

# **Aquaculture Legislation Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill is an omnibus Bill that amends legislation governing aquaculture. Four separate Acts, the Resource Management Act 1991, the Fisheries Act 1996, the Maori Commercial Aquaculture Claims Settlement Act 2004, and the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, will be amended by the Bill. It is intended that the Bill will be divided into 4 separate Bills during the committee of the whole House stage of the Bill.

The Bill addresses the problems that the Environment Court's decision in *SMW Consortium Limited v Tasman District Council* (W034/06, 9 May 2006) (the **SMW decision**) has raised with the current wording of the law. As a result of the SMW decision, it is necessary to clarify the policy intent of the aquaculture reform legislation that applications to occupy space for aquaculture activities can only be made in relation to aquaculture management areas (**AMAs**) included in operative regional coastal plans. The effect of the court's decision is that applications can be made outside of AMAs in operative regional coastal plan. This was not anticipated and means that key elements of the aquaculture reforms, such as the assessment of any undue adverse effects on fishing and allocation of space to Māori, may not be achieved.

The Bill clarifies that applications for occupation of the coastal marine area for the purpose of aquaculture activities can not be made in relation to areas that are not AMAs in operative regional coastal plans.

The Bill cancels any such applications that were made after 9 May 2006 (the date of the SMW decision) that do not relate to AMAs in operative regional coastal plans.

Those applications made between 1 January 2005 and 9 May 2006 (when the decision was made) are frozen and can only be processed if the relevant area becomes an AMA in an operative regional coastal plan. In the event that the relevant area does not become an AMA in an operative regional coastal plan within 10 years of commencement of the Bill, the applications will be cancelled.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill is to come into force on the day after it receives the Royal assent.

## **Part 1**

### **Amendments to Aquaculture Reform (Repeals and Transitional Provisions) Act 2004**

*Clause 3* provides that this Part amends the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

*Clause 4* amends section 39 which precludes aquaculture decisions being made in relation to certain areas. The amendments bring within the exception to the prohibition applications made in the period from 1 January 2005 to 9 May 2006.

*Clause 5* amends section 51 which requires a regional council to request an aquaculture decision if certain applications for coastal permits are declined or withdrawn. The amendments limit its application to interim aquaculture management areas and apply the aquaculture decision provisions in the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 instead of those in the Fisheries Act 1996.

*Clause 6* amends section 52 which applies to applications for marine farming permits and spat catching permits under the Fisheries Act 1983 and which provides for the deletion of areas from an aquaculture management area or interim aquaculture management area to which they apply if declined or to be treated as if the chief executive had made an determination under section 186E of the Fisheries Act 1986 if granted. The amendments limit the scope of the section to interim aquaculture management areas.

## **Part 2**

### **Amendments to Fisheries Act 1996**

*Clause 7* provides that this Part amends the Fisheries Act 1996.

*Clause 8* substitutes *new section 186D* which specifies when a regional council can request the chief executive of the Ministry of Fisheries to make aquaculture decisions. The new section provides that requests can be made in relation to areas to be included as aquaculture management areas in a proposed regional coastal plan and also for the purposes of section 186H(1)(d)(ii).

*Clause 9* substitutes a *new section 186F* which precludes the chief executive from making aquaculture decisions in relation to certain areas. These are areas that are subject to deemed coastal permits under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 or that were the subject of a previous determination (excepting previous determinations under section 186H(1)(d)(ii)).

## **Part 3**

### **Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004**

*Clause 10* provides that this Part amends the Maori Commercial Aquaculture Claims Settlement Act 2004.

*Clause 11* amends the definition of **new space** in section 4. The amendments—

- include space in an aquaculture management that, at the date which new space is identified under section 9(1), is subject to an application for occupation of a coastal marine area for the

purpose of an aquaculture activity made after 31 December 2004 and before the close of 9 May 2006:

- include space in an aquaculture management area if certain conditions are met relating to previously ceasing to be in an aquaculture management area and all previous coastal permits having expired:
- exclude pre-commencement space, space that becomes available for coastal permits after a regional council has complied with section 9(1), and space that was in a previous regional coastal plan or change to a regional coastal plan.

## **Part 4**

### **Amendments to Resource Management Act 1991**

*Clause 12* provides that this Part amends the Resource Management Act 1991.

*Clause 13* amends section 2(1) which contains definition of terms. The amendment substitutes a new definition of **aquaculture management area** which refers to *new section 165AB* as inserted by *clause 18*.

*Clause 14* amends section 12A which contains restrictions on aquaculture activities in the coastal marine area and on other activities in aquaculture management areas. The amendments—

- insert a *new subsection (1A)* which precludes applications for coastal permits authorising aquaculture activities except in an aquaculture management area in a regional coastal plan:
- repeal subsection (3). This provision is relocated in *new section 107E* as inserted by *clause 16*.

*Clause 15* consequentially amends section 104 to insert reference to *new section 107E* as inserted by *clause 16*.

*Clause 16* inserts *new section 107E*. The new section is to the same effect as the current section 12A(3).

*Clause 17* amends section 165A to clarify the definition of available space.

*Clause 18* inserts a *new section 165AB* which provides that an aquaculture management area can be established only by being included in a regional coastal plan or proposed regional coastal plan or by be-

coming an aquaculture management area under section 44 or 45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

*Clause 19* inserts *new sections 165BB and 165BC*.

*New section 165BB* requires a consent authority to cancel an application for a coastal permit for aquaculture activities if the application—

- is made after 9 May 2006 but before the commencement of the Bill; and
- does not relate to an aquaculture management area in a regional coastal plan as at the commencement of the Bill.

*New section 165BC* applies to applications for coastal permits for aquaculture activities made on or after 1 January 2005 but before 10 May 2006. These applications are not to be processed or determined until the area they relate to become aquaculture management areas. Applications are to be cancelled to the extent that proposed regional coastal plans notified after the commencement of the Bill do not provide for aquaculture management areas. Applications are to be cancelled after 10 years after the commencement of the Bill if, by that time, no proposed regional coastal plan has been notified which include aquaculture management areas to which the applications relate.

*Clause 20* repeals section 165C(5) of the principal Act.

*Clause 21* substitutes a *new section 165K* which specifies 2 situations when an application for a coastal permit is not to be granted unless the applicant is the holder of an authorisation for the space concerned. First, where a regional coastal plan does not provide for the allocation of available space by an alternative to an offer of authorisation and the space has been identified by a regional council for allocation to the trustee under section 9(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004 and the applicant is applying for a coastal permit for aquaculture activities. Second, where a regional coastal plan provides for the allocation of authorisations of space by public tender or another method and the applicant is applying for a coastal permit for activities that are not aquaculture activities.

*Clause 22* amends Schedule 1A which contains supplementary provisions about the preparation and change of regional coastal plans providing for aquaculture activities.

The amendments—

- clarify the application of the Schedule:
  - preclude a regional coastal plan being notified if it contains aquaculture management areas that are subject to certain permits or applications for certain coastal permits granted or made before 1 January 2005:
  - clarify when a request for an aquaculture decision is not necessary.
-

*Hon Trevor Mallard*

## **Aquaculture Legislation Amendment Bill**

Government Bill

### **Contents**

		Page
1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Amendments to Aquaculture Reform (Repeals and Transitional Provisions) Act 2004</b>		
3	Principal Act amended	3
4	Aquaculture decisions must not be made in relation to certain areas	3
5	Regional council must request aquaculture decision for coastal permit declined or withdrawn	3
6	Areas excluded from interim aquaculture management area or aquaculture management area	4
<b>Part 2</b>		
<b>Amendments to Fisheries Act 1996</b>		
7	Principal Act amended	4
8	New section 186D substituted	4
	186D Request for aquaculture decision	4
9	New section 186F substituted	5
	186F Aquaculture decisions must not be made in relation to certain areas	5

---

**Aquaculture Legislation Amendment Bill**

---

**Part 3**  
**Amendments to Maori Commercial Aquaculture**  
**Claims Settlement Act 2004**

10	Principal Act amended	5
11	Interpretation	5

**Part 4**  
**Amendments to Resource Management Act 1991**

12	Principal Act amended	7
13	Interpretation	7
14	Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas	7
15	Consideration of applications	7
16	New heading and section 107E inserted	8
	<i>Decisions on applications relating to non-aquaculture activities</i>	
	107E Decision on application to undertake non-aquaculture activity in aquaculture management area	8
17	Interpretation	8
18	New section 165AB inserted	8
	165AB Establishment of aquaculture management areas	8
19	New sections 165BB and 165BC inserted	8
	165BB Some applications for coastal permits must be cancelled	9
	165BC Certain applications not to be processed or determined until aquaculture management area established in regional coastal plan	9
20	Provisions about aquaculture management areas	10
21	New section 165K substituted	10
	165K When applications not to be made or granted unless applicant holds authorisation	10
22	Schedule 1A amended	11

---



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

- 1 Title**  
This Act is the Aquaculture Legislation Amendment Act **2008**.
- 2 Commencement** 5  
This Act comes into force on the day after the day on which it receives the Royal assent.
- Part 1**  
**Amendments to Aquaculture Reform**  
**(Repeals and Transitional Provisions) Act** 10  
**2004**
- 3 Principal Act amended**  
This **Part** amends the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- 4 Aquaculture decisions must not be made in relation to certain areas** 15
- (1) Section 39(c) is amended by omitting “, other than an application to which section 150B(2) of that Act applies,” and substituting “to occupy a coastal marine area for the purpose of an aquaculture activity”. 20
- (2) Section 39 is amended by adding the following subsection as subsection (2):
- “(2) However, **subsection (1)(c)** does not apply to the following applications:
- “(a) applications to which section 150B(2) of the principal Act applies. 25
- “(b) applications made in the period beginning on 1 January 2005 and ending with the close of 9 May 2006.”
- 5 Regional council must request aquaculture decision for coastal permit declined or withdrawn** 30
- (1) Section 51(1)(a)(iii) is amended by omitting “aquaculture management area or”.

- (2) Section 51(2) is amended by—
- (a) omitting “aquaculture management area or”; and
  - (b) omitting “under section 186D of the Fisheries Act 1996.”
- (3) Section 51 is amended by repealing subsection (3) and substituting the following subsection: 5
- “(3) Sections 38 to 44 apply to the request.”

**6 Areas excluded from interim aquaculture management area or aquaculture management area**

- (1) The heading to section 52 is amended by omitting “**or aquaculture management area**”. 10
- (2) Section 52 is amended by repealing subsections (2) and (3) and substituting the following subsections:
- “(2) If the chief executive of the Ministry of Fisheries has declined an application to which this section applies, whether before or after the commencement of this Act, the regional council must delete from an interim aquaculture management area any area to which the application applies. 15
- “(3) If the chief executive of the Ministry of Fisheries has granted an application to which this section applies, whether before or after the commencement of this Act, the area to which the application relates is to be treated as if the chief executive had made a determination under section 38 of this Act in relation to it and section 44 applies accordingly.” 20

**Part 2** 25

**Amendments to Fisheries Act 1996**

**7 Principal Act amended**

This **Part** amends the Fisheries Act 1996.

**8 New section 186D substituted**

Section 186D is repealed and the following section substituted: 30

**“186D Request for aquaculture decision**

- “(1) A regional council may request the chief executive to make—

- “(a) an aquaculture decision in relation to an area to be included as an aquaculture management area in a proposed regional coastal plan:
- “(b) a further aquaculture decision for the purposes of section 186H(1)(d)(ii). 5
- “(2) However, the regional council must not make a request in relation to an area to be included as an aquaculture management area in a proposed regional coastal plan if the area is an area in relation to which **section 186F** precludes the chief executive from making an aquaculture decision.” 10

**9 New section 186F substituted**

Section 186F is repealed and the following section substituted:

**“186F Aquaculture decisions must not be made in relation to certain areas**

- “(1) The chief executive must not make an aquaculture decision if 15  
the decision would apply to an area—
- “(a) that is subject to a deemed coastal permit under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
- “(b) that was the subject of a previous determination. 20
- “(2) However, **subsection (1)** does not prevent the chief executive making an aquaculture decision for the purposes of section 186H(1)(d)(ii).”

**Part 3**

**Amendments to Maori Commercial  
Aquaculture Claims Settlement Act 2004** 25

**10 Principal Act amended**

This **Part** amends the Maori Commercial Aquaculture Claims Settlement Act 2004.

**11 Interpretation** 30

- (1) The definition of **new space** in section 4 is amended by repealing paragraph (a)(ii) and substituting the following subparagraph:
- “(ii) space in the aquaculture management area that, at the date on which the relevant regional council 35

- identifies the new space under section 9(1), is subject to—
- “(A) an application for occupation of the coastal marine area for the purpose of an aquaculture activity that was made after 31 December 2004 and before the close of 9 May 2006; or 5
  - “(B) an application to which section 150B(2) of the Resource Management Act 1991 applies; but”. 10
- (2) The definition of **new space** in section 4 is amended by repealing paragraphs (b) and (c) and substituting the following paragraph:
- “(b) does not include space that is pre-commencement space as defined in section 20; and”. 15
- (3) The definition of **new space** in section 4 is amended by repealing paragraph (d) and substituting the following paragraph:
- “(d) does not include space in an aquaculture management area if, before the space is made available for applications for coastal permits or allocations of authorisations, the regional council complied with section 9(1); and”. 20
- (4) The definition of **new space** in section 4 is amended by inserting the following paragraph after paragraph (d):
- “(da) does not include space in aquaculture management area if the space is in a regional coastal plan or in a change to a regional coastal plan, and the space was in the previous regional coastal plan or, in the case of a change, in the current regional coastal plan; and”. 25
- (5) The definition of **new space** in section 4 is amended by adding “; but” to paragraph (e) and by also adding the following paragraph: 30
- “(f) does include space if—
    - “(i) the space was in an aquaculture management area in a regional coastal plan; and
    - “(ii) the space was new space for the purposes of section 9(1); and 35
    - “(iii) authorisations and coastal permits have been allocated or granted in respect of the space, including the trustee; and

- “(iv) the space subsequently ceases to be in an aquaculture management area; and
- “(v) all coastal permits granted in respect of the space have expired and no further coastal permits have been granted in respect of the space; and 5
- “(vi) the space is included in an aquaculture management area in a subsequent regional coastal plan.”

## **Part 4**

### **Amendments to Resource Management Act 1991**

10

#### **12 Principal Act amended**

This **Part** amends the Resource Management Act 1991.

#### **13 Interpretation**

Section 2(1) is amended by repealing the definition of **aquaculture management area** and substituting the following definition: 15

“**aquaculture management area**—

“(a) means an area established as an aquaculture management area in accordance with **section 165AB**; and

“(b) includes part of an aquaculture management area”. 20

#### **14 Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas**

(1) Section 12A is amended by inserting the following subsection after subsection (1): 25

“(1A) No person may apply for a coastal permit to occupy a coastal marine area for the purpose of an aquaculture activity except in an aquaculture management area in a regional coastal plan.”

(2) Section 12A(3) is repealed.

#### **15 Consideration of applications**

30

Section 104(3)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:

“(i) section 107, 107A, **107E**, or 217:”.

**16 New heading and section 107E inserted**

The following heading and section are inserted after section 107D:

*“Decisions on applications relating to non-aquaculture activities*

5

**“107E Decision on application to undertake non-aquaculture activity in aquaculture management area**

“(1) This section applies when a person applies for a coastal permit to undertake an activity in an aquaculture management area and the activity is not an aquaculture activity.

10

“(2) The consent authority may grant the permit only to the extent to which the activity is compatible with aquaculture activities.”

**17 Interpretation**

The definition of **available space** in section 165A(a) is amended by repealing subparagraph (vi) and substituting the following subparagraph:

15

“(vi) a coastal permit to occupy space in an aquaculture management area for activities that are not aquaculture activities if the activities authorised by the coastal permit are not compatible with aquaculture activities; and”.

20

**18 New section 165AB inserted**

The following section is inserted after section 165A:

**“165AB Establishment of aquaculture management areas**

25

An area may be established as an aquaculture management area only in the following ways:

“(a) by being included in a regional coastal plan or proposed regional coastal plan in accordance with section 165C:

“(b) by becoming an aquaculture management area under section 44 or 45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.”

30

**19 New sections 165BB and 165BC inserted**

The following sections are inserted after section 165B:

**“165BB Some applications for coastal permits must be cancelled**

A consent authority must cancel an application for a coastal permit for the occupation of space in the coastal marine area for the purpose of aquaculture activities if the application— 5

“(a) is made after 9 May 2006 but before the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008**; and

“(b) does not relate to an aquaculture management area in a regional coastal plan as at the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008**. 10

**“165BC Certain applications not to be processed or determined until aquaculture management area established in regional coastal plan** 15

“(1) This section applies to applications for coastal permits for the occupation of space in the coastal marine area for the purpose of aquaculture activities made on or after 1 January 2005 but before 10 May 2006.

“(2) A consent authority must not process or determine an application until such time as the area to which the application relates becomes an aquaculture management area in a regional coastal plan. 20

“(3) An application referred to in **subsection (2)** must be processed and determined under the rules in the regional coastal plan and any proposed regional coastal plan at the time the consent authority resumes processing the application. 25

“(4) However, a consent authority must not grant a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation relating to commercial fishing, except to a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act. 30

“(5) An application is deemed to be cancelled on and from the date on which a proposed regional coastal plan is notified under clause 5 of Schedule 1 after the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008** and 35

to the extent that the application relates to an area covered by the plan and the plan provides for an aquaculture management area, but it does not include the area that the application relates to.

- “(6) An application is deemed to be cancelled on and from the day that is 10 years after the commencement of **Part 4 of the Aquaculture Legislation Amendment Act 2008** to the extent that, by that date,—
- “(a) no proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1; or
- “(b) a proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1, but the plan contains no aquaculture management areas.
- “(7) This section—
- “(a) prevails over Part 7A; but
- “(b) applies subject to the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(8) In this section, **aquaculture management area** does not include an area that is deemed to be an aquaculture management area under section 45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.”

**20 Provisions about aquaculture management areas**  
Section 165C is amended by repealing subsection (5).

**21 New section 165K substituted**  
Section 165K is repealed and the following section substituted:

- “**165K When applications not to be made or granted unless applicant holds authorisation**
- “(1) **Subsection (2)** applies to available space in the coastal marine area if—
- “(a) a regional coastal plan does not provide for the allocation of the space by an alternative to an offer of authorisations; or



- “(b) the space has been identified by a regional council as space for allocation to the trustee under section 9(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(2) A person must not apply for, and a consent authority must not grant, a coastal permit authorising occupation of the space or identified space (as the case may be) for aquaculture activities unless the person is the holder of an authorisation for the space. 5
- “(3) **Subsection (4)** applies to space in a coastal marine area and the regional coastal plan provides for the allocation of authorisations of space by public tender or another method. 10
- “(4) A person must not apply for, and a regional council must not grant, a coastal permit authorising occupation of the space for activities that are not aquaculture activities unless the person is a holder of an authorisation for the space.” 15
- 22 Schedule 1A amended**
- (1) Clause 1 of Schedule 1A is amended by inserting the following subclause before subclause (1):
- “(1AA) This Schedule applies to the preparation of, and changes to, a regional coastal plan to the extent that the plan provides for aquaculture activities.” 20
- (2) Schedule 1A is amended by inserting the following clause after clause 1:
- “**1A Proposed regional coastal plans not to include areas subject to certain applications** 25
- A proposed regional coastal plan and a change to a regional coastal plan must not be notified under clause 5 or 26 of Schedule 1 if—
- “(a) the plan or change contains areas described as aquaculture management areas; and 30
- “(b) the areas are not subject to deemed coastal permits under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; and
- “(c) the areas are subject to— 35
- “(i) coastal permits or certificates of compliance that were granted or issued before 1 January 2005 and

- that authorised the occupation of a coastal marine area for the purpose of aquaculture activities; or
- “(ii) applications for coastal permits (not being applications under section 150B(2)) that were made before 1 January 2005 and that were seeking authorisation for occupation of a coastal marine area for the purpose of aquaculture activities.” 5
- (3) Clause 2 of Schedule 1A is repealed and the following clause substituted:
- “2 Assessment of undue adverse effects on fishing” 10**
- “(1) The regional council must not notify the proposed regional coastal plan until—
- “(a) the chief executive of the Ministry of Fisheries has made an aquaculture decision under section 186E of the Fisheries Act 1996 in relation to any area described in the plan as an aquaculture management area; and 15
- “(b) the regional council has complied with clause 3 of this Schedule.
- “(2) However, **subclause (1)** does not apply in relation to an area that is— 20
- “(a) subject to a deemed coastal permit under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
- “(b) an aquaculture management area in relation to which a determination has already been made under section 186E of the Fisheries Act 1996 or section 38 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.” 25
- (4) Clause 3(4) of Schedule 1A is amended by omitting “, and any other stocks or species not subject to the quota management system”. 30
-