



# Aquaculture Reform 2004: From the Old to the New – Moving to the New Regime

## INTRODUCTION

This information sheet explains how we will move to the new ways of managing marine farming provided by the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 and 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 – The Rules of the Game – Creating Aquaculture Management Areas*
- *Aquaculture Reform 2004 – Settling Maori Claims.*

## THE AQUACULTURE REFORM (REPEALS AND TRANSITIONAL PROVISIONS) ACT 2004

This Act eases the transition to Aquaculture Management Areas (AMA) by recognising existing marine farm leases and licences, Resource Management Act (RMA) 1991 coastal permits, regional coastal plans, some existing applications, and marine farming permits and spat catching permits issued under the Fisheries Act 1983. In certain, specified circumstances, each of these are deemed an AMA or declared an “Interim AMA”.

The transitional provisions are summarised below. The Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 should be studied carefully to see which situation applies.

## MARINE FARM LICENCES AND LEASES, AND MARINE FARMING PERMITS

All leases and licences already issued under the Marine Farming Act 1971, and marine farming permits issued under the Fisheries Act 1983, are deemed to be coastal permits under the RMA. Any conditions associated with them are now conditions of the new permits, and deemed coastal permit holders will be registered as fish farmers under the Fisheries Act 1996.

The deemed coastal permits will include conditions on any discharges, where this activity occurs already.

Existing marine farming licences and leases automatically receive a term of 20 years from the enactment of the new legislation on 1 January 2005. At this time, if the site is within an Aquaculture Management Area (AMA), the existing marine farmer’s application for a new consent will be determined first, before anyone else’s consent application for that space. However, existing marine farming permits expire at the end of the term they had been issued for under the old regime. Once a marine farming permit expires, marine farmers have to apply for a new authorisation under the new regime.

Councils may review the conditions on the permits to make them consistent with the RMA – within limits. To ensure the existing activity can continue, councils cannot change the term, the species, or the area a permit covers. An existing operator can appeal any of the council’s decisions.



## **EXISTING APPLICATIONS**

### **Applications received and notified before**

#### **28 November 2001**

Applications received and notified by 28 November 2001 will be fully dealt with under the old regime, in place before the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

If the application is granted the necessary resource consents, the applicant must then seek a permit under the Fisheries Act 1983. If this is granted, the relevant permit will be issued. It will then be transitioned across into the new regime and the holder registered as a fish farmer. No part of these applications is allocated to iwi. (For more information on this, see the information sheet, *Settling Maori Claims*).

### **Applications received but not notified before**

#### **28 November 2001**

Applications received but not notified before 28 November 2001 were 'frozen' by the moratorium. They are to be assessed under the rules in place from 1 January 2005. This means an application must fall within an Aquaculture Management Area (AMA) and, if approved, is subject to the 20 percent allocation to iwi. The only exceptions are the two areas where the moratorium has already been lifted – in Canterbury and the southern Kaipara Harbour.

If an AMA is created over all or part of the water space covered by the application, the application is 'unfrozen' and processed according to the new provisions in the RMA and Fisheries Act.

Frozen applications remain 'frozen' until they either expire (by 31 December 2014), or become part of an AMA.

### **Fisheries Act (1983) and marine farming permit applications**

Applications currently being considered by the Ministry of Fisheries (MFish) will be dealt with under the Fisheries Act 1983. Where a permit is granted, the relevant permit will be issued. It will then be transitioned across into the new regime, and the holder registered as a fish farmer.

## **EXISTING PROPOSED AND OPERATIVE REGIONAL COASTAL PLANS**

The new Act recognises that some regional and unitary councils have already made good progress toward creating AMA-like zones in their regional coastal plans. These councils can apply to the Minister of Conservation to have those zones in their plan declared an "Interim AMA". MFish assesses Interim AMAs using the old "Undue Adverse Effects" test in s67J (or Q for spat catching) of the Fisheries Act 1983, to consider any effects on fishing and the sustainability of fisheries resources. If the Interim AMA does not have an Undue Adverse Effect, it becomes a full AMA. If the AMA or any part of it has an Undue Adverse Effect on fishing or fisheries resources, the relevant area must be removed from the AMA, before the remaining area can be declared a full AMA.

Applications for new marine farms can be considered once the Interim AMA becomes a full AMA. Applications for coastal permits for marine farming can only be accepted inside AMAs.

Existing marine farms that have resource consent or Marine Farming Act authorisation, **and** are sited in an area where marine farming is not prohibited under an existing or proposed regional coastal plan, will be deemed to be AMAs.

Old	New	ARA 2004 <sup>1</sup>	Relevant Information
<b>Marine Farming Act 1971</b>			
Marine Farm Licences and Leases and  RMA permit for the structure and occupation of the space.	Deemed coastal permit for 20 years.  The RMA permit continues for 20 years.	Section 10  Section 49	The council may review conditions of a deemed coastal permit within 12 months. The marine farmer can appeal any decisions arising from the review (ARA section 10).  The RMA permit includes old Harbours Act approvals which were deemed coastal permits under RMA s384.  After 20 years a marine farming licence or lease-holder has a preferential right to apply for a new permit to occupy the space (ARA section 49).
<b>Resource Management Act 1991/Fisheries Act 1983 (Post-1992, when the Marine Farming Act was closed off)</b>			
Fisheries Act 1983 Permit (either a marine farming permit or a spat catching permit) and  RMA coastal permits.	Deemed consent for Fisheries Act permit (both kinds).  RMA consent continues.	Section 20 Section 21  Section 24	Fisheries Act permits are deemed to be RMA coastal permits. The council may review the conditions on these to make them consistent with the RMA (ARA section 20).  The farmer can appeal any decisions arising from the review (ARA section 24).
<b>Off-site Farms</b>			
Enforcement action can be taken to move the farm onto its approved site. There is no provision for amending the permit to reflect the actual site where that is more appropriate.	Review of actual location of the farm against the originally approved site.	Section 53	Two years are given, from 1 January 2005, for the marine farmer to apply, or for the council to initiate this process. Generally, if it makes environmental sense to move the paperwork rather than the farm, this will be done. The decision will be up to the council, and there are other matters they can consider under the RMA.  At the end of the process the farm will be on the site given in the permit. The site cannot be bigger than the original authorised areas.
<b>Deemed Aquaculture Management Area (AMA)</b>			
	Areas where there are existing authorised marine farms will be deemed to be AMAs by law.	Section 45	Deeming does not apply where the marine farm is in an area identified as being prohibited for aquaculture under an existing or proposed plan. The area of the deemed AMA will be the area covered by the deemed consent subject to any lapsing under ARA section 28 and the review of any off-site marine farms. The plan rules for the deemed AMA will be those applying in the current plan.  To change the AMA, or the rules applying to it, the council will have to do a plan change.

<sup>1</sup> ARA 2004 is the Aquaculture Reform (Appeals and Transitional Provisions) Act 2004.

Existing	New	ARA 2004 <sup>1</sup>	Relevant Information
<b>Applications</b>			
Lodged with council and not notified before 28 November 2001.  On hold.	Application is 'frozen' and can only proceed if within an AMA.	Section 47	These applications were caught by section 150B(2) of the Moratorium Act 2002. If a plan change is notified defining an AMA, and the applications are outside an AMA in that plan, they are cancelled.  In the event of there being no plan defining AMAs, applications will be cancelled by 31 December 2014 (ARA section 47).
Notified by council and partially processed.	Continues to be processed under the current RMA provisions, and the Fisheries Act 1983, and is then transitioned into the new regime.	Section 50	The RMA permit is considered and if issued, then the applicant should seek the relevant fisheries permit. If this is issued, the consent holder is deemed a registered fish farmer and the fisheries permit area becomes a deemed AMA (refer ARA sections 20/21).
Consent granted by council and seeking Fisheries Act permit.	Continues to be processed under the Fisheries Act 1983 and is then transitioned into the new regime.	Section 52	The relevant fisheries permit is issued. The consent holder is deemed a registered fish farmer and the fisheries permit area becomes a deemed AMA (refer ARA sections 20/21).
<b>Regional Coastal Plans</b>			
Proposed and operative Regional Coastal Plans.	New applications for aquaculture cannot be accepted until an AMA is made operative. Once the plan is operative, marine farming is only permitted within an AMA.  There are two options to get an operative AMA:  (1) council applies to the Minister of Conservation for relevant parts of the existing regional coastal plan to be declared an Interim AMA  (2) develop new AMA provisions for the Regional Coastal Plan.	Prohibition on new marine farms = RMA section 12A.  Interim AMAs = ARA section 36.  New AMAs = RMA section 165c.	The Minister's agreement to the Interim AMA application is subject to the regional coastal plan adequately addressing the effects (including cumulative effects) on the environment, the occupation of the coastal area, and of aquaculture activities.  An Interim AMA is subject to an 'aquaculture decision' by the Chief Executive of the Ministry of Fisheries under the ARA (section 38) and includes consideration of the effect on fishing and the sustainability of fisheries resources, excluding those areas covered by existing permits and certain applications (ARA section 40).  The process for developing new AMAs is governed by the requirements of new RMA Schedule 1A.  The new AMA could be Private Plan Change proposals, or council-initiated plan changes.

<sup>1</sup> ARA 2004 is the Aquaculture Reform (Appeals and Transitional Provisions) Act 2004.



## RESOURCE CONSENTS

Coastal permits continue for the duration of the resource consent. When the consent expires, permit holders must apply for a new permit.

The Resource Management Amendment Act (No4) 2004 provides further limited protection for existing marine farm consent holders. When a consent nears the end of its term, the existing farmer's application for a new consent will be determined first, before anyone else's consent application on that space, so long as:

- the new application seeks to continue the existing aquaculture operation
- it is still within an Aquaculture Management Area (AMA)
- the incumbent meets certain additional criteria.

The additional criteria that the incumbent must meet, on top of those a council would normally consider when assessing a consent application, are the consent holder's track record in compliance and whether they use current industry good practice on their farm (see new section 165ZJ of the Resource Management Act 1991).

Note that the protection for existing marine farm consent holders can be over-ridden if a plan change removes the AMA, or the council adopts another mechanism to allocate space for marine farming.

## FARM REGISTRY OBLIGATIONS

Existing coastal permit holders will be registered as fish farmers under the Fisheries Act 1996. This will be done by MFish, which manages the fish farmer register to track product flow and check compliance with the wild harvest of that farmed species.

Those who will be registered are holders of:

- an appropriate resource consent (or someone acting under the authority of someone else's consent)
- a certificate of compliance under the RMA.

Fees will apply for new registrations or any future changes to the register. Any changes to a site's definition, species or ownership can only be made by the fish farmer in relation to their sites, and must be accompanied by the appropriate supporting documents.

MFish will pass information on to regional and unitary councils about the marine farmers in their region, the sites registered to them and species permitted to be farmed on each site, and a copy of the current tenure agreement.

The Chief Executive of the Ministry of Fisheries may decline an application for registration on the fish farm register if he believes the applicant has fisheries convictions within the past five years.

## REVIEW OF OFF-SITE FARMS

The Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 provides for the review of marine farms located outside their authorised space.

Deemed coastal permit holders have two years from 1 January 2005 to apply to have their permit amended to reflect their actual space. Councils may also initiate the process. The permit holder's application must be accompanied by an assessment of environmental effects. The request is treated as if it were an application for a resource consent.

Where an application is declined, the consent holder is required to move the activity to the authorised space. A deemed coastal permit amended through these provisions cannot authorise the permit holder to occupy a space bigger than that allowed by their original consent.

Enforcement action can be taken to move the farm onto the approved site.

## DERELICT OR ABANDONED FARMS

In the case of derelict or abandoned marine farms, any forfeiture action begun by the Ministry of Fisheries under the Marine Farming Act will be concluded.



## **LAND-BASED AND FRESHWATER FISH FARMS**

Land-based and freshwater fish farms will continue to be licensed under the Freshwater Fish Farming Regulations 1983. Any new applications will be processed under those regulations until the sections of the aquaculture reform that relate to land-based fish farming come into force. This will happen once the existing Freshwater Fish Farming Regulations 1983 have been reviewed. Once these aquaculture reform provisions commence, licences will be replaced by a requirement to register as a fish farmer under the Fisheries Act 1996.