



# Aquaculture Reform 2004: An Overview

## INTRODUCTION

This information sheet provides an overview of the outcomes of New Zealand's aquaculture reform. It is one of a series of four information sheets explaining different aspects of the reform for people working in local government, and for their stakeholders.

The other three information sheets in the series are:

- *Aquaculture Reform 2004 – From the Old to the New – Moving to the New Regime*
- *Aquaculture Reform 2004 – The Rules of the Game – Creating Aquaculture Management Areas*
- *Aquaculture Reform 2004 – Settling Maori Claims.*

A previous information sheet (*Aquaculture Reform*, July 2004) provides further background information and is available from the Ministry for the Environment or its website: [www.mfe.govt.nz/](http://www.mfe.govt.nz/) Information about the specific roles played by the Department of Conservation (DoC) and Ministry of Fisheries (MFish), and who to contact for more information, are available from their websites – [www.doc.govt.nz](http://www.doc.govt.nz) and [www.fish.govt.nz/](http://www.fish.govt.nz/)

### Note

We use the term 'marine farming' in these information sheets to mean aquaculture activities in the marine coastal area, as laid out in the Resource Management Amendment Act (No4) 2004.

The term 'fish farmer' refers to a person registered as such under the Fisheries Act 1996, or someone currently licensed under the Freshwater Fish Farming Regulations 1983.

While the aquaculture reform does cover land-based fish farming, including marine species, these provisions have not yet come into force. When they do, further information sheets explaining that aspect of the reform will be provided.

## WHY THE REFORM IS HAPPENING

New Zealand has a beautiful and abundant coastal marine area, which also provides a livelihood to many New Zealanders. One industry involved in this area is marine farming, a sector currently worth around \$250 million a year.

In the late 1990s, demand for access to unpolluted, nutrient-rich waters for a diverse range of marine farming increased five-fold. There are currently about 1200 marine farms nationally.

The overwhelming demand highlighted a need for a more controlled planning regime and the need for better integration between coastal planning, aquaculture and fisheries management, and the agencies involved. A dual permitting system required applicants to first gain a resource consent under the Resource Management Act (RMA) 1991, and then a permit from the Ministry of Fisheries under the Fisheries Act 1983. It became clear the existing legislative framework needed amending.

Regional and unitary councils were left dealing with applications for marine farms on a first-come, first-served basis, with little guidance on how marine farming fitted into overall coastal management. The results were bottlenecks and high processing costs for applicants, submitter fatigue, costly delays in developing regional coastal plans, local moratoria and poor environmental outcomes as there was little strategic direction on the location of marine farms to deal with their cumulative effects. Marine farmers, local communities, fishers and the Government wanted change.

Since the late 1990s, a lot of work has gone into sorting this out – the aim: to create an aquaculture management regime that balances economic development, environmental sustainability, Treaty obligations and community concerns.

The aquaculture reform came into effect on 1 January 2005.



## TIMELINE

- **August 2000:**  
The Government seeks submissions on proposals to change the way aquaculture is managed – 242 submissions received.
- **November 2001:**  
The Government approves the proposed reforms and puts in place an immediate moratorium on new applications, pending the new regime.
- **March 2002:**  
The Resource Management (Aquaculture Moratorium) Amendment Act comes into force. Originally for two years, the moratorium is extended to 31 December 2004 to ensure the aquaculture reform is consistent with the foreshore and seabed policy.
- **Later in 2002:**  
Wai 953 raises the possibility of conflict between the aquaculture reform and Treaty principles. This is addressed by the 20 percent iwi provision in the Maori Commercial Aquaculture Claims Settlement Act 2004.
- **August 2004:**  
The Aquaculture Reform Bill is introduced for its first reading.
- **December 2004:**  
The Aquaculture Reform Bill is passed into law, and takes effect from 1 January 2005.

## WHAT THE REFORM ACHIEVES

The purpose of the aquaculture reform is:

“...to enable the sustainable growth of aquaculture and ensure the cumulative environmental effects are properly managed while not undermining the fisheries regime or Treaty of Waitangi settlements.”  
(PAGE 24, Aquaculture Reform Bill 2004, explanatory note.)

The reform brings greater clarity about how aquaculture is managed in New Zealand. The Marine Farming Act 1971 is repealed and the RMA now governs the bulk of aquaculture management. (Some aspects are covered by the other Acts listed below.) The RMA applies to the edge of the territorial sea (12 nautical miles). There are clearer responsibilities for regional and unitary councils and MFish.

In the longer-term, the reform will provide greater certainty for aquaculture developers, and reduce ‘submitter fatigue’ for communities (their participation will be concentrated at the time of plan changes and variations, when areas for marine farming are determined). The reform aims to deliver an aquaculture industry that is sustainable economically, environmentally and socially because key regulatory and allocation issues are managed by one agency, the regional or unitary council. Councils will be enabled to manage the increasing demand for marine space in a well-planned and controlled way, balancing the needs of fishers, marine farmers, iwi, communities, other commercial users, recreational users and the environment.

## THE MAIN ASPECTS OF THE REFORM

The main aspects of the reform are that:

- it creates a single process for aquaculture planning and consents, through the RMA
- regional and unitary councils have clearer direction and responsibilities for managing all environmental effects of aquaculture, including effects on fisheries and other marine resources
- marine farms can only occur in zoned areas, known as Aquaculture Management Areas (AMAs)

- a new AMA can be initiated by regional and unitary councils, the industry or individuals
- effects of aquaculture on fishing activity will be taken into account through this process by a test under the Fisheries Act 1996
- more certainty is provided by settling claims for Maori commercial aquaculture post-21 September 1992.

The aquaculture reform amends five existing Acts through the following:

- Resource Management Amendment Act (No4) 2004
- Fisheries Amendment Act (No5) 2004
- Conservation Amendment Act (No3) 2004
- Biosecurity Amendment Act (No3) 2004
- Te Ture Whenua Maori Amendment Act (No3) 2004.

And it creates two new Acts:

- Maori Commercial Claims Settlement Act 2004
- Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

### **WHAT THE REFORM MEANS IN PRACTICE**

The reform puts regional and unitary councils squarely in the driver's seat. Councils can plan where coastal marine aquaculture will or will not occur, rather than being driven by applications for sites.

Central government agencies will work with councils to put the reform into practice.

Once a new Aquaculture Management Area (AMA) is defined in a regional coastal plan, life will generally be simpler for applicants who, in most cases, will only need resource consent and to be registered as a marine farmer. The test for undue adverse effects on fishing is now dealt with when the AMA is created, so applicants will no longer need to also apply to MFish for a permit. For more information on this, see the information sheet, *The Rules of the Game – Creating Aquaculture Management Areas*.

### **Moving to the new regime**

Certainty is provided for existing marine farms that have a current resource consent or Marine Farming Act authorisation. Farms in an area identified in the coastal plan as appropriate for marine farming activity have AMA status.

The reform also recognises that some regional and unitary councils have already made good progress toward creating AMAs in their coastal plans. These councils can apply to the Minister of Conservation to have those parts of their plan declared an "Interim AMA". The sequence is:

- 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 their effects on fisheries resources and fishing activity
- if the Interim AMA passes this Undue Adverse Effects test, it becomes a full AMA.

More information on this is provided in the information sheet, *From the Old to the New – Moving to the New Regime*. That information sheet also explains the transition provisions for RMA and fisheries applications that have been halted by the Aquaculture Moratorium 2002.

### **Creating an Aquaculture Management Area**

AMAs can be initiated by councils or by private interests. A summary is provided below, and the processes are explained more fully in the information sheet, *The Rules of the Game – Creating Aquaculture Management Areas*.

#### **i) Council-initiated process:**

If a council chooses to initiate the process, changes, variations and reviews of regional coastal plans go through the comprehensive planning process in the RMA. Councils will consult widely to decide where marine farming should happen, and as part of the process, will consider the potential effects on the environment, such as marine farming's effects on other users, marine life, fisheries sustainability and nutrient depletion. The process involves public notification, hearing submissions and opportunities for appeals to the Environment Court.

Once draft AMAs have been identified, MFish then tests whether there are any Undue Adverse Effects on commercial, customary or recreational fishing and reports its decision to councils.

Councils will only be able to accept applications to marine farm within AMAs in operative regional coastal plans. Some AMAs will identify the type of marine farming that will be appropriate. Marine farms will be prohibited outside AMAs.

Councils can identify an AMA specifically to meet obligations under the settlement of Maori commercial aquaculture claims. This is explained in the information sheet, *Settling Maori Claims*.

ii) Invited Private Plan Change:

Rather than deciding where marine farms should go and then pursuing public plan changes, some councils may prefer to decide where they do **not** want aquaculture, and invite industry-initiated Private Plan Changes in the remaining coastal marine space.

The Private Plan Change process is exactly the same as for a council-initiated plan change, except that the private party carries the costs of the planning process.

The council initiates an invited Private Plan Change by calling for interested parties to submit proposals. The council must indicate the areas where it will **not** consider a plan change. Council can accept one or more proposals, combine proposals into one larger proposal, or reject all the proposals.

If the plan change is successful, 20 percent of the space will be provided for the settlement of Maori claims, and the proponent of the Private Plan Change will be authorised to apply for consents for the remaining 80 percent. The council may add space to the area requested by the Private Plan Change. If it does so, the council contributes to the costs of the planning process, and the remaining space is allocated according to the coastal plan provisions.

If a council does not call for interested parties to submit proposals, nor indicate areas where marine farming is not allowed, then the normal Schedule One option in the RMA is the only one available. However, if a private party chooses to use this option, he or she will not get a preferential allocation of marine space. This option can be used when a council has an operative coastal plan and to promote a variation to a proposed plan. The proponent meets all planning costs.

For further information on Private Plan Changes, see the information sheet, *The Rules of the Game – Creating Aquaculture Management Areas*.

**Modifying or removing AMAs**

Plan changes or reviews can modify or remove AMAs. The same public process is followed as for creating an AMA, before the plan is approved. If the modification involves shifting the AMA, or increasing its size or intensity, the process will also include the MFish test for Undue Adverse Effects on fishing activity (for more details on this test, see the information sheet, *The Rules of the Game – Creating Aquaculture Management Areas*).

Existing marine farmers have some protection against changes – any farms within the AMA when it is changed have the right to continue until their consent expires.

**Settling Maori claims**

In line with the 1992 Fisheries Settlement, the Government is committed to providing iwi with 20 percent of the marine farming space within every region. This means 20 percent of all existing space allocated since 21 September 1992, and 20 percent of all marine farming space created in future, including AMA space created by Private Plan Changes.

If space is not available for the 1992 to 2004 allocation, the financial equivalent must be made available to iwi by the Crown.

Settlement of Maori claims is further explained in the information sheet, *Settling Maori Claims*.



### How the costs and benefits will fall

It is expected that the overall costs for processing marine farm applications will decrease. This decrease will largely result because most environmental assessments are done at the stage that AMAs are planned; under the old regime individual assessments were required for smaller, disjointed areas.

#### i) Councils:

The costs to councils of developing AMAs may be offset by:

- tendering the right to apply for a consent for coastal space for aquaculture in any AMA it initiates. Any tender money is split between the council and the Crown, and must be spent on coastal management
- charging for coastal occupations (this charging is provided for by the RMA 1991).

If councils don't want to use a tender process to allocate AMA space they must say why in their coastal plan, and explain what they will do instead. Note that, with successful invited Private Plan Changes, tenders don't apply as proponents get preferential access to 80 percent of the available space, after provision has been made for the settlement of Maori claims.

#### ii) Applicants:

Before the aquaculture reforms, individual applicants for marine farming space had to shoulder most costs – providing the information needed to support their applications to councils and MFish, and paying the council's processing costs.

Having just one application process (for a resource consent) should save applicants money. Once an AMA is approved, applicants for space within the AMA no longer have to obtain Fisheries Act approval. For new AMAs, the MFish costs of the Undue Adverse Effects test will be Crown-funded.

The two main compliance costs for industry are record keeping and monitoring costs, and the fish farmer registry.

### Allowing flexibility

There may be times when industry wants an experimental site to test an innovative idea on a limited scale. While these proposals will have to be in an AMA and go through the resource consent process, the rules in the coastal plan should be written flexibly enough to deal with significant adverse effects, yet not be so prescriptive that they prevent innovation. That's where the council's planning skills come into play, including their consultation with industry and the public. The government agencies involved also recognise the need for flexibility.

### Fish farmer register

All marine farmers will need to be registered as fish farmers under the Fisheries Act 1996. The Fish Farmer Register will be administered by MFish so it can track the movement of farmed product.

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

For more information on the register, see the information sheet, *From the Old to the New – Moving to the New Regime*.

### Are land-based fish farms affected?

Land-based and freshwater fish farms will continue to be licensed under the Freshwater Fish Farming Regulations 1983. Any new applications will also 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 the aquaculture reform provisions commence, licences will be replaced by a requirement to register as a fish farmer under the Fisheries Act 1996.

### MAKING THE CHANGES – IMPLEMENTATION

Once councils have operative Aquaculture Management Areas (AMAs) in their regional coastal plans, the task of applying for aquaculture resource consents will be simpler and more certain.



However, quite a bit has to happen to get to that level of certainty. Councils, communities and stakeholders will have to decide how much information is enough to provide a robust plan and meet the requirements of the RMA. Some councils may have to direct resources to build their capacity and capability to do the work.

To support councils to implement the reform and assess its impacts and implications, some special projects are being run by MfE, MFish and DoC. These cover:

- information explaining the reform, to support council planners and consents officers
- a stock take of what knowledge, skills and capacity regional and unitary councils need, and anything that may get in the way of successful implementation
- guidance on the procedures and standards that make up industry best practice
- an assessment of the information needed to analyse marine farming's effects on fishing activity or conservation values
- making sure the aquaculture reform stays in step with the many other things happening in the coastal marine environment, including the review of the New Zealand Coastal Policy Statement.

## WHO DOES WHAT?

Regional and unitary councils:

- primarily responsible for the process of identifying Aquaculture Management Areas (AMAs) – identifies and gathers the information needed
- considers whether existing regional coastal plan provisions will qualify for an Interim AMA
- identifies areas where Private Plan Change requests will not be accepted
- responsible for the public consultation process for formal notifications, and receiving submissions on plans and plan changes
- responsible for allocating coastal space for marine farming
- picks up the administration of all pre-RMA marine farming licences, leases and permits from the Ministry of Fisheries
- continues administration of existing coastal permits
- environmental assessment and monitoring.

Ministry of Fisheries:

- advises on implementing settlement of Maori commercial aquaculture interests. For more information, see the information sheet, *Settling Maori Claims*
- provides information and advice to regional councils on fisheries matters before the coastal plan is notified
- provides formal assessment, before plan notification, on whether a council's proposed AMAs will have an Undue Adverse Effect on customary, recreational or commercial fishing
- identifies areas where marine farmers must seek agreement of affected commercial fishers before lodging an application for a coastal permit, and identifies the parties whose agreement is needed
- registers agreements between marine farm applicants and fishing interests in areas specified as having an Undue Adverse Effect on commercial fishing
- notifies councils of any agreements lodged with the Ministry of Fisheries
- administers the fisheries registration system for all fish farms
- declares species that can be taken as spat
- grants marine farming and spat catching permits for a limited transitional period.

Department of Conservation:

- provides information and advice to councils on coastal management and marine conservation matters before the coastal plan is notified
- participates in the statutory process for plan development
- recommends the Minister of Conservation approves a regional coastal plan, in accordance with the RMA
- receives requests for an area to have the status of an interim aquaculture management area and makes recommendations to the Minister of Conservation
- recommends to the Minister of Conservation, the issuing of directions to councils on the allocation of space in certain circumstances
- responsible for the New Zealand Coastal Policy Statement, including review and monitoring its implementation.