



Aquaculture Reform 2004: The Rules of the Game – Creating Aquaculture Management Areas

INTRODUCTION

This information sheet explains the aquaculture planning provisions introduced by the aquaculture reform in the Resource Management Amendment Act (No4) 2004.

It is one of a series of four information sheets explaining different aspects of the aquaculture reform for people working in local government, and for their stakeholders. The other information sheets are:

- *Aquaculture Reform 2004 – An Overview*
- *Aquaculture Reform 2004 – From the Old to the New – Moving to the New Regime*
- *Aquaculture Reform 2004 – Settling Maori Claims.*

The reform introduces Aquaculture Management Areas (AMAs) as a planning tool in regional coastal plans. From 1 January 2005, new marine farms are only able to occur within an AMA. All new and existing marine farms are to be managed under this regime.

The information sheet, *From the Old to the New – Moving to the New Regime*, provides greater detail about how the transition to the new management regime created by the aquaculture reform will occur. The transition enables certain existing marine farm leases and licences, RMA coastal permits, RMA regional coastal plans and some existing applications to be deemed as AMAs or 'Interim AMAs'.

WHAT ARE AQUACULTURE MANAGEMENT AREAS, AND WHY DO WE HAVE THEM?

Aquaculture Management Areas (AMAs) are a coastal management tool to address the cumulative effects of aquaculture. They will be included in regional coastal plans after regional and unitary councils have consulted with the public and marine farming industry. They replace existing provisions.

In preparing AMAs, councils are required to address the effects of aquaculture on the environment, fisheries resources and other uses of the coastal marine area, and to consider their effects on commercial, customary and recreational fishing.

Not all councils need to identify new AMAs in their regional coastal plan. For example, this would not be necessary where there is little demand for new space, or if marine farming is not viable and/or appropriate within the region. These councils may still choose to identify areas where aquaculture is specifically excluded – this will help them manage any applications for Private Plan Changes by making it clear to industry where marine farming is not allowed. (Private Plan Changes are discussed more fully below.)

Councils may remove or modify existing AMAs through a plan change. This could include changes to the deemed AMAs (see the information sheet, *From the Old to the New – Moving to the New Regime*). Because consents have a fixed term, the activity authorised by the consent can continue to the end of this term, regardless of what happens to the AMA. The AMA only matters when a marine farmer wants to renew the consent or change it.



The time and cost it takes to identify AMAs will vary depending on the nature and scale of each proposed AMA, and each council's progress toward the new regime. While the reform replaces a disjointed and complex regulatory framework, it may take some councils a concerted effort up front to identify and create AMAs.

Moving to the new regime requires clear advice and support to regional and unitary councils and other stakeholders to ensure the intent of the reform is delivered. To that end, central government will support councils as they undertake this work.

WHAT WILL AQUACULTURE MANAGEMENT AREAS LOOK LIKE?

In defining their Aquaculture Management Areas (AMAs), regional and unitary councils need to address the actual and/or potential adverse effects (including cumulative) that aquaculture has on the environment, and on other uses of the coastal marine area. These include information about the actual and/or potential effects on the carrying capacity of the marine ecosystem. They can draw on the findings of any studies that have been completed or are currently underway. The Ministry of Fisheries (MFish) will provide councils with access to both its staff and fisheries information to help guide their constraints mapping in the development of future AMA proposals.

The status of aquaculture will be determined in the plan. In some situations, if there is good information, the council will be able to give greater certainty to applicants by making aquaculture a controlled activity. Where effects are less able to be predicted, consents may need more justification and an aquaculture proposal may be a restricted discretionary, discretionary or non-complying activity.

When developing AMAs, regional and unitary councils are expected to consider the appropriateness of existing marine farms.

THE AQUACULTURE MANAGEMENT AREA PROCESS

The Aquaculture Management Area (AMA) process that councils must follow is the same public planning process under the Resource Management Act (RMA) 1991, with one addition. A new RMA Schedule 1A includes a test by MFish to assess whether the proposed AMA would have an Undue Adverse Effect on commercial, customary or recreational fishing.

Any AMA that passes the MFish test is included in a council's proposed regional coastal plan, which must then be approved by the Minister of Conservation before it becomes operative.

Testing the effects on fishing

Regional and unitary councils can't notify their regional coastal plan under the RMA until the Ministry of Fisheries' Chief Executive (or his delegated official) has decided whether the proposed AMA will have an Undue Adverse Effect on fishing. The sustainability of fisheries resources is now a council function.

This decision maintains the integrity and benefits of the rights-based fisheries management system, ensures the Crown delivers on its obligations to Maori and protects fishers' existing use and access rights.

The Undue Adverse Effects test looks at a proposed AMA's likely effect on commercial, recreational and customary fishing. Fishing means the catching, taking or harvesting of fish, aquatic life or seaweed.

The test primarily looks at the extent and type of fishing at the site, and what alternative sites are available if the proposed AMA goes ahead. In doing so, the Ministry also takes into account the cumulative effects of past marine farming developments in the area.

The Undue Adverse Effects test must be made using the best available information. MFish must consult with commercial, recreational and customary fishers and will also use other available information such as fishing records and reports, research documents, regulations, management plans and institutional knowledge.

Any areas within the proposed AMA that would unduly affect customary or recreational fishing will be removed from the AMA proposal.

Any areas within the proposed AMA that would unduly affect commercial fishing will be identified in the coastal plan. Anyone wanting to establish a marine farm in these places must first reach an agreement with the affected quota holders before they can apply for resource consent.

Where Undue Adverse Effects are found, the decision is known in the Act as a 'reservation'. If there are no Undue Adverse Effects, the outcome is known as a 'determination'.

When the Ministry of Fisheries' Chief Executive (or delegate) has made the decision, it must be publicly notified. If any party believes the facts it was based on are incorrect and wants to appeal the decision, this must be lodged with the High Court within three months of the Undue Adverse Effects decision.

Note that an Undue Adverse Effects test is not required for existing marine farms already deemed AMAs as part of the transition to the new regime, as these will already have been dealt with under s67J or Q (for spat catching) of the Fisheries Act 1983.

The Minister of Conservation's approval

Councils apply to the Minister of Conservation to have their proposed regional coastal plans, including new AMAs, approved. Only when they get this approval does their plan become operative. And only then can they receive applications for coastal permits within the new AMA(s).

The Minister of Conservation's involvement reflects his responsibilities for sustainable coastal management under the RMA, including the Crown's interest in the coast.

If a council has chosen tendering as its mechanism for allocating marine farming space, then the successful tenderer may apply for a resource consent. (Tendering is discussed further below.)

PRIVATE PLAN CHANGES

The Private Plan Change is an alternative route to create new Aquaculture Management Areas (AMAs). It gives individuals and/or industry the option to identify potentially suitable aquaculture areas when doing so is not a priority for a regional or unitary council at that time.

The statutory process for a Private Plan Change is just the same as that followed by councils, and includes the Undue Adverse Effects test discussed above.

A council can specify where it will accept Private Plan Change applications, and identify maximum sizes for an AMA. These controls aim to avoid numerous fragmented applications for privately initiated AMAs. (See also the provisions in Clause 25 of the RMA First Schedule.)

If a council-initiated Private Plan Change is successful, the proponents are given the first opportunity to apply for 80 percent of the approved AMA space, once 20 percent of the AMA has been set aside for the settlement with Maori (see the information sheet, *Settling Maori Claims*).

Note that a Private Plan Change can be sought even if a council has not specified where it will accept applications. In this case, even if successful, the proponent does not get any preferential access to space.

Councils may also exclude areas to prevent Private Plan Change requests (Section 165W of the RMA). These areas must be publicly notified, and before doing this the council must meet the same requirements for consultation as for a proposed regional policy statement or plan (these are listed in the RMA First Schedule Clause 3).

AQUACULTURE MANAGEMENT AREAS ESTABLISHMENT PROCESS

Moratorium lifts – December 2004

RMA now main tool for managing aquaculture space

Transitional Provisions

- Transfer of Marine Farming Act leases and licences to the RMA
- Transfer Fisheries Act permit conditions obtained under the current dual RMA/Fisheries system into RMA consents
- Completing the current applications under both the RMA and Fisheries Act, including those on hold under the moratorium
- All existing marine farms deemed as AMAs, once processed through transitional provisions (unless prohibited in a plan)

Council-Initiated Plan Change

- Council begins RMA plan change process and develops proposal, including consultation
- Undue Adverse Effects test undertaken by Ministry of Fisheries before plan is notified
- Proposed plan notified, submissions and potential appeals to the Environment Court before the plan is approved
- 20 percent of representative new space identified in the process is set aside for iwi. Up to an additional 20 percent of new space may be required by the Crown to provide 20 percent of existing marine farming space approved since 21/09/92

Private Plan Change

- Council undertakes 'constraints mapping' to determine excluded areas for aquaculture
- Council invites private plan change within remaining areas
- Private plan change – includes UAE test (the same as a council-initiated process, except funded by industry)
- 20 percent of representative new space identified in the process is set aside for iwi

AMA created, identified in coastal plan

Tender process

Successful tenderer applies for resource consent

Private plan change initiator has preferential right to apply for resource consent (if required)

New default for dealing with expiring aquaculture resource consents and the incumbent gets their application considered first and must meet set criteria



THE ROLE OF TERRITORIAL AUTHORITIES

Land management decisions by district and city councils can directly impact on the viability of an Aquaculture Management Area (AMA). Equally, decisions by regional and unitary councils about AMAs can have impacts on adjoining land uses and values.

AMA planning therefore requires close consultation and integration between regional and unitary councils and territorial authorities.

ALLOCATING SPACE IN AQUACULTURE MANAGEMENT AREAS

As part of the Treaty settlement, Government will instruct councils to provide between 20 percent and 40 percent of new AMA space to iwi before any other space is allocated (see the information sheet, *Settling Maori Claims*, for more details on iwi provisions).

The Resource Management Amendment Act (No4) 2004 (section 165E) makes tendering the allocation method for new aquaculture space, unless the regional or unitary council has provided an alternative method in its regional coastal plan.

In the case of Private Plan Changes for areas where the council has specified marine farming can occur, proponents get preferential access within their AMA and don't need to tender.

In all cases, the tender revenue earned is split equally between the council and the Crown.

The Resource Management Amendment Act (No4) 2004 (section 165O) empowers the Minister of Conservation to direct regional and unitary councils about allocating coastal space if there is a need to give effect to government policy in the coastal marine area, or to preserve the Crown's ability to meet an obligation arising out of an agreement in principle or deed of settlement between the Crown and Maori (in relation to an historic Treaty settlement).

There are limited circumstances in which this power can be exercised. They include:

- before plan notification or approval, directions can be given that the space not be allocated, or that affect the plan's allocation method
- just before individual allocation rounds, the Ministerial direction can be used to allocate to the Crown or limit the term of consents.

The Department of Conservation will investigate, in consultation with councils, the need for guidance to further explain the Minister's power of direction and provisions for coastal tendering. This guidance is not required immediately.



MORE INFORMATION

This information sheet and other information on the Aquaculture Reform 2004 is available on the Ministry for the Environment's website: www.mfe.govt.nz