to be referred to the Primary Production Select Committee, which will examine the Bill in 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/.

Where to find out more

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