

Aquaculture Legislative Reforms 2011 technical guidance note 3:

Aquaculture regulation-making power

This guidance note is one of a series explaining the changes to the way marine-based aquaculture is managed in New Zealand as a result of the aquaculture legislative reforms that made changes to the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, the Fisheries Act 1996, the Māori Commercial Aquaculture Claims Settlement Act 2004, and the Resource Management Act 1991 (RMA). The changes are effective from 1 October 2011.

This guidance note provides an overview of the new power enabling the Minister responsible for Aquaculture to recommend regulations to amend aquaculture-related provisions in a regional coastal plan by regulation.

In this guidance note, the term 'regional council' includes both regional and unitary councils.

Other guidance notes that describe different parts of the legislative reforms in more detail are:

- » Guidance note 1: Aquaculture planning and consenting
- » Guidance note 2: Managing demand in the coastal marine area
- » Guidance note 4: Re-consenting aquaculture

Purpose of the aquaculture regulation-making power

The legislative reforms enable central government to play a more active leadership role in aquaculture planning at a national or regional level.

The reforms do this through a new power in the RMA which gives the Minister responsible for Aquaculture the ability to recommend regulations to amend the way a regional coastal plan manages aquaculture activities (sections 360A–360C).

The intention is that the regulation-making power will be used in circumstances where other RMA processes and intervention tools are inadequate to achieve the Government's objectives for aquaculture management.

How the process will operate

Conditions that need to be satisfied

The Minister responsible for Aquaculture must satisfy a number of conditions before making a recommendation that a regulation be made under section 360A of the RMA.

The matter to be addressed must be deemed necessary or desirable for achieving the Government's policy for aquaculture. That policy may be expressed in documents such as the National Aquaculture Strategy and Action Plan (being developed at the time this guidance note was published), the Government's Economic Growth Agenda and the New Zealand Coastal Policy Statement 2010.

The regulation-making power can only be used for matters which are considered to be of regional or national significance.

Determining whether a particular matter is of sufficient significance will be a question of judgment for the Minister, and for Cabinet, whose agreement will be needed before the regulation can progress.

The Minister responsible for Aquaculture must consider the provisions of the regional coastal plan that will be affected by the proposed regulation (section 360B(2)(a)). In addition, any amendments made to the regional coastal plan must continue to give effect to any relevant national policy statement (such as the New Zealand Coastal Policy Statement 2010) and the

relevant regional policy statement. This is to ensure that any amendments are in keeping with the overall intent of the region's coastal planning framework. The amendments must also not conflict with any national environmental standard.

Consultation

In deciding whether a regulation should be made, the Minister responsible for Aquaculture must consult with the following stakeholders:

- » the Minister of Conservation
- » other Ministers — for example, the Minister for the Environment, the Minister of Māori Affairs and the Minister of Transport
- » any regional council that will be affected by the proposed regulation(s)
- » iwi authorities
- » the public

Section 360B(2A) sets out the manner in which consultation with the public and iwi authorities must be undertaken. While the Minister responsible for Aquaculture has flexibility in the method used, they must notify the public and iwi authorities of the proposed regulations, and provide adequate time and opportunity to comment. A public hearing is not statutorily required as part of this process.

It is anticipated that the consultation process will be administered by the Ministry of Fisheries or a Ministerial Advisory Panel established by the Minister responsible for Aquaculture. A report and recommendations must be made to the Minister on the outcomes of the consultation and these must be publicly notified.

Section 32 analysis

The legislative reforms amend section 32 of the RMA to include a new subsection which requires the Minister responsible for Aquaculture to undertake an evaluation of the appropriateness, alternatives, benefits and costs of any proposed amendments to a regional coastal plan before proceeding with a recommendation for a regulation.

This ensures that proposed amendments are evaluated in the same way as other plan and policy changes.

Regional coastal plan amended

Once the Minister responsible for Aquaculture is satisfied that the proposed amendments to the regional coastal plan satisfy the conditions set out in section 360B, they can make a recommendation to the Governor-General that the amendments proceed as regulations. The regional council will be notified of this decision.

Once the regulations are made, the amendment(s) they contain become part of the operative plan as if they were notified under clause 20 of Schedule 1 to the RMA. Any amendments made under section 360A may be subsequently amended by the Schedule 1 process, under section 360A, or under any other provision of the RMA.

Regional council obligations

Once regulations have been made under section 360A, the regional council whose regional coastal plan will be amended must publicly notify the amendments.

The public notice must provide a general description of the nature and effect of the regulations and specify the date on which the amendments come into force. This date will be specified in the regulations.

The regional coastal plan must then be amended in accordance with the regulations. This must occur by the date specified, or, if no date is specified, as soon as practicable after the regulations come into force. The process prescribed in the First Schedule of the RMA is not required to give effect to the amendments made through the regulations.

The regional council should ensure that its regional coastal plan is updated to reflect the amendments, or that a copy of the regulations is attached to every copy of the plan, including any version hosted on its website.

Where to find out more

Information on the aquaculture reforms is available at www.fish.govt.nz and www.aquaculture.govt.nz.

This document is intended to give general technical guidance on aspects of marine based aquaculture following the changes made by the 2011 aquaculture legislative reforms. It is not legal advice. For legal advice on any aspect of the reforms you should consult your lawyer.

The general disclaimer on the Ministry of Fisheries Website www.fish.govt.nz/en-nz/info/legal/default.htm also applies to this document and should be read in conjunction with it.

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