

Aquaculture Legislation Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Aquaculture Legislation Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill is a response to the outcome of a 2006 Environment Court decision (*SMW Consortium Limited v Tasman District Council*), which found that applications to occupy space for aquaculture activities may be made regarding areas that are not aquaculture management areas in operative regional coastal plans. As the 2004 aquaculture reforms did not contemplate such applications, the bill specifically seeks to clarify that applications to occupy space for aquaculture activities can be made only in relation to aquaculture management areas in operative coastal plans.

The bill would amend the four separate Acts that govern aquaculture in New Zealand—the Resource Management Act 1991, the Fisheries

Act 1996, the Maori Commercial Aquaculture Claims Settlement Act 2004, and the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. The minor recommended amendments set out below would address some omissions and clarify the bill's intent.

Fisheries Act 1996

We recommend an amendment to clause 8 of the bill, which establishes when a regional council may request an aquaculture decision from the chief executive of the Ministry of Fisheries. We recommend that new section 186D(1)(b) be amended to refer to section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (in addition to section 186H(1)(d)(ii) of the Fisheries Act 1996); this section relates to an aquaculture decision under an interim aquaculture management area where the chief executive of the Ministry of Fisheries has decided there are no undue adverse effects on fishing and the sustainability of fisheries resources in a certain area on the basis of a particular rule in a plan. The reference to section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 is needed to make it clear that the rule could not be amended or revoked until the chief executive of the Ministry of Fisheries made a further aquaculture decision.

We recommend that clause 9 (new section 186F(2)) be amended to also refer to section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. We also recommend amending new section 186F so that it refers to a determination under section 186E of the Fisheries Act 1996 or section 38 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, to reflect all of the circumstances in which the chief executive could make a determination. In addition, we recommend amending this clause to match the wording of clause 2(2)(b) of Schedule 1 of the Resource Management Act 1991. This minor amendment is necessary to ensure consistency throughout the relevant Acts. A minor amendment to section 186F(2) to refer to a "further" aquaculture decision is also recommended for consistency with section 186D(1)(b).

We recommend bringing a matter forward from the Aquaculture Legislation Amendment Bill (No 2), which would insert new clauses 9A and 9B (amending sections 186ZF and 186ZI of the Fisheries Act 1996) into the bill. For SMW-type applications this would clar-

ify the starting point of the six months a would-be marine farmer has for negotiating an aquaculture agreement with affected fisheries rights holders. While the Fisheries Act 1996 currently allows this negotiation period, the Act does not make it clear exactly when the six months should begin. We consider that this amendment would allow aquaculture development to progress faster than it does at present, as the bill intends; but, given the narrow scope of the legislation, we have been advised that the amendment should apply only to SMW-type applications.

Maori Commercial Aquaculture Claims Settlement Act 2004

We recommend amending new section 4(da) in clause 11(4) of the bill, referring to the definition of new space, to reflect its intent more clearly. The current wording of the bill could prevent an area in an aquaculture management area from being considered new space just because the area was identified in a previous plan, irrespective of whether it was in an aquaculture management area. We recommend amending the section to ensure that the definition of new space excludes space that was an aquaculture management area in the previous regional coastal plan.

We recommend bringing one matter forward from the Aquaculture Legislation Amendment Bill (No 2). This minor technical amendment would insert a definition of “regional council” into section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004 (the Interpretation section). Currently, the Act does not define “regional council”, and therefore there is a risk that the term might be linked to its definition under the Local Government Act 2002, which excludes the Marlborough, Tasman, Nelson, and Gisborne unitary authorities and the Chatham Islands Council. It was never intended that these authorities should be excluded from the requirements of the Act, so we consider defining the term to be necessary, and believe it should refer to the definition of regional council in the Resource Management Act 1991.

Resource Management Act 1991

We recommend amending clause 16 of the bill, to make it clear that coastal permits for any non-aquaculture activity could be granted

only if the activity would be compatible with the aquaculture activities “that may be undertaken in the aquaculture management area”. This amendment is necessary to direct councils to assess any applications for non-aquaculture activities against the provisions of the relevant plan.

New section 165BC deals with freezing coastal permit applications for the occupation of coastal space for aquaculture activities that were made between 1 January 2005 and 9 May 2006 (applications of the SMW type) until the relevant area becomes an aquaculture management area in an operative regional coastal plan (and has therefore been assessed for undue adverse effects). The intention was not to restrict applications in areas that are already aquaculture management areas in operative regional coastal plans (or deemed to be such), and we recommend an amendment to new section 165BC in clause 19 to make this clear.

Clause 21 inserts new section 165K, which deals with preserving space for allocation to the trustee under the Maori Commercial Aquaculture Claims Settlement Act. We recommend that new section 165K(1) be amended so that it indicates the circumstances where space is likely to be allocated to the trustee (that is, when it is “available space” in an aquaculture management area, or space covered by 150B(2) applications and SMW-type applications).

We also recommend amendments to clause 22. This clause amends Schedule 1A, and relates to the process for preparing and notifying regional plans and plan changes providing for aquaculture activities. We are concerned that new clause 1A of Schedule 1A is confusing in its current state. We therefore suggest a number of technical amendments to clarify the clause. The intention is to ensure that councils do not include as aquaculture management areas in proposed plans areas that are still subject to applications, or could be the subject of applications, under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

We recommend making it clear that contravening the restriction in this clause would not invalidate notification of the whole proposed plan or change, but only those parts of the plan that offended against the restriction itself. We also consider it necessary to specify the restriction in more detail. Specifically, we recommend that the clause specify that a council may not include an aquaculture management area in a proposed plan if the area is subject to a coastal permit or cer-

tificate of compliance authorising occupation for marine farming or spat catching activity that was granted before 2005; or a coastal permit authorising occupation for aquaculture activities that was granted pursuant to section 50(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or an application for a coastal permit for occupation for the purpose of aquaculture activities that pre-dates the reforms (but is not subject to section 150B(2) of the Resource Management Act 1991).

We also recommend making it clear that this restriction would apply only until an application for marine farming or spat catching permit in relation to the relevant space had been made under section 26(1) or 50(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 and determined; or an application in relation to the relevant space, which was continued under section 25 or 50(3) of that Act, had been determined.

We also recommend clarifying that councils could include areas that were subject to deemed coastal permits as aquaculture management areas in proposed plans or changes notified under clause 5 or clause 26 of Schedule 1. In addition, we recommend amending new clause 2 of Schedule 1A to make it clear that this is a restriction on notification of a proposed regional coastal plan or change to a regional coastal plan under clause 5 or clause 26 of Schedule 1. We also recommend that new subclause 3 be inserted to make it clear that an aquaculture decision would still be required if there had already been a determination, but it was tied to a rule in the regional coastal plan (or proposed regional coastal plan) and a subsequent plan change sought to amend the rule.

Submissions

We heard various opinions on the bill. Most were in support of the legislation in principle, although a number were of the view that more clarity was needed about the policy intent of some of the amendments and therefore sought minor technical amendments. Submitters were also concerned at the relatively short time allowed to assess the bill, and considered that there was insufficient consultation by the ministry. Many of the suggested amendments fell outside of the bill's narrow scope, and we consider that a number of the matters raised

would be better dealt with by the Aquaculture Legislation Amendment Bill (No 2).

A number of submitters raised the issue of undue adverse effects assessments for deemed aquaculture management areas, and suggested the bill should provide for a reassessment before any change in the character, intensity, or scale of occupation where this might materially affect fishing. There was never any intention in the 2004 aquaculture reforms that the Ministry of Fisheries should be able to carry out a further assessment of effects on fishing in deemed aquaculture management areas when there was a change in the type or intensity of marine farming activity. Once an area is deemed to be an aquaculture management area, the rules in the regional coastal plan or proposed regional coastal plan regulate what activities can be carried out. Section 30(2) of the Resource Management Act 1991 allows regional councils to consider the effects of aquaculture activities on fishing and fisheries resources when making decisions under the Resource Management Act 1991. Therefore, we do not consider any amendment necessary for such purposes.

Another concern for numerous submitters was the setting aside of an additional 20 percent of new aquaculture space for allocation to Maori to help the Crown meet its obligations regarding pre-commencement space. The 2004 aquaculture reforms intended that the Order in Council requiring councils to set aside an additional 20 percent of new space should include space covered by section 150B(2) applications, but a drafting error in the Maori Commercial Aquaculture Claims Settlement Act 2004 means that any Order in Council does not apply to space covered by section 150B(2) applications. Given that some applicants have already in good faith entered into planning processes based on the law as drafted, we consider that it would not be appropriate to amend the law at this late stage to allow space covered by such applications to be used to help the Crown meet its “pre-commencement space” obligations.

Appendix

Committee process

The Aquaculture Legislation Amendment Bill was referred to the committee on 5 August 2008. The closing date for submissions was 20 August 2008. We received and considered 19 submissions from interested groups and individuals. We heard nine submissions. We received advice from the Ministry for the Environment, the Ministry of Fisheries, and the Department of Conservation.

Committee membership

Hon David Carter (Chairperson)

R Doug Woolerton (Deputy Chairperson)

Dr Ashraf Choudhary

Phil Heatley

Hon Steve Maharey

Katherine Rich

Eric Roy

Hon Dover Samuels

Aquaculture Legislation Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Trevor Mallard

Aquaculture Legislation Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Aquaculture Legislation Amendment Act **2008**.
- 2 Commencement** 5
This Act comes into force on the day after the day on which it receives the Royal assent.
- Part 1**
Amendments to Aquaculture Reform
(Repeals and Transitional Provisions) Act 10
2004
- 3 Principal Act amended**
This **Part** amends the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- 4 Aquaculture decisions must not be made in relation to certain areas** 15
- (1) Section 39(c) is amended by omitting “, other than an application to which section 150B(2) of that Act applies,” and substituting “to occupy a coastal marine area for the purpose of an aquaculture activity”. 20
- (2) Section 39 is amended by adding the following subsection as subsection (2):
- “(2) However, **subsection (1)(c)** does not apply to the following applications:
- “(a) applications to which section 150B(2) of the principal Act applies: 25
- “(b) applications made in the period beginning on 1 January 2005 and ending with the close of 9 May 2006.”
- 5 Regional council must request aquaculture decision for coastal permit declined or withdrawn** 30
- (1) Section 51(1)(a)(iii) is amended by omitting “aquaculture management area or”.

- (2) Section 51(2) is amended by—
- (a) omitting “aquaculture management area or”; and
 - (b) omitting “under section 186D of the Fisheries Act 1996.”
- (3) Section 51 is amended by repealing subsection (3) and substituting the following subsection: 5
- “(3) Sections 38 to 44 apply to the request.”

6 Areas excluded from interim aquaculture management area or aquaculture management area

- (1) The heading to section 52 is amended by omitting “or aquaculture management area”. 10
- (2) Section 52 is amended by repealing subsections (2) and (3) and substituting the following subsections:
- “(2) If the chief executive of the Ministry of Fisheries has declined an application to which this section applies, whether before or after the commencement of this Act, the regional council must delete from an interim aquaculture management area any area to which the application applies. 15
- “(3) If the chief executive of the Ministry of Fisheries has granted an application to which this section applies, whether before or after the commencement of this Act, the area to which the application relates is to be treated as if the chief executive had made a determination under section 38 of this Act in relation to it and section 44 applies accordingly.” 20

Part 2 25

Amendments to Fisheries Act 1996

7 Principal Act amended

This **Part** amends the Fisheries Act 1996.

8 New section 186D substituted

Section 186D is repealed and the following section substituted: 30

“186D Request for aquaculture decision

- “(1) A regional council may request the chief executive to make—

“(a) an aquaculture decision in relation to an area to be included as an aquaculture management area in a proposed regional coastal plan:

“(b) a further aquaculture decision for the purposes of section 186H(1)(d)(ii) of this Act or section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

“(2) However, the regional council must not make a request in relation to an area to be included as an aquaculture management area in a proposed regional coastal plan under **subsection (1)(a)** if the area is an area in relation to which **section 186F** precludes the chief executive from making an aquaculture decision.”

9 New section 186F substituted

Section 186F is repealed and the following section substituted:

“186F Aquaculture decisions must not be made in relation to certain areas

“(1) The chief executive must not make an aquaculture decision if the decision would apply to an area—

“(a) that is subject to a deemed coastal permit under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or

“(b) that was the subject of a previous determination.

“(b) that is an aquaculture management area in relation to which a determination has already been made under section 186E of this Act or section 38 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

“(2) However, **subsection (1)** does not prevent the chief executive making ~~an~~ a further aquaculture decision for the purposes of section 186H(1)(d)(ii) of this Act or section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.”

9A Fishers whose consent is necessary for aquaculture agreement

Section 186ZF is amended by repealing subsection (5) and substituting the following subsection:

“(5) Where the regional council proposes to make an offer of authorisations for available space in an aquaculture management area under section 165E of the Resource Management Act 1991, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which notice is given under section 165G(2)(a) of the Resource Management Act 1991. 5

“(6) Where space in the coastal marine area is subject to applications to which **section 165BC** of the Resource Management Act 1991 applies, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which notice is given under section 165G(2)(c) of that Act.” 10

9B Period within which aquaculture agreements must be lodged for registration

Section 186ZI(1) is amended by repealing paragraph (b) and substituting the following paragraph: 15

“(b) within 6 months after,—

“(i) where an offer of authorisations is to be made under section 165E of the Resource Management Act 1991, the date referred to in section 186ZF(5); or 20

“(ii) where space in the coastal marine area is subject to applications to which **section 165BC** of the Resource Management Act 1991 applies, the date referred to in section 186ZF(6); or 25

“(iii) the date on which a notice of receipt is given under section 15(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004.”

Part 3

Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004 30

10 Principal Act amended

This **Part** amends the Maori Commercial Aquaculture Claims Settlement Act 2004.

11 Interpretation

- (1) The definition of **new space** in section 4 is amended by repealing paragraph (a)(ii) and substituting the following subparagraph:
- “(ii) space in the aquaculture management area that, at the date on which the relevant regional council identifies the new space under section 9(1), is subject to—
- “(A) an application for occupation of the coastal marine area for the purpose of an aquaculture activity that was made after 31 December 2004 and before the close of 9 May 2006; or
- “(B) an application to which section 150B(2) of the Resource Management Act 1991 applies; but”.
- (2) The definition of **new space** in section 4 is amended by repealing paragraphs (b) and (c) and substituting the following paragraph:
- “(b) does not include space that is pre-commencement space as defined in section 20; and”.
- (3) The definition of **new space** in section 4 is amended by repealing paragraph (d) and substituting the following paragraph:
- “(d) does not include space in an aquaculture management area if, before the space is made available for applications for coastal permits or allocations of authorisations, the regional council complied with section 9(1); and”.
- (4) The definition of **new space** in section 4 is amended by inserting the following paragraph after paragraph (d):
- “(da) does not include space in an aquaculture management area if the space is in a proposed regional coastal plan or in a proposed change to a regional coastal plan, and the space ~~was in the previous~~ is in an aquaculture management area in the operative regional coastal plan or, in the case of a change, in the current regional coastal plan; and”.
- (5) The definition of **new space** in section 4 is amended by adding “; but” to paragraph (e) and by also adding the following paragraph:

- “(f) does include space if—
- “(i) the space was in an aquaculture management area in a regional coastal plan; and
 - “(ii) the space was new space for the purposes of section 9(1); and 5
 - “(iii) authorisations and coastal permits have been allocated or granted in respect of the space, including the trustee; and
 - “(iv) the space subsequently ceases to be in an aquaculture management area; and 10
 - “(v) all coastal permits granted in respect of the space have expired and no further coastal permits have been granted in respect of the space; and
 - “(vi) the space is included in an aquaculture management area in a subsequent regional coastal plan.” 15
- (6) Section 4 is amended by inserting the following definition in its appropriate alphabetical order:
“regional council has the same meaning as in section 2(1) of the Resource Management Act 1991”.

Part 4

20

Amendments to Resource Management Act 1991

12 Principal Act amended

This **Part** amends the Resource Management Act 1991.

13 Interpretation

25

Section 2(1) is amended by repealing the definition of **aquaculture management area** and substituting the following definition:

“aquaculture management area—

- “(a) means an area established as an aquaculture management area in accordance with **section 165AB**; and
- “(b) includes part of an aquaculture management area”.

30

- 14 Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas**
- (1) Section 12A is amended by inserting the following subsection after subsection (1): 5
- “(1A) No person may apply for a coastal permit to occupy a coastal marine area for the purpose of an aquaculture activity except in an aquaculture management area in a regional coastal plan.”
- (2) Section 12A(3) is repealed.
- 15 Consideration of applications** 10
- Section 104(3)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:
- “(i) section 107, 107A, **107E**, or 217:”.
- 16 New heading and section 107E inserted**
- The following heading and section are inserted after section 107D: 15
- “Decisions on applications relating to non-aquaculture activities*
- “107E Decision on application to undertake non-aquaculture activity in aquaculture management area** 20
- “(1) This section applies when a person applies for a coastal permit to undertake an activity in an aquaculture management area and the activity is not an aquaculture activity.
- “(2) The consent authority may grant the permit only to the extent to which the activity is compatible with the aquaculture activities that may be undertaken in the aquaculture management area.” 25
- 17 Interpretation**
- The definition of **available space** in section 165A(a) is amended by repealing subparagraph (vi) and substituting the following subparagraph: 30
- “(vi) a coastal permit to occupy space in an aquaculture management area for activities that are not aquaculture activities if the activities authorised

by the coastal permit are not compatible with aquaculture activities; and”.

18 New section 165AB inserted

The following section is inserted after section 165A:

“165AB Establishment of aquaculture management areas 5

An area may be established as an aquaculture management area only in the following ways:

“(a) by being included in a regional coastal plan or proposed regional coastal plan in accordance with section 165C:

“(b) by becoming an aquaculture management area under section 44 or 45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.” 10

19 New sections 165BB and 165BC inserted

The following sections are inserted after section 165B:

“165BB Some applications for coastal permits must be cancelled 15

A consent authority must cancel an application for a coastal permit for the occupation of space in the coastal marine area for the purpose of aquaculture activities if the application—

“(a) is made after 9 May 2006 but before the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008**; and 20

“(b) does not relate to an aquaculture management area in a regional coastal plan as at the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008**. 25

“165BC Certain applications not to be processed or determined until aquaculture management area established in regional coastal plan

“(1) This section applies to applications for coastal permits for the occupation of space in the coastal marine area for the purpose of aquaculture activities made on or after 1 January 2005 but before 10 May 2006, being applications that (at the time of being made) did not relate to an aquaculture management area in a regional coastal plan. 30 35

- “(2) A consent authority must not process or determine an application until such time as the area to which the application relates becomes an aquaculture management area in a regional coastal plan.
- “(3) An application referred to in **subsection (2)** must be processed and determined under the rules in the regional coastal plan and any proposed regional coastal plan at the time the consent authority resumes processing the application. 5
- “(4) However, a consent authority must not grant a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation relating to commercial fishing, except to a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act. 10 15
- “(5) An application is deemed to be cancelled on and from the date on which a proposed regional coastal plan is notified under clause 5 of Schedule 1 after the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008** and to the extent that the application relates to an area covered by the plan and the plan provides for an aquaculture management area, but it does not include the area that the application relates to. 20
- “(6) An application is deemed to be cancelled on and from the day that is 10 years after the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008** to the extent that, by that date,— 25
- “(a) no proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1; or 30
- “(b) a proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1, but the plan contains no aquaculture management areas.
- “(7) This section— 35
- “(a) prevails over Part 7A; but
- “(b) applies subject to the Maori Commercial Aquaculture Claims Settlement Act 2004.

- “(8) In this section, **aquaculture management area** does not include an area that is deemed to be an aquaculture management area under section 45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.”
- 20 Provisions about aquaculture management areas** 5
Section 165C is amended by repealing subsection (5).
- 21 New section 165K substituted**
Section 165K is repealed and the following section substituted:
- “165K When applications not to be made or granted unless applicant holds authorisation** 10
- “(1) **Subsection (2)** applies to ~~available~~ space in the coastal marine area if—
- “(a) the space is available space and a regional coastal plan does not provide for the allocation of the space by an alternative to an offer of authorisations; or 15
- “(b) the space has been identified by a regional council as space for allocation to the trustee under section 9(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004. 20
- “(2) A person must not apply for, and a consent authority must not grant, a coastal permit authorising occupation of the space or identified space (as the case may be) for aquaculture activities unless the person is the holder of an authorisation for the space.
- “(3) **Subsection (4)** applies to space in a coastal marine area and the regional coastal plan provides for the allocation of authorisations of space by public tender or another method. 25
- “(4) A person must not apply for, and a regional council must not grant, a coastal permit authorising occupation of the space for activities that are not aquaculture activities unless the person is a holder of an authorisation for the space.” 30
- 22 Schedule 1A amended**
- (1) Clause 1 of Schedule 1A is amended by inserting the following subclause before subclause (1):

“(1AA) This Schedule applies to the preparation of, and changes to, a regional coastal plan to the extent that the plan provides for aquaculture activities.”

(2) Schedule 1A is amended by inserting the following clause after clause 1:

“1A Proposed regional coastal plans not to include areas subject to certain applications

A proposed regional coastal plan and a change to a regional coastal plan must not be notified under clause 5 or 26 of Schedule 1 if—

“(a) the plan or change contains areas described as aquaculture management areas; and

“(b) the areas are not subject to deemed coastal permits under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; and

“(c) the areas are subject to—

“(i) coastal permits or certificates of compliance that were granted or issued before 1 January 2005 and that authorised the occupation of a coastal marine area for the purpose of aquaculture activities; or

“(ii) applications for coastal permits (not being applications under section 150B(2)) that were made before 1 January 2005 and that were seeking authorisation for occupation of a coastal marine area for the purpose of aquaculture activities.

“1A Proposed regional coastal plan or proposed change to regional coastal plan must not describe certain areas as aquaculture management areas

“(1) A proposed regional coastal plan or a proposed change to a regional coastal plan must not describe an area as an aquaculture management area if the area comprises or includes space—

“(a) that is subject to an application—

“(i) to which section 25(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applies; and

“(ii) made by a person to whom section 25(2) of that Act applies; and

“(iii) which has not been determined or withdrawn; or

- “(b) that is, or may be, subject to an application—
 “(i) referred to in section 26(1)(b) of that Act; and
 “(ii) made by a person referred to in section 26(1)(a)
of that Act; and
 “(iii) where an application has been made, it has not 5
been determined or withdrawn; or
 “(c) that is subject to an application to which section 50(2)
of that Act applies; or
 “(d) that was subject to an application to which section 50(2)
of that Act applied and— 10
 “(i) the application was granted; but
 “(ii) the application for a marine farming permit or
spat catching permit referred to in section 50(3)
of that Act has not been made or has been made
but has not been determined or withdrawn. 15
- “(2) To avoid doubt, **subsection (1)** does not prevent a proposed
regional coastal plan or a proposed change to a regional coastal
plan describing as an aquaculture management area an area to
which a deemed coastal permit under the Aquaculture Reform
(Repeals and Transitional Provisions) Act 2004 relates. 20
- “(3) **Subsection (1)** does not apply to a proposed regional coastal
plan or a proposed change to a regional coastal plan if the pro-
posed plan or proposed change has been notified under clause
5 or 26 of Schedule 1 before the commencement of **Part 4 of**
the Aquaculture Legislation Amendment Act 2008. 25
- “(4) If a proposed regional coastal plan or a proposed change to
a regional coastal plan describes an area as an aquaculture
management area in breach of **subsection (1)**, then (to avoid
doubt)—
 “(a) the area is not, and is not to be treated as, an aquaculture 30
management area; and
 “(b) the breach does not invalidate the rest of the plan to the
extent that the rest of the plan is not inconsistent with
the area not being an aquaculture management area.”
- (3) Clause 2 of Schedule 1A is repealed and the following clause 35
 substituted:

“2 Assessment of undue adverse effects on fishing

- “(1) The regional council must not notify ~~the~~ a proposed regional coastal plan or a proposed change to a regional coastal plan under clause 5 or 26 of Schedule 1 until—
- “(a) the chief executive of the Ministry of Fisheries has made an aquaculture decision under section 186E of the Fisheries Act 1996 in relation to any area described in the plan as an aquaculture management area; and
- “(b) the regional council has complied with clause 3 of this Schedule.
- “(2) However, **subclause (1)** does not apply in relation to an area that is—
- “(a) subject to a deemed coastal permit under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
- “(b) an aquaculture management area in relation to which a determination has already been made under section 186E of the Fisheries Act 1996 or section 38 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- “(3) **Subsection (2)(b)** does not include a determination to which section 186H(1)(d)(ii) of the Fisheries Act 1996 or section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applies, if the proposed regional coastal plan or proposed change to a regional coastal plan proposes to revoke or amend the rule on which the determination was based.”
- (4) Clause 3(4) of Schedule 1A is amended by omitting “, and any other stocks or species not subject to the quota management system”.

Legislative history

24 July 2008

5 August 2008

Introduction (Bill 239-1)

First reading and referral to Primary Production
Committee

