



# Fisheries Amendment Act (No 3) 2004

Public Act 2004 No 104  
Date of assent 21 December 2004  
Commencement see section 2

## Contents

1	Title	
2	Commencement	
3	Purpose	
4	Interpretation	
5	Application of Resource Management Act 1991	
6	New sections 89A and 89B inserted	
	89A Exemption relating to farmed fish and spat catching	
	89B Exemption relating to customary rights orders	
7	Application of this Part	
8	New Part 9A inserted	
	<b>Part 9A</b>	
	<b>Aquaculture</b>	
	186C Interpretation	
	Subpart 1—Aquaculture decisions in relation to aquaculture management areas	
	186D Request for aquaculture decision	
	186E Chief executive to make aquaculture decision	
	186F Aquaculture decisions must not be made in relation to certain areas	
	186G Matters to be considered before aquaculture decision made	
	186H Requirements for aquaculture decision	
	186I Appeal against aquaculture decision	
	186J Judicial review of aquaculture decision	
	Subpart 2—Fish farmers	
	186K Fish farmer register	
	186L Information to be shown in fish farmer register	
	186M Access to fish farmer register	
	186N Fish farmer must advise chief executive of certain changes	
	186O Limitations on holding and dealing with fish farmer registration	
	186P Restriction on fish farming	
	186Q Exemptions	
	186R Applications to register as fish farmer	
	186S Decision on application	
	186T Section 186S subject to sections 30 and 31 of Aquaculture Reform (Repeals and Transitional Provisions) Act 2004	
	186U Effect of registration	
	186V Registration of fish farmer	
	186W Variation of registration	
	186X Appeal against suspension of fish farmer registration	
	186Y Revocation of registration	
	186Z Appeal against revocation of fish farmer registration	
	186ZA Subpart does not affect Freshwater Fish Farming Regulations 1983	
	186ZB Subpart does not apply to fish farming under customary rights order	

Subpart 3—Spat catching	11	Penalties
<i>Harvestable spat</i>	12	Forfeiture for section 252(2), (3), and (5) offences, offences carrying fine of \$100,000, repeat offences, and serious non-commercial offences
186ZC Alteration of Schedule 8A		
Subpart 4—Aquaculture agreements		
186ZD Interpretation		
186ZE Register of aquaculture agreements	13	New section 269 substituted
186ZF Fishers whose consent is necessary for aquaculture agreement		269 Suspension of permit, licence, or registration where levies unpaid
186ZG High Court may consent to aquaculture agreement on behalf of non-consenting persons	14	Interpretation
186ZH Lodging aquaculture agreements with chief executive for registration	15	Transfer of specified functions, duties, or powers to approved service delivery organisations
186ZI Period within which aquaculture agreements must be lodged for registration	16	Suspension of permit and refusal of services for non-payment of fees
186ZJ No proceedings to be taken against chief executive	17	General regulations
186ZK Chief executive must notify regional council of certain matters	18	Certain notices to have status of regulations
186ZL Memorials	19	Requirements applying generally to applications and requests under this Act
9 Restrictions on purchase or acquisition of fish by certain persons	20	New Schedule 8A inserted
10 New section 192A inserted	21	Environment Act 1986 amended
192A Restriction on acquisition of fish, aquatic life, and seaweed by fish farmers		

**Schedule**  
**New Schedule 8A inserted in**  
**principal Act**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Fisheries Amendment Act (No 3) 2004.
- (2) In this Act, the Fisheries Act 1996 is called “the principal Act”.

**2 Commencement**

This Act comes into force on 1 January 2005.

**3 Purpose**

The purpose of this Act is to—

- (a) remove the requirement for aquaculture activities to be authorised by a marine farming permit or spat catching permit granted under the Fisheries Act 1983; and

- (b) require all fish farmers to be registered under the Fisheries Act 1996; and
- (c) provide for the chief executive of the Ministry of Fisheries to make aquaculture decisions; and
- (d) provide for aquaculture agreements between the holders of fisheries rights and persons who wish to undertake aquaculture activities in a part of an aquaculture management area that is subject to a reservation relating to commercial fishing.

#### 4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definitions of **fish farm**, **fish farmer**, and **fish farming**, and substituting the following definitions:

“**fish farm** means,—

- “(a) in relation to a person registered as a fish farmer under Part 9A, the area and premises specified in the fish farmer’s registration;
- “(b) in relation to a person who holds a current licence under the Freshwater Fish Farming Regulations 1983, the area and premises specified in the licence

“**fish farmer** means a person—

- “(a) registered as a fish farmer under Part 9A; or
- “(b) who holds a current licence under the Freshwater Fish Farming Regulations 1983

“**fish farming**—

- “(a) means the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest; and
- “(b) to avoid doubt, includes the possession and ongrowing of harvestable spat; but
- “(c) does not include an activity specified in paragraph (a) if the fish, aquatic life, or seaweed—
  - “(i) is not in the exclusive and continuous possession or control of the fish farmer; or
  - “(ii) cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed”.

- (2) Section 2(1) of the principal Act is amended by omitting from the definition of **fisheries services** the words “, the Fisheries

Act 1983, or the Marine Farming Act 1971,”), and substituting the words “or the Fisheries Act 1983”.

- (3) Section 2(1) of the principal Act is amended by inserting in paragraph (c) of the definition of **fisheries services**, after the word “fishing” (in the second place where it occurs), the words “and fish farming”.
- (4) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
  - “**aquaculture activities** has the same meaning as in the Resource Management Act 1991
  - “**aquaculture decision** has the meaning given to it by section 186C
  - “**aquaculture management area** has the same meaning as in the Resource Management Act 1991
  - “**determination** has the meaning given to it by section 186C
  - “**farmed fish**, in relation to a fish farmer, means fish, aquatic life, or seaweed—
    - “(a) of a species specified in the fish farmer’s registration or licence under the Freshwater Fish Farming Regulations 1983 for the site concerned; and
    - “(b) that was not acquired in breach of section 192A
  - “**fish farmer register** means the register required to be kept under section 186K
  - “**harvestable spat** means the species of fish, aquatic life, or seaweed specified in Schedule 8A at the stage of the life cycle specified in that schedule
  - “**reservation** has the meaning given to it by section 186C”.

## 5 Application of Resource Management Act 1991

- (1) Section 6 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
  - “(2) Subsection (1) does not—
    - “(a) prevent a regional council from taking into account the effects of aquaculture activities on fishing or fisheries resources in establishing an aquaculture management area under section 165C of the Resource Management Act 1991; or
    - “(b) apply to a regional coastal plan to the extent that it establishes an aquaculture management area; or

- “(c) prevent any regional plan or coastal permit authorising the erection in the coastal marine area of a fish farm structure or other structure.”
- (2) Section 6(3) of the principal Act is amended by omitting from the definition of **occupy** the expression “12(4)”, and substituting the expression “2(1)”.
- (3) Section 6(4) of the principal Act is repealed.
- (4) Section 16 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 is consequentially repealed.

## **6 New sections 89A and 89B inserted**

The principal Act is amended by inserting, after section 89, the following sections:

### **“89A Exemption relating to farmed fish and spat catching**

Section 89(1) does not apply to the taking of farmed fish if taken in accordance with—

- “(a) section 186U; or  
“(b) an exemption granted under section 186Q.

### **“89B Exemption relating to customary rights orders**

Section 89(1) does not apply to the taking of fish, aquatic life, or seaweed if—

- “(a) the fish, aquatic life, or seaweed is taken from a site at which fish farming is being undertaken under a customary rights order under the Foreshore and Seabed Act 2004; and  
“(b) the fish, aquatic life, or seaweed has been lawfully acquired and transferred to that site and ongrown, or bred or cultivated at that site, in accordance with the customary rights order.”

## **7 Application of this Part**

Section 114(a) of the principal Act is amended by omitting the word “including”, and substituting the word “excluding”.

## **8 New Part 9A inserted**

The principal Act is amended by inserting, after Part IX, the following Part:

## **“Part 9A “Aquaculture**

### **“186C Interpretation**

In this Part,—

“**adverse effect**, in relation to fishing, means to restrict access for fishing or to displace fishing

“**aquaculture decision** means a determination or a reservation

“**determination**, in relation to an aquaculture management area, means a decision by the chief executive that he or she is satisfied that the aquaculture management area will not have an undue adverse effect on fishing

“**reservation**, in relation to an aquaculture management area, means a decision by the chief executive that he or she is not satisfied that the aquaculture management area will not have an undue adverse effect on fishing.

### **“Subpart 1—Aquaculture decisions in relation to aquaculture management areas**

#### **“186D Request for aquaculture decision**

- “(1) A regional council may request the chief executive to make an aquaculture decision in relation to an aquaculture management area.
- “(2) However, the regional council must not make a request in relation to an aquaculture management area that contains an area to which section 186F(1)(a), (b), or (c) applies.

#### **“186E Chief executive to make aquaculture decision**

- “(1) Within 6 months after accepting a request for an aquaculture decision, the chief executive must—
- “(a) make a determination; or
  - “(b) make a reservation; or
  - “(c) make 1 or more determinations or reservations or both in relation to different parts of the area.
- “(2) The chief executive may request the regional council that requested the aquaculture decision and any fisher whose interests may be affected to provide him or her with further information about the effects that the aquaculture management area would have on access to or displacement of fishing.

- “(3) For the purposes of subsection (1), the period beginning on the day when a request for further information is made and ending on the day when the information is provided is excluded from the 6-month period referred to in subsection (1).
- “(4) Before making an aquaculture decision, the chief executive must—
- “(a) consult the persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the aquaculture management area; and
  - “(b) consider any submissions made by those persons and organisations.

**“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 for which—
- “(a) a coastal permit under the Resource Management Act 1991 authorises occupation for the purposes of an aquaculture activity; or
  - “(b) a deemed coastal permit under section 10 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 is in force; or
  - “(c) an application for a coastal permit under the Resource Management Act 1991, other than an application to which section 150B(2) of that Act applies, has been made but not determined.
- “(2) However, subsection (1) does not prevent the chief executive making an aquaculture decision for the purposes of section 186H(1)(d)(ii).

**“186G Matters to be considered before aquaculture decision made**

In considering, for the purposes of making an aquaculture decision, whether an aquaculture management area will have an undue adverse effect on fishing, the chief executive must have regard only to the following matters:

- “(a) the location of the aquaculture management area in relation to areas in which fishing is carried out:

- “(b) the effect of the aquaculture management area on fishing of any fishery, including the proportion of any fishery likely to become affected:
- “(c) the degree to which aquaculture activities within the aquaculture management area will lead to the exclusion of fishing:
- “(d) the extent to which fishing for a species in the aquaculture management area can be carried out in other areas:
- “(e) the extent to which the aquaculture management area will increase the cost of fishing:
- “(f) the cumulative effect on fishing of any previous aquaculture activities.

**“186H Requirements for aquaculture decision**

- “(1) An aquaculture decision must—
  - “(a) be in writing; and
  - “(b) define the areas that are subject to the decision; and
  - “(c) provide reasons for the decision; and
  - “(d) if the decision is a determination based on a rule in a regional coastal plan or proposed regional coastal plan that relates to the character, intensity, or scale of the occupation of the aquaculture management area for aquaculture activities,—
    - “(i) specify the rule; and
    - “(ii) state that the rule may not be revoked or amended until the chief executive makes a further aquaculture decision in relation to the area affected by the revocation or amendment; and
  - “(e) be notified to the regional council.
- “(2) If the chief executive makes a reservation, the reservation must also include—
  - “(a) whether the reservation relates to customary, recreational, or commercial fishing or a combination of them; and
  - “(b) if the reservation relates only to commercial fishing, the stocks and areas concerned, specifying any stocks subject to the quota management system, any stocks or species specified in Schedules 4C and 4D, and any other stocks or species not subject to the quota management system; and

“(c) any other matters required by regulations to be included.

“(3) The chief executive must—

“(a) publicly notify the fact that he or she has made a determination or reservation; and

“(b) in the notice published for that purpose, include—

“(i) the information specified in subsections (1) and (2); and

“(ii) information about where a copy of the determination or reservation can be obtained.

**“186I Appeal against aquaculture decision**

“(1) The following persons may appeal to the High Court against an aquaculture decision:

“(a) the person who requested the aquaculture decision, being the regional council or the person specified in a notice given under section 165ZC of the Resource Management Act 1991:

“(b) any person consulted or who ought to have been consulted under section 186E(4):

“(c) any person who has an interest in the decision greater than the public generally.

“(2) An appeal must be filed within 3 months after public notification of the aquaculture decision.

“(3) The High Court may confirm or modify the aquaculture decision appealed against or substitute a different aquaculture decision.

**“186J Judicial review of aquaculture decision**

Any person wishing to seek, under Part I of the Judicature Amendment Act 1972, judicial review of an aquaculture decision must do so within 3 months after the public notification of the decision.

**“Subpart 2—Fish farmers**

**“186K Fish farmer register**

“(1) The chief executive must keep a fish farmer register.

“(2) The register may be kept in the form of information stored by means of a computer.

- “(3) The register may be kept in conjunction with any other register required to be kept under this Act.
- “(4) The Crown owns all the information in the register that is required by this Act to be contained in the register.
- “(5) The chief executive must, by notice in the *Gazette*, appoint the place at which the register is to be located and state the hours when the register is open for inspection by the public.
- “(6) Without limiting section 297, regulations made under that section may provide for the operation of the register under this section, including the electronic transmission of information for the purposes of this subpart.

“186L **Information to be shown in fish farmer register**

The fish farmer register must contain the information required by regulations made under section 297.

“186M **Access to fish farmer register**

- “(1) The fish farmer register is a public register for the purposes of the Privacy Act 1993.
- “(2) The fish farmer register must be open for inspection by members of the public on payment of the prescribed fee (if any) during the hours stated by notice in the *Gazette* under section 186K(5).
- “(3) The Crown is not liable in damages for any loss or damage resulting from—
  - “(a) any error in or omission from the fish farmer register; or
  - “(b) any inaccuracy in a search of the fish farmer register.
- “(4) The chief executive must, on request and payment of a reasonable charge fixed by the chief executive, supply to any person copies of all or any part of the fish farmer register.
- “(5) If the chief executive is satisfied, on the application of any person, that the disclosure of the person’s address (as entered in the register) would be prejudicial to the personal safety of the person or his or her family, the chief executive may direct that the information must not be made available for inspection or otherwise disclosed.

**“186N Fish farmer must advise chief executive of certain changes**

- “(1) A fish farmer must apply to the chief executive under section 186W to correct information in the fish farmer register relating to the fish farmer as soon as practicable after becoming aware that the information is incorrect or incomplete.
- “(2) To avoid doubt, subsection (1) applies to a change to a resource consent or certificate of compliance under the Resource Management Act 1991 that relates to the fish farmer’s aquaculture activities.
- “(3) Every fish farmer who contravenes subsection (1) commits an offence and is liable to the penalty set out in section 252(6).

**“186O Limitations on holding and dealing with fish farmer registration**

A fish farmer may not transfer, lease, or assign his or her registration as a fish farmer.

**“186P Restriction on fish farming**

- “(1) A person must not undertake fish farming except in accordance with—
- “(a) the person’s registration as a fish farmer; or
  - “(b) an exemption granted by the chief executive under section 186Q.
- “(2) Every person who contravenes subsection (1) commits an offence and is liable to the penalty set out in section 252(5).

**“186Q Exemptions**

- “(1) The chief executive may, by notice in the *Gazette*, grant an exemption for the purposes of section 186P(1)(b).
- “(2) In deciding whether to grant an exemption, the chief executive must have regard to—
- “(a) the scale of the fish farmer’s proposed fish farming operations, including the number of sites and the quantity of fish, aquatic life, or seaweed involved; and
  - “(b) the species of the fish, aquatic life, or seaweed proposed to be farmed; and
  - “(c) the use to which the farmed fish, aquatic life, or seaweed is to be put; and

- “(d) any other fishing related operations carried out or proposed to be carried out by the fish farmer; and
  - “(e) any other matter that the chief executive considers relevant.
- “(3) An exemption may be granted on such terms and conditions as the chief executive thinks fit.
- “(4) An exemption may be granted—
- “(a) to 1 or more persons or classes of persons; and
  - “(b) for fish farming generally or 1 or more different types of fish farming.
- “(5) However, the chief executive may grant an exemption to a specified fish farmer only if the fish farmer has—
- “(a) applied to the chief executive on the approved form for the exemption; and
  - “(b) paid to the chief executive the prescribed fee (if any).
- “(6) The chief executive may, by notice in the *Gazette*,—
- “(a) amend, add, or revoke any term or condition in the exemption; or
  - “(b) revoke the exemption.
- “(7) The chief executive must not do anything under subsection (6) unless the chief executive has provided the holders of the exemption with a reasonable opportunity to make submissions on the matter.
- “(8) Anything done under subsection (6) takes effect on and from the date specified for that purpose in the notice.

“186R **Applications to register as fish farmer**

- “(1) A person wishing to register as a fish farmer must apply to the chief executive on the approved form and pay the prescribed fee.
- “(2) The application must be accompanied by a copy of the appropriate resource consent or certificate of compliance under the Resource Management Act 1991 that applies to the area and premises specified in the application.
- “(3) The chief executive may—
- “(a) request an applicant to provide further information to enable the chief executive to make a decision on the application; and
  - “(b) defer making a decision on the application until the further information is provided.

**“186S Decision on application**

- “(1) The chief executive must grant or decline an application to register a fish farmer.
- “(2) The chief executive must decline an application if—
- “(a) the chief executive is not satisfied that—
    - “(i) the applicant has a resource consent or certificate of compliance under the Resource Management Act 1991 to use the space concerned for aquaculture activities; or
    - “(ii) the applicant has the consent of a person who has a resource consent or certificate of compliance under the Resource Management Act 1991 to use the space concerned for aquaculture activities; or
  - “(b) the applicant does have a resource consent or certificate of compliance under the Resource Management Act 1991, but the species of fish authorised to be farmed under the consent or certificate is different from the species of fish that the application relates to; or
  - “(c) the applicant proposes to farm a species and the farming of the species would contravene another enactment.
- “(3) The chief executive may decline an application if the applicant has been convicted within the 5 years immediately preceding the application of an offence involving fish, aquatic life, or seaweed.
- “(4) The chief executive may grant an application from an applicant specified in subsection (3), but only if the registration of the fish farmer is made subject to conditions that the chief executive considers necessary or desirable to ensure that the requirements of this Act are complied with.
- “(5) Without limiting the conditions that may be imposed under subsection (4), the chief executive may impose conditions relating to 1 or more of the following:
- “(a) the species of fish, aquatic life, or seaweed that may be farmed:
  - “(b) the processes and systems (including recordkeeping, reporting, storage, and labelling) that the applicant must use in operating the fish farm:
  - “(c) the involvement in the operations of the fish farm of any person convicted of a fisheries offence.

**“186T Section 186S subject to sections 30 and 31 of Aquaculture Reform (Repeals and Transitional Provisions) Act 2004**

Section 186S applies subject to sections 30 and 31 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

**“186U Effect of registration**

While a fish farmer’s registration is current, the fish farmer and any employee or agent of the fish farmer may do any of the following things to the extent authorised by, and in accordance with terms and conditions of, the registration:

- “(a) take farmed fish from a site specified in the registration; and
- “(b) possess, sell, or otherwise dispose of farmed fish.

**“186V Registration of fish farmer**

If the chief executive grants an application to register a fish farmer, the chief executive must—

- “(a) enter in the fish farmer register—
  - “(i) the date on which the application was granted; and
  - “(ii) the name of the fish farmer; and
  - “(iii) the location and boundaries of the fish farm in relation to which the fish farmer is registered; and
  - “(iv) the species of fish, aquatic life, or seaweed that may be farmed at the fish farm; and
  - “(v) any other information specified in regulations under this Act; and
- “(b) issue a notice of registration to the fish farmer setting out—
  - “(i) the details entered in the register in relation to the fish farmer; and
  - “(ii) any conditions imposed under section 186S.

**“186W Variation of registration**

- “(1) The chief executive may, on his or her own initiative or on the application of a fish farmer, vary the registration of the fish farmer to ensure that the information in the fish farmer register is correct and complete.

- “(2) If the chief executive proposes to vary the registration of a fish farmer on his or her own initiative, the chief executive must, before doing so,—
- “(a) give the fish farmer concerned notice in writing of the proposed variation; and
  - “(b) give the fish farmer a reasonable opportunity to make submissions to the chief executive about the proposed variation; and
  - “(c) consider any submissions made by the fish farmer.
- “(3) If the chief executive varies the fish farmer register, the chief executive must record in the register the date on which the variation is made and the date on which the variation takes effect.
- “(4) After varying the fish farmer register, the chief executive must give the fish farmer a notice in writing of the variation and of the date on which the variation takes effect.
- “(5) The chief executive must not vary the registration of a fish farmer if the proposed variation were treated as an application to register as a fish farmer and the chief executive would have had to decline the application under section 186S(2).

“186X **Appeal against suspension of fish farmer registration**

A District Court may at any time on application by a fish farmer whose registration is suspended under section 269 make an order lifting the suspension subject to any sureties and conditions specified by the court.

“186Y **Revocation of registration**

- “(1) The chief executive must revoke the registration of a fish farmer if—
- “(a) the fish farmer concerned requests the chief executive to do so; or
  - “(b) the chief executive is satisfied that the fish farmer has ceased to be entitled to be registered.
- “(2) The chief executive must not revoke the registration of a fish farmer under subsection (1)(b) unless the chief executive has—
- “(a) given the fish farmer concerned notice in writing of the proposed revocation and the grounds on which it is based; and

- “(b) given the fish farmer a reasonable opportunity to make submissions to the chief executive.
- “(3) If the chief executive revokes the registration of a fish farmer under this section, the chief executive must give the fish farmer a notice in writing of the revocation and the date on which the revocation takes effect.
- “(4) This section does not require the chief executive to remit or refund any fees, charges, or levies paid or payable by the fish farmer for the period from the date of registration to the date of revocation.

**“186Z Appeal against revocation of fish farmer registration**

- “(1) A fish farmer whose registration is revoked under section 186Y may appeal to a District Court against the revocation.
- “(2) The District Court may—
  - “(a) confirm the revocation; or
  - “(b) revoke the revocation.
- “(3) After the appeal is filed and pending its decision on the appeal, the District Court may make an order suspending the revocation subject to any terms and conditions it considers appropriate.

**“186ZA Subpart does not affect Freshwater Fish Farming Regulations 1983**

This subpart does not—

- “(a) affect the application of the Freshwater Fish Farming Regulations 1983; and
- “(b) require a person undertaking fish farming under a licence granted under those regulations to register as a fish farmer under this subpart.

**“186ZB Subpart does not apply to fish farming under customary rights order**

This subpart does not apply to fish farming undertaken in accordance with a customary rights order made under the Foreshore and Seabed Act 2004.

### “Subpart 3—Spat catching

#### “*Harvestable spat*

#### “186ZC **Alteration of Schedule 8A**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, alter Schedule 8A to omit, amend, or include any species of fish, aquatic life, or seaweed as harvestable spat.
- “(2) An Order in Council made under subsection (1) that declares any species of fish, aquatic life, or seaweed to be harvestable spat may do so with reference to—
- “(a) its size, biological characteristics, season, or location; and
  - “(b) any other relevant matters.
- “(3) The Minister may make a recommendation under subsection (1) to include a species of fish, aquatic life, or seaweed in Schedule 8A only if he or she is satisfied that including the species in Schedule 8A is not likely to have an adverse effect on recruitment to the adult population of the species concerned.
- “(4) Before making a recommendation under subsection (1) to include a species of fish, aquatic life, or seaweed in Schedule 8A, the Minister must consult the persons or organisations that the Minister considers are representative of the classes of persons having an interest in the species concerned, including Māori, environmental, commercial, and recreational interests.

### “Subpart 4—Aquaculture agreements

#### “186ZD **Interpretation**

In this subpart, unless the context otherwise requires, **aquaculture agreement** means 1 or more documents, in the approved form, containing the consents required under section 186ZF.

#### “186ZE **Register of aquaculture agreements**

- “(1) The chief executive must keep a register of aquaculture agreements.
- “(2) Sections 186K(2) to (6), 186L, and 186M apply, with all necessary modifications, to the aquaculture agreement register.

**“186ZF Fishers whose consent is necessary for aquaculture agreement**

- “(1) An aquaculture agreement lodged with the chief executive for registration must contain the consents required under subsection (2) to aquaculture activities being undertaken in the area concerned.
- “(2) The consents required are,—
- “(a) in the case of a stock specified in a reservation that is subject to the quota management system,—
    - “(i) the consents of the registered quota owners of the stock holding not less than 90% of the quota shares for the stock; and
    - “(ii) to the extent that the consents referred to in subparagraph (i) are given by persons holding 90% or more but less than 100% of the quota shares for the stock, the consent of the High Court in relation to the persons who did not consent:
  - “(b) in the case of a stock or species that is specified in a reservation that is not subject to the quota management system but listed in Schedule 4C,—
    - “(i) the consents of not less than 90% of the permit holders for the stock or species; and
    - “(ii) to the extent that the consents referred to in subparagraph (i) are given by 90% or more but less than 100% of the permit holders, the consent of the High Court in relation to the persons who did not consent:
  - “(c) in the case of a species that is specified in a reservation that is not subject to the quota management system but listed in Schedule 4D,—
    - “(i) the consents of not less than 90% of the persons who hold permits and would hold provisional catch history, as provided for in section 29A(2), for the stock if the stock or species were to become subject to the quota management system; and
    - “(ii) to the extent that the consents referred to in subparagraph (i) are given by 90% or more but less than 100% of the persons holding that catch history, the consent of the High Court in relation to the persons who did not consent.

- “(3) For the purposes of subsection (2)(b) and (c), **permit holders** includes any mandated iwi organisations that would be entitled to receive quota shares for the relevant quota management system stock under the Maori Fisheries Act 2004 if the stocks or species were to become subject to the quota management system.
- “(4) After an aquaculture agreement is lodged with the chief executive, no person whose consent is contained in the agreement may revoke the consent.
- “(5) For the purposes of this section, 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.

“**186ZG High Court may consent to aquaculture agreement on behalf of non-consenting persons**

- “(1) A person wishing to lodge an aquaculture agreement with the chief executive may, for the purposes of section 186ZF(2)(a), (b), or (c), apply to the High Court for its consent to the lodging of the agreement.
- “(2) The High Court must not give its consent unless it is satisfied that the applicant has offered sufficient compensation to each person who has not consented to the lodging of the aquaculture agreement,—
- “(a) in the case of persons holding quota shares, for the effect on their rights, as holders of the quota shares, of the proposed aquaculture activity:
- “(b) in the case of permit holders, for the effect on their rights, of the proposed aquaculture activity, if the stocks or species concerned were to become subject to the quota management system and they held quota shares.
- “(3) If the High Court gives its consent under subsection (2), the High Court may (with the agreement of the applicant) make such ancillary orders or give such directions as it thinks fit relating to the payment of compensation.
- “(4) However, to avoid doubt, any order for the purposes of subsections (2) and (3) may not—
- “(a) require the payment of compensation that exceeds the compensation offered by the applicant; or
- “(b) require the applicant to lodge an aquaculture agreement; or

“(c) require the applicant to continue with proceedings to obtain the consent of the High Court.

“(5) A person who makes an application to the High Court under subsection (1) must, as soon as practicable after making the application, give a copy of the application to the chief executive.

**“186ZH Lodging aquaculture agreements with chief executive for registration**

“(1) If an aquaculture agreement lodged with the chief executive for registration does not comply with this subpart, the chief executive must—

“(a) return the agreement 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 agreement is returned as to why the agreement has not been registered.

“(2) If an aquaculture agreement lodged with the chief executive for registration complies with this subpart, the chief executive must—

“(a) register the agreement in the register of aquaculture agreements 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 agreement has been registered.

“(3) In deciding whether to register an aquaculture agreement, the chief executive—

“(a) is entitled to rely on the information in the agreement as sufficient evidence that a fisher has consented under section 186ZF, unless the chief executive has notice of evidence to the contrary; and

“(b) is not required to verify the identity of a fisher appearing to consent in the agreement.

**“186ZI Period within which aquaculture agreements must be lodged for registration**

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

“(a) on the approved form; and

- “(b) within 6 months after—
  - “(i) the date referred to in section 186ZF(5); or
  - “(ii) the date on which a notice of receipt is given under section 15(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(2) However, the chief executive may give a person a further 3 months to lodge an aquaculture agreement if the chief executive is satisfied that—
  - “(a) the person has taken reasonable steps to obtain the consent of all the fishers whose consent is required; and
  - “(b) the person requires further time to obtain all the consents.
- “(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 the time granted under subsection (2); and
  - “(b) the period beginning with the day on which an application to the High Court is made under section 186ZG(1) and ending on the day on which the High Court gives its decision.
- “(5) This section applies subject to section 15 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

**“186ZJ No proceedings to be taken against chief executive**

- “(1) No civil or criminal proceedings are to be brought against the chief executive in respect of any decision of the chief executive under section 186ZH or section 186ZI.
- “(2) However, subsection (1) does not apply in relation to proceedings seeking, under Part I of the Judicature Amendment Act 1972, judicial review of a decision by the chief executive.

**“186ZK Chief executive must notify regional council of certain matters**

- “(1) The chief executive must notify the regional council concerned of a matter specified in subsection (2) as soon as practicable after the matter has occurred.
- “(2) The matters are—
- “(a) the name of the holder of an aquaculture agreement registered by the chief executive and the area that the agreement relates to;
  - “(b) an application made under section 186ZG;
  - “(c) an extension of time given under section 186ZI;
  - “(d) when the period for lodging aquaculture agreements has expired, including any period extended under section 186ZI;
  - “(e) that no aquaculture agreements have been lodged at the expiry of the period for lodging them, if that is the case;
  - “(f) any application for judicial review of a decision of the chief executive in relation to aquaculture agreements.

**“186ZL Memorials**

- “(1) If a regional council notifies its intention under section 165G of the Resource Management Act 1991 to allocate space to undertake aquaculture activities in aquaculture management areas that are subject to a reservation in relation to commercial fishing, the chief executive must ensure that a memorial is recorded in the appropriate register against all quota for the stocks specified in a notice given by the chief executive under section 186H of this Act in relation to the reservation.
- “(2) A memorial must be to the effect that—
- “(a) the chief executive has made a reservation under section 186E; and
  - “(b) as a result, an aquaculture agreement can be registered under this Part; and
  - “(c) if an agreement is registered, fishing may be affected by the allocation of space in the area subject to the reservation for aquaculture activities.
- “(3) A memorial recorded in a register under subsection (1) must be cancelled on the expiry of the period specified in section 186ZI(1)(b).

“(4) If a memorial recorded in a register under subsection (1) applies to space that is the subject of an authorisation allocated to the trustee under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004, the memorial does not expire until the end of the period specified in section 186ZI(1)(b).”

**9 Restrictions on purchase or acquisition of fish by certain persons**

Section 192(3) of the principal Act is repealed.

**10 New section 192A inserted**

The principal Act is amended by inserting, after section 192, the following section:

**“192A Restriction on acquisition of fish, aquatic life, and seaweed by fish farmers**

“(1) No fish farmer may acquire or be in possession of any fish, aquatic life, or seaweed unless the fish, aquatic life, or seaweed was—

“(a) purchased or acquired from another fish farmer or a licensed fish receiver; or

“(b) lawfully bred or cultivated by the fish farmer; or

“(c) harvestable spat that settled on fish farm structures if—  
“(i) the structures were lawfully placed or erected in the fish farm; and

“(ii) the spat was of a species specified in the fish farmer’s registration for the fish farm.

“(2) The chief executive may, by notice in the *Gazette*, grant exemptions from subsection (1)—

“(a) in respect of a specified fish farmer, class of fish farmers, or fish farmers generally;

“(b) in respect of 1 or more species or states of fish, aquatic life, or seaweed.

“(3) In deciding whether to grant an exemption, the chief executive must have regard to—

“(a) the origin of the fish, aquatic life, or seaweed; and

“(b) the species life cycle and state of the fish, aquatic life, or seaweed; and

“(c) the quantities of the fish, aquatic life, or seaweed; and

“(d) any other matter that the chief executive considers relevant.

- “(4) The chief executive may grant an exemption to a specified fish farmer only if the fish farmer has—
- “(a) applied, on an approved form, to the chief executive for the exemption; and
  - “(b) paid the prescribed fee (if any).
- “(5) Every person who contravenes subsection (1) commits an offence and is liable to the penalty set out in section 252(3).”

## **11 Penalties**

- (1) Section 252(3) of the principal Act is amended by inserting, after paragraph (j), the following paragraph:
- “(ja) section 192A(5) (unlawful acquisition or possession of fish, aquatic life, or seaweed):”.
- (2) Section 252(5) of the principal Act is amended by inserting, after paragraph (hd), the following paragraph:
- “(he) section 186P(2) (fish farming other than in accordance with registration or exemption):”.
- (3) Section 252(6) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
- “(ca) section 186N(3) (failing to notify change of information in fish farmer register):”.

## **12 Forfeiture for section 252(2), (3), and (5) offences, offences carrying fine of \$100,000, repeat offences, and serious non-commercial offences**

Section 255C(2) of the principal Act is amended by adding to paragraph (c) the expression “; and”; and also by adding the following paragraph:

- “(d) in the case of a conviction for an offence under section 186P, any property (excluding fish farm structures) used in the fish farm concerned.”

## **13 New section 269 substituted**

The principal Act is amended by repealing section 269, and substituting the following section:

### **“269 Suspension of permit, licence, or registration where levies unpaid**

- “(1) The chief executive may, by notice in writing, after giving a person notice in writing of the chief executive’s intention to

do so, suspend a fishing permit or special permit or licensed fish receiver's licence or controlled fishery licence or fish farmer's registration held by the person if—

- “(a) the person is liable to pay—
    - “(i) a levy imposed under section 264; or
    - “(ii) an additional amount payable under section 18 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995; and
  - “(b) the person does not pay the levy or additional amount in full within 2 months after the date on which payment of the levy is due, or within the time allowed under an arrangement with the chief executive, as the case may be; and
  - “(c) payment of the outstanding levy or additional amount has not been waived under section 267(2) or section 18 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995, as the case may be.
- “(2) The chief executive may suspend a permit, licence, or registration under subsection (1) regardless of whether or not the levy has been imposed on the person as a holder of a permit, licence, or registration.
- “(3) If the person holds 2 or more fishing permits or special permits or licensed fish receiver's licences or controlled fishery licences, or holds any combination of 2 or more of them, the chief executive may suspend such of the permits or licences, as he or she considers appropriate.
- “(4) A fishing permit or special permit or licensed fish receiver's licence or controlled fishery licence suspended under this section has no effect during the period of the suspension.
- “(5) While a fish farmer registration is suspended under this section, no fish, aquatic life, or seaweed is to be transferred onto or off the fish farm specified in the registration.
- “(6) The chief executive—
- “(a) must lift a suspension under this section if the outstanding levy (including any additional amount payable under section 18 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995) is paid to the chief executive;
  - “(b) may, conditionally or unconditionally, lift a suspension under this section if the chief executive and the person

liable to pay the outstanding amount of the levy enter into an arrangement for repayment of that amount.

- “(7) A court may at any time, on application by the holder of a fishing permit, special permit, licensed fish receiver’s licence, controlled fishery licence, or fish farmer registration that has been suspended under this section, make an order lifting the suspension subject to any sureties and conditions specified by the court.”

#### **14 Interpretation**

- (1) Section 296A of the principal Act is amended by omitting from paragraph (a)(ii) the word “and”, and substituting the word “or”; and also by inserting, after paragraph (a)(ii), the following subparagraph:

“(iii) principally associated with the administration of fish farming; and”.

- (2) Section 269A(b) of the principal Act is amended by omitting the expression “and 124”, and substituting the expression “, 124, and 186K”.

#### **15 Transfer of specified functions, duties, or powers to approved service delivery organisations**

Section 296B(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) if the recommendation relates to a function, duty, or power associated with the administration of fish farming, the proposed approved service delivery organisation is representative of fish farmers who have an interest in the function, duty, or power; and”.

#### **16 Suspension of permit and refusal of services for non-payment of fees**

- (1) Section 296ZAA(1) of the principal Act is amended by inserting, after the word “licence”, the words “or fish farmer’s registration”.
- (2) Section 296ZAA(2) of the principal Act is amended—
- (a) by inserting, after the word “licence” in the first place where it occurs, the words “or fish farmer’s registration”; and

- (b) by inserting, after the word “licence” in the second place where it occurs, the words “or registration”.
- (3) Section 296ZAA(4) of the principal Act is amended by inserting, after the word “licence”, the words “or a fish farmer’s registration”.
- (4) Section 296ZAA(7) of the principal act is amended by inserting, after the word “licence”, the words “or a fish farmer’s registration”.

**17 General regulations**

Section 297(1)(q) of the principal Act is amended by omitting the expression “and 124”, and substituting the expression “, 124, 186K, and 186ZE”.

**18 Certain notices to have status of regulations**

Section 303(2) of the principal Act is amended by inserting, after the expression “175,”, the expression “186K, 186Q,”.

**19 Requirements applying generally to applications and requests under this Act**

Section 305B of the principal Act is amended by adding the following subsection:

- “(3) The lodging of an aquaculture agreement for registration under section 186ZH is to be treated as a request for the purposes of this section.”

**20 New Schedule 8A inserted**

The principal Act is amended by inserting, after the Eighth Schedule, the Schedule 8A set out in the Schedule of this Act.

**21 Environment Act 1986 amended**

The Schedule of the Environment Act 1986 is amended—

- (a) by inserting, after the item “The Fisheries Act 1983”, the item “The Fisheries Act 1996”; and
  - (b) by omitting the item “The Marine Farming Act 1971”.
-

s 20

**Schedule**  
**New Schedule 8A inserted in principal Act**

ss 2(1), 186ZC

**Schedule 8A**  
**Harvestable spat**

The planktonic stage of the following species:

Echinoderms

Kina (*Evechinus chloroticus*)

Molluscs

Blue mussel (*Mytilus galloprovincialis*)Cockle (*Austrovenus stutchburyi*)Dredge oysters (*Tiostrea chilensis*)Green lipped mussel or green shell mussel (*Perna canaliculus*)Pacific oyster (*Crassostrea gigas*)Scallops (*Pecten novaezelandiae*)

Seaweed

Bladder kelp (*Macrocystis pyrifera*)Bull kelp (*Durvillaea* spp.)Karengo (*Porphyra* spp.)Lessonia (*Lessonia variegata*)Pterocladia (*Pterocladia* spp.)Sea Lettuce (*Ulva* spp.)Sea moss (*Gracilaria* spp.)

---

**Legislative history**

14 December 2004

Divided from Aquaculture Reform Bill (Bill 181–2),  
third reading

21 December 2004

Royal assent

---

This Act is administered in the Ministry of Fisheries.

---