

AQUACULTURE

Join the Discussion

Public consultation on the future management of Aquaculture

Ministry of Fisheries *Te Tautiaki i nga tini a Tangaroa* **Ministry for the Environment** *Manatu Mo Te Taiao* **August 2000**

FOREWORD

JOIN THE DISCUSSION

A message from the Minister

The release of this discussion paper represents an important step for aquaculture.

I have no doubt that much of the growth in the fisheries sector will flow from investment in aquaculture, and the innovative use of resources and new technology. I'm encouraging further development along these lines because it will benefit the entire economy, particularly regional economies, in which I have a special interest.

The Government is committed to sustainable development of our natural resources by ensuring that economic, environmental and social interests are considered together and not separately. As part of this commitment, the Government has recently agreed to develop an Oceans Policy that will identify the goals and objectives for managing the marine environment. In terms of aquaculture, there is the need for government to provide a legal framework that can support sustainable development, without undermining the rights of existing fishers or allowing undue adverse impacts on the aquatic environment.

The management of aquaculture is one area where the demands of various competing uses for water space, be

they customary, recreational or commercial fishers, pleasure boaties, tourists or those who just want to maintain an undisturbed environment, confront each other head-on. The present law in this area is somewhat convoluted and it is important that we get the policy and legal framework right.

I hope that this paper will generate a vigorous and robust discussion about how aquaculture should be managed into the future. In my view comprehensive consultation is the best way to maximise the effectiveness of policy and planning, and achieve enduring solutions.

So now is the opportunity to have your say. I encourage you to "join the discussion" think over the material in this document carefully, talk about it with others, and provide the government with your comments and suggestions. This is your chance to be involved in shaping the future management of aquaculture.



Hon Pete Hodgson
Minister of Fisheries



OVERALL PURPOSE

The challenge identified by government is...

to update the legislative framework for aquaculture so as to provide more certainty to all participants...

and enable the greatest benefit to be obtained from the use of coastal space, without undermining the rights of existing fishers...

or allowing undue adverse impacts on the aquatic environment.

CONTENTS

1	Executive Summary	4
2	The Purpose of this Discussion Paper	5
3	The Need for Change	6
	Aquaculture - an industry with a positive outlook	
	An outdated and fragmented legislative approach	
	A legislative framework that can deliver integrated and sustainable development	
4	What is Being Proposed?	8
	A summary chart of key proposals and associated implementation approaches	
	Proposal 1-Consolidate the aquaculture harvest right	
	Proposal 2-Separate responsibility for managing environmental effects	
	Proposal 3-Improve integration between coastal planning, marine farming and fishing	
	Proposal 4-Streamline the management of land-based aquaculture activity	
5	The Need to Uphold the Crown's Relationship with Māori	14
	Acting in accordance with Treaty obligations	
	Customary fishing	
	Claim of customary title to the foreshore and seabed	
6	Legislative Approach	15
	A 'joint' or 'single' legislative approach?	
7	Approach One - Management under a Joint RMA and Fisheries Act Regime	16
	Consolidation under an 'aqua-permit'	
	RMA occupation and structure approvals	
	Tenure and renewal	
	Spat catching activity	
	Transition of existing marine farm leases, licences and permits to the new regime	
	Option A – Management of environmental effects, increased responsibility under the Fisheries Act	
	Option B – Management of environmental effects, increased responsibility under the RMA	
	Aqua-permit application process	
	Linking the aqua-permit and resource consent application process	
	Option C – Concurrent decision making	
	Option D – Joint hearing with concurrent decision making	
8	Approach Two - Management under a Single RMA Regime	20
	Consolidation under a resource consent and regulated harvest regime	
	Spat catching activity	
	Transition of existing marine farm leases and licences to the RMA regime	
	Increased responsibility for management of environmental effects under the RMA	
	Resolving fisheries-use conflicts during the resource consent application process	
9	Land-based Aquaculture	22
	Phase-out of the 1983 Freshwater Fish Farming (FWFF) Regulations	
	Transfer of matters not directly related to fisheries to other more appropriate legislation	
10	How These Proposals Would Become Law	23
11	How to Make a Submission	24

1 EXECUTIVE SUMMARY

OVERVIEW

Key points

- 1 The key message in this discussion paper is that aquaculture could make a greater contribution to the economy if the legislative framework under which this activity operates was updated.
- 2 The challenge therefore is to develop a legislative framework for aquaculture that can provide certainty to all participants, including administrators. This framework should enable the greatest benefit to be obtained from the use of coastal space, without undermining the rights of fishers or allowing undue adverse impacts on the aquatic environment.
- 3 This paper sets out four key proposals to do that:
Proposal One that a single form of aquaculture harvesting right be provided, under which all existing and future aquaculture harvesting activity would operate.
Proposal Two that only one agency should have the responsibility to manage effects that aquaculture activities have on aquatic fauna, habitat and the sustainability of fisheries.
Proposal Three that mechanisms be developed to improve the planning process and to encourage area-use or trade agreements to be entered into

between new marine farm applicants, fishers and other stakeholders.

Proposal Four that the management of land-based aquaculture activity be streamlined by removing redundant or overlapping regulatory regimes.

- 4 Having outlined the key proposals, this paper then goes on to explore two legislative approaches that might be available to implement the proposals.

Approach One is to continue to manage aquaculture under a dual Resource Management Act (RMA) and Fisheries Act (FA) regime, but with improved linkages between the two Acts.

Approach Two is to roll the management of aquaculture into the RMA.

- 5 The first approach would represent a modification of the current split whereby marine farmers require approval under both the RMA and the FA before they engage in aquaculture activity.
- 6 The second approach would provide for all marine farming activity to be approved under a single resource consent system. Marine farmers would no longer require a second approval under the fisheries legislation, as fisheries matters would be dealt with by regional councils as part of the resource consent process.

- 7 The initiatives outlined in this paper are not final. They are presented in order to generate discussion.
- 8 Submissions are invited on the initiatives identified in this paper and on any possible alternatives that might be available improve the management of aquaculture.
- 9 Information on how to make a submission is provided at the end of this paper.



A mussel harvesting barge working in the Marlborough Sounds

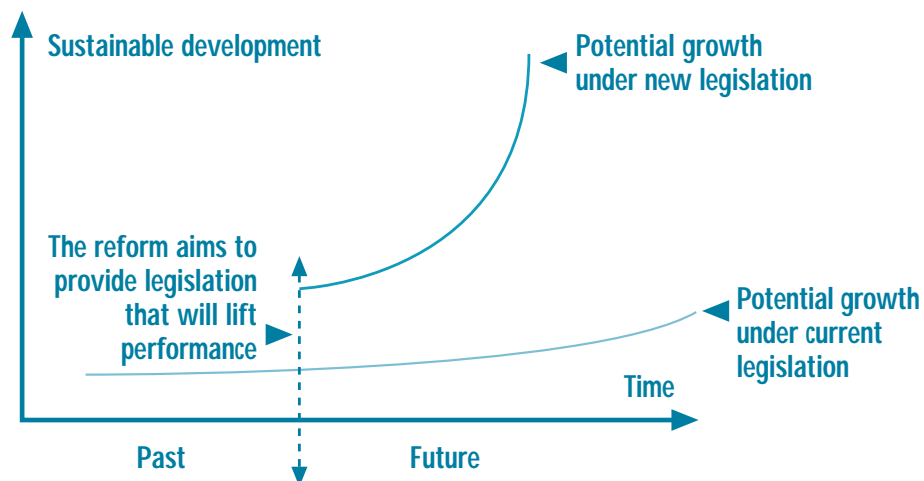
2 THE PURPOSE OF THIS DISCUSSION PAPER

PUBLIC PARTICIPATION

A chance to help shape the future

- 10 The purpose of this paper is to provide you with an opportunity to comment on proposals to improve the future management of aquaculture in New Zealand.
- 11 The initiatives outlined in this paper are not final. They are presented in order to generate discussion and to help identify any possible alternatives that might be available.

SECTOR GROWTH MODEL CHART



- 12 Your participation in the submission process will help us to identify the risks, costs, benefits and practicalities associated with each approach.
- 13 While we invite comment on this paper, it is more than likely that the preferred approach will be made up of a combination of different ideas – or it might be driven by a completely new idea that is not included in this paper, but comes through in public submissions.
- 14 Your participation in the submission process is important, as it will help to formulate the final proposals prior to government making any decisions on how to proceed.
- 15 Information on how to make a submission is provided at the end of this paper.

DIFFICULTIES WITH CURRENT LEGISLATION



3 THE NEED FOR CHANGE

THE AQUACULTURE INDUSTRY

Aquaculture - an industry with a positive outlook

- 16 Aquaculture is an important activity in terms of the contribution it makes to the New Zealand economy.
- 17 Since the first marine farms were developed north of Auckland during the mid 1960s, production has increased significantly and today around 1000 marine farms have been established in New Zealand. Last year the production from these farms contributed around NZ\$200 million to the national economy.
- 18 The main species farmed are Greenshell™ mussel, quinnat salmon and pacific oyster. New techniques are enabling the farming of other species, such as paua, dredge oyster, scallop, eel, snapper, kina, seaweed, sponges and rock lobster.
- 19 Generally aquaculture involves catching spat and holding juvenile animals on structures such as ropes and racks, or in cages placed in the sea, until they have grown to harvest size. Animals can also be farmed on-shore in purpose-built fish hatcheries and grow-out ponds.
- 20 Most marine farms are currently located in the inter-tidal zone or in sheltered waters close to shore. The main areas of marine farm production are Northland,

the Firth of Thames, Marlborough Sounds and Stewart Island.

- 21 There is strong demand for additional water space for new marine farm development, particularly in the Firth of Thames, Tasman and Golden Bays, the Marlborough Sounds and Akaroa Harbour.

THE CURRENT MANAGEMENT FRAMEWORK

An outdated and fragmented legislative approach

- 22 The outlook for aquaculture is positive – but it could be better.
- 23 The aquaculture industry faces the usual set of economic and market constraints, but additionally, the legal framework under which it operates is out of date and fragmented.
- 24 There is now a lack of integration between coastal planning, aquaculture activity and fisheries management. This lack of integration is making it difficult for government to provide effective management in the coastal marine area.
- 25 While the current framework does address environmental effects, it does not address the question of how to allocate coastal space in a way that enables the greatest value to be obtained over time.

- 26 The industry needs a modern legislative framework able to support the contribution that aquaculture can make to the economy. New Zealand also needs a system of environmental management that does not involve added costs, and is effective in achieving sustainable management of natural resources
- 27 Most marine farms are operating under the Marine Farming Act that was introduced in 1971. This legislation predates the introduction of the quota system for commercial fisheries in 1986, as well as the following:
- the introduction of the Resource Management Act (RMA) in 1991, and the development of Regional Coastal Plans
 - the settlement of Treaty of Waitangi fisheries claims in 1992
 - the introduction of the Biosecurity Act in 1993
 - the introduction of the Hazardous Substances and New Organisms Act in 1995.
- 28 Put simply, the framework established for aquaculture is out of date, and has been eclipsed by more recent legislative developments.

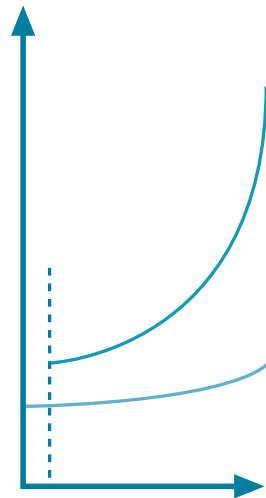
KEY PRIORITIES

A legislative framework that can deliver integrated and sustainable development

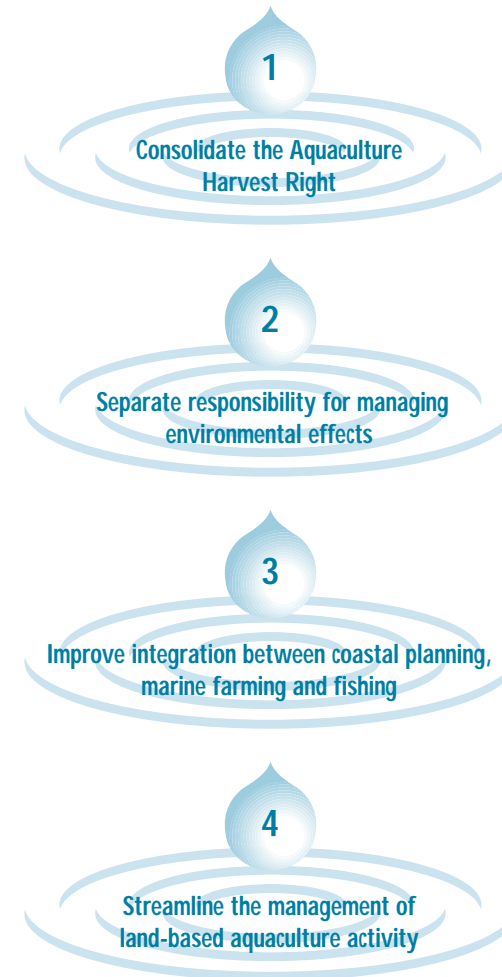
29 The challenge identified by government is to update the legislative framework for aquaculture so as to provide more certainty to all participants. This framework should enable the greatest benefit to be obtained from the use of coastal space, without undermining the rights of existing fishers or allowing undue adverse impacts on the aquatic environment.

30 To do this, it is proposed that the focus of any legislative change must be:

- consolidation of all existing and future aquaculture harvest rights into a single harvest approval.
- clarification of who should be responsible for considering the effects that aquaculture activities have on the aquatic environment and fisheries.
- provision for improved integration between marine farming, and fishing rights when it comes to the allocation of space for new marine farm development.
- streamlining the management of land-based aquaculture activity.



PROPOSALS TO LIFT PERFORMANCE



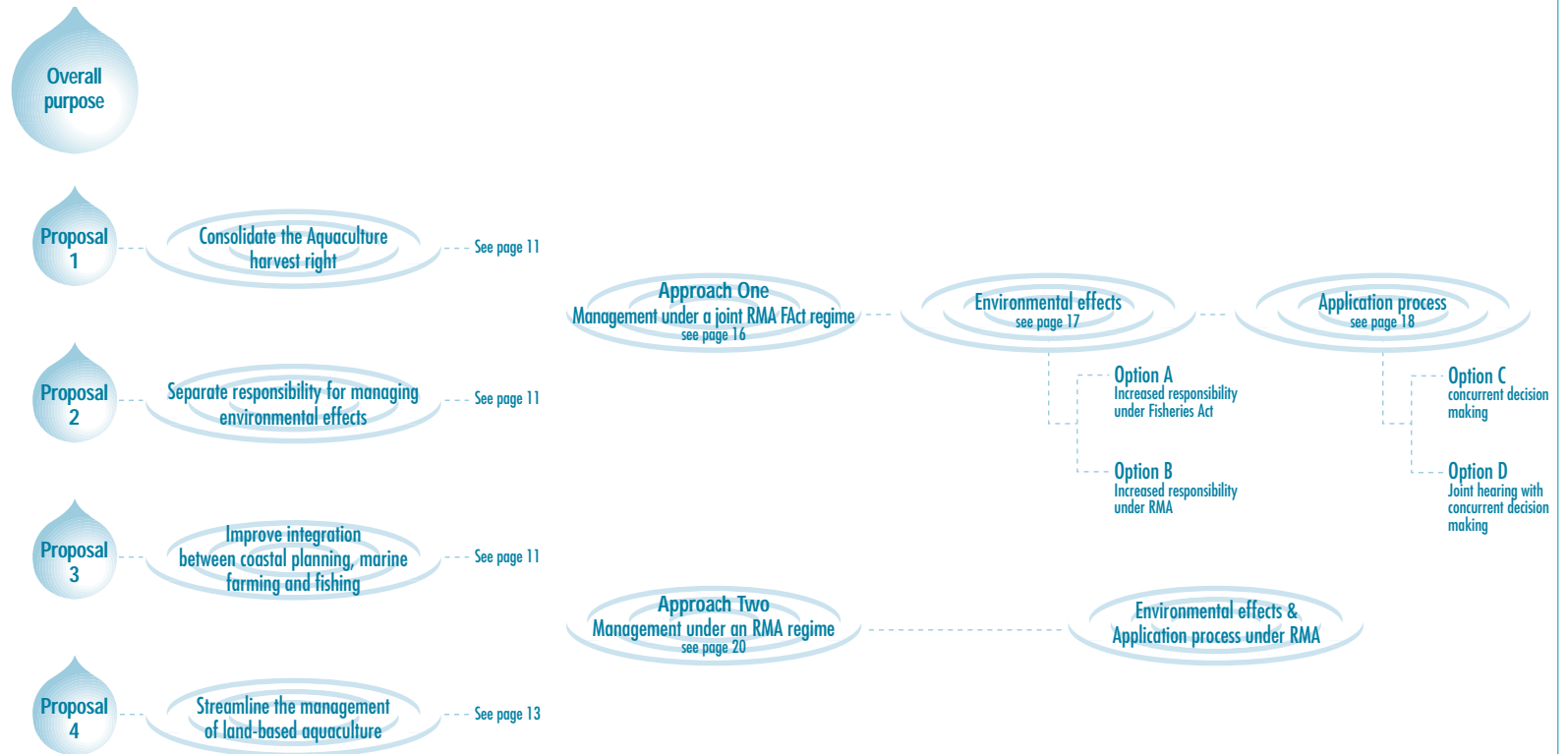
4 WHAT IS BEING PROPOSED?

OVERVIEW

A summary of key proposals and associated implementation approach

- 31 This paper sets out four key proposals to update the legislative framework for aquaculture. The proposals and relevant background are set out in more detail in Section 4 of this paper.
- 32 Having outlined the key proposals, sections 6-8 of this paper examine how the proposals might be implemented under two different legislative approaches.
- 33 A summary of the proposals and associated implementation approaches is provided in this chart.

GUIDE TO THE DISCUSSION PAPER



SUMMARY OF KEY PROPOSALS AND ASSOCIATED IMPLEMENTATION APPROACHES

	<p style="text-align: center;">APPROACH ONE Aquaculture under a dual RMA and Fisheries Act regime</p>	<p style="text-align: center;">APPROACH TWO Aquaculture under the RMA</p>
<p>PROPOSAL 1 Provide a single form of aquaculture harvesting right.</p>	<p>All current and future aquaculture harvesting rights are consolidated into an aqua-permit that is granted by the Ministry of Fisheries under the Fisheries Act 1996. All current and future rights to occupy water space are granted by regional councils via resource consent.</p>	<p>Automatic harvest right is provided through regulatory regime under Fisheries Act 1996 - no aqua-permit is required. RMA resource consent still required for occupation.</p>
<p>PROPOSAL 2 Vest responsibility to manage the effects that aquaculture activities have on aquatic fauna, habitat and the sustainability of fisheries in a single agency.</p>	<p>Option A Regional councils continue to manage the effects that marine farming has on amenity values, cultural and spiritual values, visual environment, odour, noise and water quality - via RMA. RMA not responsible for management of effects on aquatic fauna and habitat. Ministry of Fisheries manages the effects that the placement of marine farming structures, and the stocking, on-growing and harvesting of marine farmed stock, has on aquatic fauna, habitat and the sustainability of fisheries - via Fisheries Act.</p> <p>Option B Regional councils continue to manage the effects that marine farming has on amenity values, cultural and spiritual values, visual environment, odour, noise, water quality and physical disturbance of foreshore and seabed - via RMA. Regional councils also manage the effects that the placement of marine farming structures, and the stocking, on-growing and harvesting of marine farmed stock, has on aquatic fauna, habitat and the sustainability of fisheries - via RMA. Fisheries Act no longer responsible for management of effects on fisheries habitat and sustainability.</p>	<p>Same as Option B under Approach One (opposite). That is, regional councils manage all environmental effects of marine farming, including effects on aquatic fauna, habitat and the sustainability of fisheries.</p>

	<p style="text-align: center;">APPROACH ONE (continued) Aquaculture under a dual RMA and Fisheries Act regime</p>	<p style="text-align: center;">APPROACH TWO (continued) Aquaculture under the RMA</p>
<p>Proposal 3</p> <p>Develop mechanisms to improve the planning process and encourage area-use or trade agreements to be entered into between new marine farm applicants, fishers, and other stakeholders.</p>	<p>Fisheries Act provides a dispute process to allow marine farm applicants to negotiate area-use or trade agreements with customary Māori, commercial and recreational fishers, and other stakeholders.</p> <p>ALIGNMENT OF RMA AND FISHERIES ACT APPLICATION PROCESSES</p> <p>Option C Maintain separate RMA and Fisheries Act application processes, but with concurrent decision-making</p> <p>Option D Maintain separate RMA and Fisheries Act application processes, but with joint hearings, and concurrent decision-making.</p>	<p>Single hearing of all RMA and fisheries matters.</p> <p>RMA provides a dispute process to allow marine farm applicants to negotiate area-use or trade agreements with customary Māori, commercial and recreational fishers, and other stakeholders preventing a regional council from granting a consent if agreement is not reached, with appeal rights to the Environment Court.</p> <p>No hearing required under Fisheries Act.</p>
<p>Proposal 4</p> <p>Streamline the management of land-based aquaculture activity by removing redundant or overlapping regulatory regimes.</p>	<p>Harvest right is provided through regulatory regime under Fisheries Act.</p> <p>RMA resource consent required for environmental effects including water extraction and discharge.</p> <p>Responsibility for management of non-fisheries matters moved to more appropriate legislation.</p>	<p>Same as or under Approach One (opposite).</p>

THE PROPOSALS

Proposal 1 Consolidate the Aquaculture harvest right

It is proposed that a single form of aquaculture harvesting right be provided, under which all existing and future aquaculture activity would operate.

Background to the proposal

- 34 The law that provides for aquaculture has evolved over time into a complex overlay of acts, amendments, regulations and gazette notices.
- 35 Aquaculture activity now operates under five different types of occupation and harvest right. These are:
- marine farm lease
 - marine farm licence
 - marine farming permit and resource consent
 - spat catching permit and resource consent
 - freshwater fish farm licence and resource consent.
- 36 Responsibility for allocating and managing these rights is shared between central and local government.
- 37 This fragmentation has created uncertainty for administrators and those who are required to comply with the current regime.

Proposal 2 Separate responsibility for managing environmental effects

It is proposed that only one agency should have the responsibility to manage the effects that aquaculture activities have on aquatic fauna, habitat and the sustainability of fisheries resources.

Background to the proposal

- 38 Responsibility for managing the effect that aquaculture activity has on the aquatic environment and fisheries is currently spread across three separate acts. These are:

- Marine Farming Act 1971 (MFA)
- Resource Management Act 1991 (RMA)
- Fisheries Act 1983 (FA83)

The RMA promotes the sustainable management of resources. It does this by managing adverse effects in the coastal marine area.

- 39 In the context of aquaculture, the RMA manages the effects of the placement of marine farming structures and the ongoing activity of marine farming, on matters including habitat, indigenous fauna, water quality, natural character, amenity values and on the physical characteristics of the foreshore and seabed¹.
- 40 On the other hand, the FA 1983 deals with the effects that the placement of marine farming structures, and the stocking, on-growing and harvesting of farmed marine stock may have on the sustainability of fisheries and their habitat.
- 41 This overlap between the MFA, RMA and FA83 (83) is difficult to manage and has created confusion and

uncertainty for those required to administer and comply with these regimes.

- 42 The two planning processes (RMA and FA) deal with issues that overlap. The most difficult of these involves the impact that marine farms have on the nutrient flow through the marine ecosystem.
- 43 This is of fundamental importance to the overall sustainability of marine farming, effects on existing fishing activities, and the viability of naturally occurring fisheries stocks. It can also have broader importance in terms of effects on the wider ecosystem.

Proposal 3 Improve integration between coastal planning, marine farming and fishing

It is proposed that mechanisms be developed to improve the planning process and to encourage area-use or trade agreements to be entered into between new marine farm applicants, fishers, and other stakeholders.

Background to the proposal

- 44 The future of marine farming is in part linked to the availability of water-space for expansion.
- 45 At present a three-step sequential process applies to the allocation of water-space for the development of new marine farms.

¹ The interpretation of the RMA and the scope of regional councils under it, is a matter currently being debated before the Environment Court in hearings concerning the references to the Tasman Resource Management Plan.

Step One A regional council's coastal plan identifies environmental constraints, can establish zones for marine farm development, and provide rules for activities² within each zone.

Coastal plans are approved by the regional council and Minister of Conservation and they must implement provisions of the New Zealand Coastal Policy Statement³. Coastal plans must also define any 'restricted coastal activities' which are discretionary or non-complying activities that require the approval of the Minister of Conservation before resource consents are issued for them. Some coastal areas are currently closed to marine farm development by moratoria established under the MFA. In these areas regional councils are prohibited from issuing resource consents for marine farming. Moratoria apply in key areas such as Tasman and Golden Bays and will remain in place until coastal plans become operative.

Step Two An application for a resource consent is made to a regional⁴ council. The resource consent authorises a marine farm to occupy water-space and use the necessary marine farm structures. It may contain conditions that are designed to avoid, remedy or mitigate possible effects.

Step Three An application for a marine farming (or spat catching) permit is made to the Ministry of Fisheries. The marine farming permit authorises a marine farm to have specified effects on the sustainability of fisheries, and impacts on any existing fishing activity. The permit also provides for marine farm stock to be held, on-grown and sold.

- 46 It is important to note that the present process, outlined above, requires that a marine farming permit be obtained before a new marine farm can become operational.
- 47 Under current law before the Ministry of Fisheries can grant a marine farming (or spat catching) permit it must be satisfied that the allocation of additional water-space for a new marine farm will not have an undue adverse effect on fishing or marine farming activity or the sustainability of any fisheries resource.
- 48 As it is the Ministry of Fisheries that must be satisfied on this point, there is little incentive for marine farmers and fishers to seek durable, non-regulatory solutions to conflicts over impacts on existing fishing rights.
- 49 This situation often leads to conflict between existing fishing right holders and marine farm developers.
- 50 This conflict has the potential to stifle appropriate development, particularly where opportunities exist to move from lower-value extractive fisheries resource use to higher-value marine farming uses.

Are improvements required under the RMA to better allocate the use of water space?

- 51 Regional councils have the responsibility to prepare plans for managing the coastal marine area. These plans must not be inconsistent with the New Zealand Coastal Policy Statement and must be approved by the Minister of Conservation.

- 52 Regional councils must process resource consent applications in the order in which they are received, and under criteria relating to the environmental effects of the application.
- 53 There are only two other mechanisms that could help ration the use of coastal space to potential marine farmers: use of coastal tendering for allocation or coastal occupation charges. Under the RMA any coastal charges are to be provided for in plans and the money received may only be used for the purpose of promoting the sustainable management of the coastal marine area.
- 54 The RMA contains provision for the Minister of Conservation to tender coastal space by Order in Council. Tender money goes to the Crown. Areas must be specified (zoned) prior to the tender and then tenders are called for the right to apply for a resource consent. The successful tenderer has priority for applying for a resource consent to occupy the space, as the ability to occupy the space is still subject to the consent being approved. A coastal tender does not affect any existing applications for coastal permits made before the Order in Council. Coastal tendering has not been used.
- 55 The RMA also contains provisions for coastal occupation charges where land of the Crown or land vested in the regional council is occupied. Any charges must be included in a coastal plan and revenue used for management in the coastal marine area.

² Activities are identified as being either 'permitted', or 'controlled', 'discretionary' 'non-complying' or 'prohibited' within the particular zones.

³ The Coastal Policy Statement is also prepared and recommended by the Minister of Conservation.

⁴ Issuing resource consents for occupation of coastal space is a regional council function. Some councils are "unitary" and have functions of both regional and district councils under the RMA. These are Tasman District Council, Nelson City Council, Marlborough District Council and Gisborne District Council.

56 Are more allocation tools required? Do councils need more or different tools to allocate space between potential applicants for marine farming? These could include a greater range of methods for allocating zoned space (such as balloting) or tendering by a regional council or other changes to the Act.

Proposal 4 Streamline the management of land-based aquaculture activity

It is proposed that the management of land-based aquaculture activity be streamlined by removing redundant or overlapping regulatory regimes.

Background to the proposal

- 57 Land-based aquaculture generally involves growing animals in hatchery tanks and outdoor ponds. A variety of marine and freshwater species can be farmed. The most important species are salmon, paua and rock lobster. Techniques have also been developed to farm eels, whitebait and snapper.
- 58 The management regime that controls aquaculture activity on land is quite different to that developed for marine farming at sea.
- 59 Land-based aquaculture usually occurs on privately owned land, and although RMA approval is required to take and discharge water that is used in the farm, the tenure and occupation arrangements fall outside of the RMA. A land use consent could, however, be required by the District Council, depending on the provisions of the local District Plan.

- 60 There is considerable duplication and redundancy inherent in the current regulatory regime applying to land-based aquaculture, both within the Fisheries Act 1996, and across other legislation.
- 61 Matters that relate to the use of fisheries, and disease control, are currently provided for by the Freshwater Fish Farming (FWFF) Regulations 1983. These regulations require that all land-based farms be licensed and controls be placed on the purchase, transfer and sale of farmed stock for biosecurity, disease and fisheries compliance purposes.
- 62 The FWFF Regulations were initially made under s 91 of the Fisheries Act 1983. When fisheries legislation was revised in 1996, all regulations previously made under s 91 of the Fisheries Act 1983 were saved by s 325 of the Fisheries Act 1996.
- 63 Although the FWFF Regulations are saved by the Fisheries Act 1996, many of the requirements set down under these regulations are outdated as they relate to matters which could now be controlled elsewhere in the Fisheries Act 1996, or in other legislation such as the RMA, Biosecurity Act 1993, and the Hazardous Substances and New Organisms Act 1995.
- 64 The management regime for land-based aquaculture could be streamlined and updated by removing the duplication of powers within the fisheries legislation, and transferring the responsibility for matters that

do not relate directly to the management of fisheries, out of the fisheries legislation and into other more relevant legislation. Any such transfer of responsibility will ensure that appropriate controls remain in place to manage biosecurity and disease issues.



Farming oysters using the rack culture method in Northland

5 THE NEED TO UPHOLD THE CROWN'S RELATIONSHIP WITH MĀORI

TREATY MATTERS

Acting in accordance with Treaty obligations

- 65 The settlement of Māori fisheries claims in 1992 did not extinguish the general obligation on the Crown to act in accordance with the principles of the Treaty of Waitangi when interacting with its Treaty partner.
- 66 As the proposal to create a new legislative framework for aquaculture has implications for Māori, the Crown must take care not to breach its obligations in respect of pre-existing customary rights, and commercial fishing rights provided by the Māori Fisheries Settlement in 1992.
- 67 Although aquaculture was not included as part of the Māori Fisheries Settlement in 1992, Māori involvement in the aquaculture industry has grown to the extent that Māori are now a significant player in the sector.
- 68 Aquaculture is seen by many iwi as an area where continued participation and further development is desirable.

Customary fishing

- 69 The establishment of marine farms can affect customary fishing. The issue that arises is whether the development of a new marine farm would

extinguish, or in some way inhibit the use of the customary right.

- 70 The government has an obligation to develop policies to help recognise the use and management practices of Māori in the exercise of non-commercial fishing rights. Accordingly, when developing the new framework for aquaculture, government must ensure that tangata whenua can take part in decision-making about where marine farms can be set up.

Claim of customary title to the foreshore and seabed

- 71 In October 1997, the Māori Land Court considered an application, seeking a declaration that the foreshore and seabed of the Marlborough Sounds are customary land.
- 72 The Court made an interim decision in December 1997, finding that customary title to the foreshore remains unless the land had been sold or title extinguished by legislation. The Court also found that customary rights to the seabed may remain. However, an evidential inquiry would be required to determine whether in fact customary title had survived.
- 73 This interim decision was appealed to the Māori Appellate Court by several parties including the Crown.

- 74 Currently the Appellate Court is considering whether certain questions of law should be stated to the High Court. If questions of law are put to the High Court, the answers will be provided to the Māori Appellate Court to assist it in making a final decision on the appeal of the interim Māori Land Court decision.
- 75 It is against this background that proposals to update the legislative framework for aquaculture are being developed. It is therefore important that these claims be borne in mind when working towards development of a more modern legislative framework for aquaculture.
- 76 In the event that the claims are upheld, and the nature and extent of customary rights to the seabed are clarified, the Crown may have to develop new arrangements with tangata whenua regarding use of the seabed for marine farming and other activities.
- 77 As it is likely to be some time before foreshore and seabed claims are resolved, it is Government's view that work on the aquaculture reforms should proceed as they have the potential to contribute positive economic and environmental outcomes.

6 LEGISLATIVE APPROACH

CHOICE OF APPROACHES

A 'joint' or 'single' legislative approach?

78 Two approaches are available to implement the proposals that have been identified for aquaculture reform.

Approach One - current RMA/FA split

Approach Two - roll into one RMA process

79 The two approaches are summarised on the chart in section 4. These approaches are not final, and are presented simply to generate discussion.

80 The first approach (which is to continue to manage aquaculture under a dual RMA and FA regime) would maintain the current split whereby marine farmers require both a resource consent and an approval under the Fisheries Act before they engage in aquaculture activity.

81 Under this approach trade-offs about the use of fisheries resources for marine farming or fishing would continue to be made under fisheries legislation.

82 The second approach (which is to roll the management of aquaculture into the RMA) would provide for all marine farming activity to be approved under a single resource consent system. Marine farmers would no longer require a second approval under the fisheries legislation.

83 This approach would require possible trade-offs between fishers and marine farmers to be integrated into the RMA planning and resource consent process.

84 There are a number of issues to consider in adopting this approach. Perhaps the most significant of these relate to:

- the state of readiness of local government in relation to relevant experience, expertise and resourcing
- the risk of variability and lack of consistency nationally
- the current lack of national policy or strategy that could encourage consistency

85 Other matters to consider include:

- the design of any new processes, or amendments to existing ones, that would be necessary
- how the legislation might deal with issues of general trade competition entering the RMA
- what would determine the balance struck between the proposed fisheries trade-off process and other RMA considerations
- Potential problems in combining this approach with the existing philosophy of the RMA, which generally deals with the environmental effects of activities.

86 The release of this discussion paper will help to more fully identify the risks, costs, benefits and practicalities associated with each approach.



Packaging the final product.

7 APPROACH ONE – MANAGEMENT UNDER A JOINT RMA AND FISHERIES ACT REGIME

CONSOLIDATE THE AQUACULTURE HARVEST RIGHT

Consolidation under an 'aqua-permit'

- 87 Under this approach the Fisheries Act 1996 would be amended to provide all existing and future marine farmers with a single marine farming harvest approval - the 'aqua-permit'
- 88 The aqua-permit would provide marine farmers with:
- The exclusive right to take spat of any species that settle onto the farm structures (subject to authorisation of the environmental effects of farming the species and the species not being the subject of any prohibition notice);
 - The right to use the water column above the seabed for the purpose of marine farming, and to possess, harvest and sell the farmed stock that is held on structures placed over or on the seabed within the area of the marine farm;
 - A harvesting right that can be traded, divided and sub-let;
 - A harvesting right that can be maintained on a public register, and have a charge placed over it as with other personal property.

89 The aqua-permit would not, however, provide marine farmers with any form of foreshore or seabed enhancement right. Nor would it provide any right to possess, harvest or sell stock that is not held in or on marine farm structures.

90 To ensure equivalency of harvesting rights among marine farmers, it is intended that all existing marine farm leases, licences and marine farming permits be folded into the new aqua-permit regime.

RMA occupation and structure approvals

91 Currently approval under the RMA is required to occupy water-space and establish marine farming structures in the coastal marine area. RMA approval is also required to control the effects of activities, such as discharges, on the environment.

92 It is proposed that use of the aqua-permit would remain subject to marine farmers holding all necessary RMA approvals.

Tenure and renewal

93 The Marine Farming Act 1971 provides that the term of a lease or licence is not to exceed 14 years. A lease or licence may contain a right of renewal for one or more terms. This can be contrasted with a resource consent under the RMA, which can have a maximum

term of 35 years. In practice, regional councils often grant consents for shorter periods, usually between 15 and 20 years.

94 It is proposed that the term of the aqua-permit would be tied to the term of the relevant resource consent granted for the site.

95 The holder of an aqua-permit would also be provided with a first right of renewal of the aqua-permit. First right of renewal does not mean that the aqua-permit will be automatically granted, but it does mean that the incumbent permit holder will have the right to re-apply to harvest from the site ahead of any other applicant.

96 Renewal of an aqua-permit would depend on the incumbent marine farmer having obtained a new resource consent for the site and successful re-negotiation of any fisheries agreement that might be required to mitigate effects on fishing.

Spat catching activity

97 It is proposed that the aqua-permit would include the right to catch spat from within the marine farming area, using the structures authorised to be in place under the resource consent.

98 The aqua-permit would apply equally to those situations where the primary activity undertaken

at the site was spat catching only (that is, where the spat is caught on site, but then transferred onto a separate site for subsequent on-growing through to harvest).

99 Current activity whereby some types of spat are gathered without the use of settlement structures (such as hand-gathering of beach-cast mussel spat, and the collection of small pacific oysters or cockles off beaches) would be authorised under a separate commercial fishing permit issued under the Fisheries Act 1996.

100 Separate approval under the Fisheries Act would also be required to take stock that had the potential to affect the sustainability of wild fisheries (such as elvers and juvenile rock lobster), and also to the capture of adult reproductive stock for breeding purposes.

Transition of existing marine farm leases, licenses and permits to the new regime

101 It is proposed that existing Marine Farming Act 1971 leases and licences, and Fisheries Act marine farming permits be deemed to be aqua-permits. All existing approvals would run through to the end of their current term. Marine farm leases and licences would be provided with one 14-year renewal – up to a maximum of 20 years.

102 All existing spat catching permits would remain valid for the balance of their current term (which in all cases is a maximum of five years), after which a new application could be made for an aqua-permit.

SEPARATE RESPONSIBILITY FOR MANAGING ENVIRONMENTAL EFFECTS

Option A Increased responsibility for managing environmental effects under the Fisheries Act

103 Under this option the interface between the RMA and FA would be clarified and improved. The Fisheries Act 1996 would be amended so that only the Ministry of Fisheries would have responsibility for managing the effects the placement of marine farming structures and the stocking, on-growing and harvesting of marine farmed stock has on:

- the seabed
- aquatic fauna
- habitat
- the sustainability of fisheries resources.

104 Under this option the RMA would continue to manage the effects that marine farming had on amenity values, cultural and spiritual values, visual environment, odour and noise. However, effects on the matters listed in the bullet points above would not be considered under the RMA.

105 Regional councils would manage the effects of marine farming activity on water quality, such as the effect of discharging chemicals into the sea.

106 This would bring aquaculture into line with the way in which the effects of other fish harvesting methods are managed under the Fisheries Act 1996.

107 Option A would also enable consideration by the Ministry of Fisheries to be given to issues such as the carrying capacity of the aquatic environment, which relates to both wild fisheries and marine farming.

Option B Increased responsibility for managing environmental effects under the RMA

108 Under this option the RMA would continue to manage the effects that marine farming had on amenity values, cultural and spiritual values, visual environment, odour, noise and physical disturbance of the foreshore and seabed.

109 In addition, the RMA would be clarified and in places strengthened so that regional councils had clear responsibility for managing the environmental effect of all aspects of marine farming on:

- aquatic fauna
- habitat
- the sustainability of fisheries resources.

110 This is consistent with the way in which most other activities that have an effect on the aquatic environment are evaluated (such as port development, reclamation, seabed mining, laying marine cables and pipelines and so on).

111 This option continues to provide a planning framework whereby the needs of the aquaculture industry (such as receiving an appropriate level of protection from inappropriate land use or land-based discharges) can be considered in an integrated manner.

112 Option B would also require regional councils to manage the carrying capacity of the aquatic environment, which relates to both wild fisheries and marine farming. It is important to note that separate authorisation under the Fisheries Act would still be required (via an aqua-permit) for any adverse effects that marine farming might have on the activities of existing fishers.

IMPROVE INTEGRATION BETWEEN COASTAL PLANNING, MARINE FARMING AND FISHING

Aqua-permit application process

- 113 Under the reform it is proposed that all new marine farm aqua-permit applications would be publicly notified.
- 114 Existing fishers and marine farmers who consider that their existing harvesting rights would be unduly affected by the new application, would be able to register an objection with the applicant and the Ministry of Fisheries within a specified time period.
- 115 If tangata whenua identify that an application had the potential to extinguish, or have an undue adverse effect on, customary fishing, the Ministry of Fisheries would need to meet with tangata whenua to discuss the application.
- 116 The Ministry would then assess whether or not the application, if it went ahead, would prevent the Minister from discharging his obligations to recognise and

provide for the use and management practices of Māori.

- 117 Depending on the nature of the customary objection and/or the application, the Ministry may halt the application or may direct the applicant to work with tangata whenua to resolve their concerns.
- 118 Once the concerns of tangata whenua had been resolved, the marine farm applicant would then enter into discussion with other objectors.
- 119 If settlement were reached, the parties involved would report on the agreement and acknowledge removal of the objection.
- 120 Where the applicant and objector are unable to resolve the issue, they would be required to enter into a formal dispute procedure.
- 121 Those seeking redress would be required to demonstrate that the proposed marine farm development would have an undue adverse effect on an existing harvesting right.
- 122 The body or person running the dispute procedure would then rule on the disagreement and provide a recommendation to the Ministry of Fisheries, detailing any arrangements that had been determined as being appropriate for the mitigation of adverse effects.
- 123 The Ministry of Fisheries would not adjudicate over disputes, and would only be able to grant an aqua-permit once satisfied that obligations arising from the dispute procedure had been settled.

124 This would retain the balance that currently exists whereby a new marine farm cannot be established if it were to have an undue adverse effect on fishing.

125 Following this process, there is a strong probability that marine farm applicants and existing fishers would develop agreements where both parties could gain from the transaction.

Linking the aqua-permit and resource consent application processes

- 126 Under current law, a marine farmer who wants to establish a new farm site is able to apply for the necessary resource consent and marine farming permit, at the same time. But the marine farming permit can only be issued after the relevant resource consent has been granted.
- 127 In practice, most applicants try to gain resource consent approval before making an application for a marine farming permit.
- 128 This sequential approach can lead to disappointment in situations where the marine farmer has successfully obtained a resource consent approval under the RMA, but has failed to obtain the necessary marine farming permit under the Fisheries law.
- 129 It is proposed that the application processes under the RMA and Fisheries law be tied more closely together.
- 130 Two options have been identified to do this.

Option C Concurrent decision making

131 Under this option the application process for an aqua-permit and the application process for a resource consent would both start at the same time - via joint public notification.

132 RMA matters would progress through to a council hearing. Matters associated with adverse impacts on existing fishers would progress through the fisheries trade-off and dispute process as outlined above.

133 The RMA would be amended to prevent the granting of a resource consent until all fisheries disputes had been resolved. Provision would also be made to adjourn any process under the RMA pending the resolution of such disputes.

134 This option would continue current processes that provide for separate consideration of RMA and fisheries matters, but it would provide applicants and objectors with a decision on both approvals at the same time, as opposed to sequentially.

Option D Joint hearing with concurrent decision making

135 This option is similar to Option C, except that the RMA would be amended so as to provide for consideration of both RMA and fisheries matters at a joint hearing of councillors and Ministry representatives.

136 This option would tie the RMA and Fisheries processes very closely together and again would provide applicants with a decision on both approvals at the same time, as opposed to sequentially.

AQUACULTURE UNDER RMA FISHERIES ACT



8 APPROACH TWO – MANAGEMENT UNDER A SINGLE RMA REGIME

CONSOLIDATE THE AQUACULTURE HARVEST RIGHT

Consolidation under a resource consent and regulated harvest regime

- 137 Under this approach all approvals to occupy water-space and establish marine farming structures in the coastal marine area would be allocated and managed by regional councils under a broadened RMA.
- 138 RMA approval would also be required to control the effects of activities, such as discharges, on the environment.
- 139 Resource consent holders would be provided with an automatic approval to take, possess, harvest and sell marine farm stock that is held on structures, through a regulatory regime established under the Fisheries Act 1996. No separate aqua-permit would be required.
- 140 The purpose of this harvest regime would be to track product flow and maintain the integrity of compliance systems established for aquaculture stocks and wild fisheries.
- 141 As far as is possible, the harvesting regime would be generic to all marine farm and aquaculture operations.
- 142 The regime would be based on provisions already contained under Part X of the Fisheries Act 1996

which provide for such things as record-keeping, reporting, disposal and taking fish for the purpose of sale.

Spat catching activity

- 143 It is proposed that the regulatory regime established under the Fisheries Act 1996 would provide marine farmers with the ability to take spat that settle onto the farm structures that are authorised under the resource consent.
- 144 The proposed regulatory regime would apply equally to those situations where the primary activity undertaken at the site was spat catching (that is, where the spat is caught on site, but then transferred onto a separate site for subsequent on-growing through to harvest).
- 145 Current activity whereby some types of spat are gathered without the use of settlement structures (such as hand-gathering of beach-cast mussel spat, and the collection of small pacific oysters or cockles off beaches) would be authorised under a separate commercial fishing permit issued under the Fisheries Act 1996.
- 146 Separate approval under the Fisheries Act 1996 would also be required to take stock (such as elvers and

juvenile rock lobsters) that had the potential to affect the sustainability of wild fisheries, and also to the capture of adult reproductive stock for breeding purposes.

Transition of existing marine farm leases and licences to the RMA regime

- 147 It is proposed that existing Marine Farming Act 1991 leases and licences be deemed to be resource consents and run through to the end of their current term plus one 14-year renewal – up to a maximum of 20 years.
- 148 All existing spat catching permits would remain valid for the balance of their current term (which in all cases is a maximum of five years), after which a new application could be made for a resource consent.

SEPARATE RESPONSIBILITY FOR MANAGING ENVIRONMENTAL EFFECTS

Increased responsibility for managing environmental effects under the RMA

- 149 Under this approach the RMA would continue to manage the effects that marine farming had on amenity values, cultural and spiritual values, visual environment, odour, noise and physical disturbance of the foreshore and seabed.

150 In addition, the RMA would be broadened so that regional councils had responsibility for managing the environmental effect of all aspects of marine farming on aquatic fauna, habitat and the sustainability of fisheries resources.

151 This is consistent with the way in which most other activities that have an effect on the aquatic environment are evaluated (such as port development, reclamation, seabed mining, laying marine cables and pipelines and so on).

152 This approach continues to provide a planning framework whereby the needs of the aquaculture industry (such as receiving an appropriate level of protection from inappropriate land use or land-based discharges) can be considered in an integrated manner.

153 This approach would also require regional councils to manage the carrying capacity of the aquatic environment, which relates to both wild fisheries and marine farming. However, unlike Approach One, disputes with existing fishers would also be managed under the RMA, rather than under the Fisheries Act.

IMPROVE INTEGRATION BETWEEN COASTAL PLANNING, MARINE FARMING AND FISHING

Resolving fisheries-use conflicts during the consent application process

154 Under this approach the RMA would be amended to provide a mechanism that allows existing fishers and marine farmers to settle disputes over any undue

adverse effects that the approval of new marine farm might have on fishing activity.

155 It is intended that a process similar to that described for dealing with aqua-permit applications (as described under Approach One) would be required.

156 Under this approach it is important to note that where tangata whenua identify that the resource consent application had the potential to extinguish, or have an undue adverse effect on, customary fishing, the regional council would need to meet with tangata whenua to discuss the application.

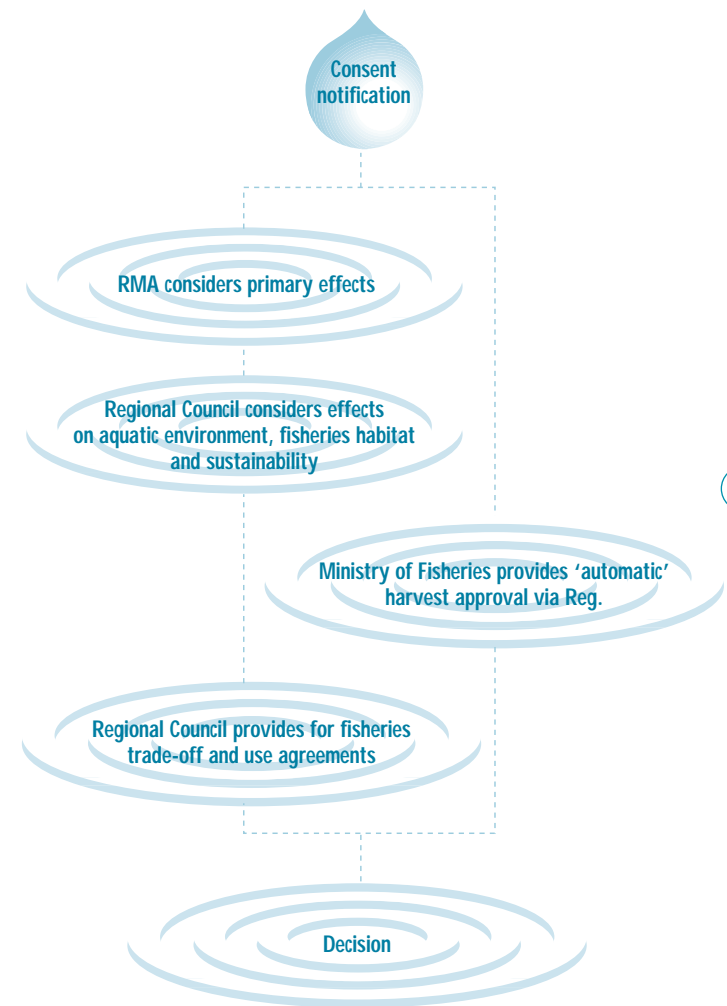
157 The regional council would then assess whether or not the application, if it went ahead, would prevent the council from discharging its obligations to recognise and provide for the use and management practices of Māori.

158 The rest of the process would flow on, as described under Approach One for aqua-permit applications.

159 It is likely that the most appropriate point at which such a dispute process could be applied would be during the pre-hearing phase of the resource consent application process. It is at this point that, under the current RMA framework, objections to consent applications are often able to resolved.

160 In cases where there was no resolution to objections based on fisheries matters, the regional council would either be prevented from granting a consent or if granted the decision could be appealed in the Environment Court, as is currently the case for decisions made on non-fisheries matters.

AQUACULTURE UNDER RMA



9 LAND-BASED AQUACULTURE

STREAMLINE THE MANAGEMENT OF LAND-BASED AQUACULTURE ACTIVITY

Phase-out of the 1983 Freshwater Fish Farming (FWFF) Regulations

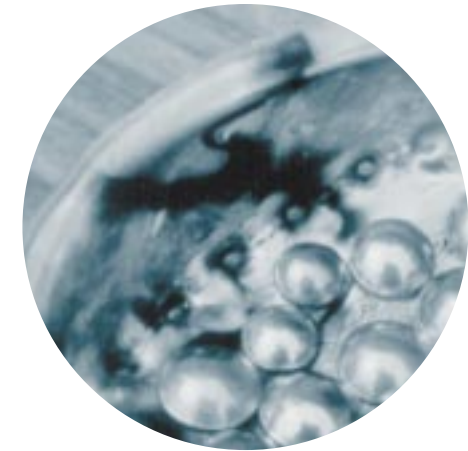
161 It is proposed that the FWFF Regulations be phased out over a five-year period, after which s 325 of the Fisheries Act 1996 would be repealed.

162 Under this proposal, those provisions currently contained in the FWFF Regulations relating to such matters as record-keeping, reporting, disposal of fish, and taking of fish for the purpose of sale, will be managed under Part X of the Fisheries Act 1996.

163 Regulation making powers provided by s 301 of the Fisheries Act 1996 will be retained to provide for any fisheries matters not adequately catered for by Part X.

Transfer of matters not directly related to fisheries to other more appropriate legislation

164 It is proposed that matters which do not relate to the management of fisheries will be progressively transferred out of the Fisheries Act 1996 and into other more relevant Acts.



Pawa pearls from a land-based hatchery.

10 HOW THESE PROPOSALS WOULD BECOME LAW

THE PROCESS FOR CHANGE

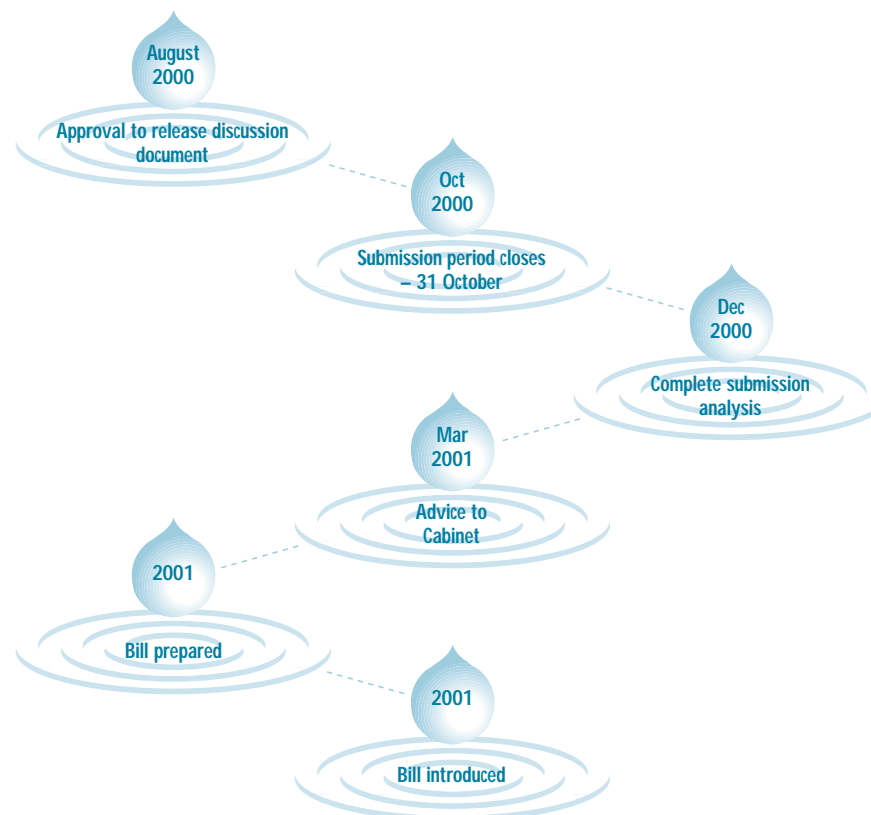
How your views will be taken into account

165 Your feedback on this discussion paper will help to develop a new legislative framework for aquaculture in New Zealand.

166 The process from here is as follows:

- The Ministry of Fisheries (Mfish) and the Ministry for the Environment (MfE) will collate and consider all submissions on the discussion paper
- Advice on the final proposals is developed
- Mfish and MfE submit final advice to the Minister of Fisheries and the Minister for the Environment
- Cabinet makes decisions on the proposals
- If some or all of the proposals are accepted these will be drafted into a Bill
- The Bill is introduced to Parliament
- The Bill is referred to a Select Committee
- Submissions are called for on the Bill
- The Select Committee considers the submissions and may amend the Bill
- The Bill is returned to Parliament for acceptance of the amendments and/or making further amendments
- The Bill is passed
- The Bill is signed into Law by the Governor-General.

FORMULATION OF ADVICE



11 HOW TO MAKE A SUBMISSION

YOUR SUBMISSION

We value your comments

167 To make a submission, simply write down the comments you wish to make, and send them to the Ministry of Fisheries at the address below by 31 October 2000.

Closing date and contact address

The closing date for submissions on this document is

31 October 2000.

All submissions should be addressed to:

Project Manager

Aquaculture Reform

Ministry of Fisheries

FREEPOST 67219

NELSON

Telephone: 03 548 1069

Fax: 03 546 9327

Email: aqreform@fish.govt.nz



Official Information Act

Please note that all submissions are subject to the Official Information Act and can be released, if requested, under that Act.

If you have specific reasons for wanting your submission withheld, please set out your reasons in the submission. MFish will consider those reasons when making any assessment for release of submissions if requested under the Official Information Act.

How should coastal space be used?