

Aquaculture Legislation Amendment Bill (No 2)

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 amendments are intended to correct problems with the current law and to improve its operation.

The Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 provides that applications in train at its commencement (1 January 2005) are to be processed under the old pre-aquaculture reform legislation. If granted, these permits will be transferred across into the new regime and the area deemed to be an aquaculture management area (AMA) in an operative regional coastal plan.

This means that the marine farming and spat catching applications that must be processed under the Fisheries Act 1983 provisions and any applications assessed as having undue adverse effect on fishing, including commercial fishing, would be declined.

The Ministry of Fisheries has carried out a preliminary assessment of the impact of interim aquaculture management areas in the Tasman region. The preliminary assessment found that a large portion of the proposed areas would need to be declined due to undue adverse effects on commercial fishing. However, the preliminary assessment has been consulted on and may be revised before the final decision is made.

The Bill amends the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 to provide an opportunity for the negotiation of an aquaculture agreement with relevant commercial fishers, in circumstances where that permit would previously have been declined due to its undue adverse effect on commercial fishing. If agreement is reached with the commercial fishers, the applicant will be granted the marine farming or spat catching permit under the Fisheries Act 1983. This may allow for development of space that would be otherwise declined.

The other amendments address more technical issues, such as the time frames for the review of deemed consents, details for lodging aquaculture agreements, and definitional issues under the Maori Commercial Aquaculture Claims Settlement Act 2004.

The invited private plan change process is emerging as the preferred means for councils to progress AMA development. At present, it is possible for multiple requests to be received for the same area of coastal space. Councils are concerned that the law concerning the invited plan change process is unclear on whether, and on what grounds, they can reject requests that are overlapping or conflicting. The Bill enables councils to hold an expression of interest process to identify spatial overlaps. Where overlaps are identified, competing interests will be given a period to negotiate with each other to resolve the competition and to modify or amend proposals to avoid the overlap. Where negotiation fails, the default is that a financial tender will be used to choose between expressions of interest that relate to the same space. Once an expression of interest is accepted, the proponent can request a plan change to establish an AMA. The Bill also makes it more explicit that if a council does not use an expression of interest process, they can choose between competing requests.

The current requirement for all aquaculture, including short term experimental aquaculture, to take place within an AMA in an operative regional coastal plan is restricting research and innovation. This is

particularly the case where the research is required to examine the suitability of a particular area for an AMA, or to test different environmental conditions to those available in existing AMAs. The proposed amendment to the Resource Management Act 1991 provides a process which will allow experimental aquaculture to take place outside of AMAs in operative regional coastal plans. There is also an amendment to the Fisheries Act 1996 to enable the Ministry of Fisheries to consider whether the experimental aquaculture activity will have any undue adverse effects on fishing. Coastal permits for experimental aquaculture activities will be issued for a maximum of 5 years with no right of renewal.

This Bill also provides that environmental monitoring (using marine organisms to monitor the state of the marine environment) is not an aquaculture activity and is therefore not limited to aquaculture management areas in operative regional coastal plans.

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 10 which provides for certain leases and licences under the Marine Farming Act 1971 to be deemed coastal permits.

The amendments—

- clarify when leases and licences that are subject to discontinued forfeiture become deemed coastal permits:
- provide that the 12 month period for reviewing conditions of deemed coastal permits starts from when a lease or licence is deemed to be a coastal permit:

- clarify the rights of objection against decisions about the review of conditions.

Clause 5 amends section 20 which provides for certain marine farming permits under section 67J of the Fisheries Act 1983 to be deemed coastal permits. The amendments—

- provide that the 12 month period for reviewing conditions of deemed coastal permits starts from when a permit is deemed to be a coastal permit:
- clarify the rights of objection against decisions about the review of conditions.

Clause 6 amends section 21 which provides for certain spat catching permits under section 67Q(2) of the Fisheries Act 1983 to be deemed coastal permits. The amendments parallel those made by *clause 5*.

Clause 7 repeals section 24. This is a consequential amendment arising from the amendments made by *clauses 5 and 6*.

Clause 8 amends section 25, which provides for certain applications under the Fisheries Act 1983, to be determined under that Act as if the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 had not been passed. The amendment is a drafting amendment to make section 25 subject to *new section 25A* inserted by *clause 9*.

Clause 9 inserts *new sections 25A and 25B*.

New section 25A applies to applications that section 25(1) applies to and that have not been determined as at the commencement of this Part of the Bill. The purpose of the new section is to defer an application being declined if the application does not meet the “undue adverse effects” test but only in relation to commercial fishing. In such a case, a 6 month period is provided for the lodgement of an aquaculture agreement. If an aquaculture agreement is lodged within that time, the chief executive of the Ministry of Fisheries may grant the application.

New section 25B contains supplementary provisions for the purpose of *new section 25A* relating to obtaining further information and rights of appeal or objection.

Clause 10 amends section 26 which provides when applications for marine farming and spat catching permits can be made after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. The amendment inserts a new provision making section 26 subject to *new section 26A*.

Clause 11 inserts *new sections 26A and 26B* which relate to applications to which section 26 applies and which contain provisions that parallel those in *new sections 25A and 25B*.

Clause 12 amends section 27 which provides for the order in which certain applications and requests are to be processed. The amendment includes a reference to requests for aquaculture decisions under section 37.

Clause 13 amends section 45 which deems certain coastal permits to be aquaculture management areas. The purpose of the amendments is to clarify that those areas cease to be, or are modified as, aquaculture management areas only by regional coastal plans that expressly provide for that and that are notified after the commencement of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 or after the date which the coastal permit is deemed to be an aquaculture management area (if that occurs after the commencement of the that Act).

Clause 14 amends section 48. This is a technical drafting amendment.

Clause 15 amends section 50 to make it subject to *new section 50A* inserted by the next clause.

Clause 16 inserts *new sections 50A and 50B* which relate to certain applications referred to in section 50(3). The new section contains provisions that parallel those in *new sections 25A, 25B, 26A, and 26B*, inserted by *clauses 9 and 11*.

Clause 17 amends section 53 which provides for applications to amend deemed coastal permits to reflect the actual space they occupied. The amendments extend the period for making applications for 12 months after the Bill is passed and make technical changes to the appeal rights against decisions on application.

Clause 18 adds a Schedule to the principal Act. The Schedule contains additional provisions relating to aquaculture agreements for the purposes of *new sections 25A, 26A, and 50A*.

Part 2

Amendments to Fisheries Act 1996

Clause 19 provides that this Part amends the Fisheries Act 1996.

Clause 20 amends section 186C to insert a definition of experimental aquaculture activities. It incorporates the definition from the Resource Management Act 1991 as inserted by *clause 32*.

Clause 21 inserts a *new section 186DA* which applies to requests for aquaculture decisions made at the same time by persons requesting changes to a regional coastal plan or proposed regional coastal plan in response to invitations under section 165Z(1) or *new section 165ZFA(1)* of the Resource Management Act 1991.

The new section provides for the chief executive to make aquaculture decisions in the order agreed by the persons making the requests. If there is no agreed order, then the requests are processed according to the extent of their impact on fishing, but if the chief executive does not have sufficient information to do this, then the order is to be determined by ballot.

Clause 22 amends section 186S which deals with granting or declining applications to register a fish farmer. The amendment allows the chief executive to decline an application if the activity proposed by the applicant is the subject of an exemption under section 186Q.

Clause 23 amends section 186ZF which specifies the fishers whose consent is necessary for an aquaculture agreement. The amendments are technical changes relating to the time at which the persons whose consent is necessary is to be determined.

Clause 24 amends section 186ZI which specifies the period within which aquaculture agreements are to be lodged with the chief executive. The amendments are technical changes arising from the amendments made by *clause 23*.

Clause 25 amends section 186ZL which provides for certain memorials to be entered on the appropriate register under the principal Act. The amendments are technical changes.

Clause 26 inserts a *new subpart 5* in Part 9A. *New subpart 5* comprises *new sections 186ZM to 186ZP* which provide for applications to the chief executive for initial evaluations and assessments about the effect on fishing of proposals to undertake experimental aquaculture activities in certain areas. These new sections should be read in conjunction with the new sections inserted in the Resource Management Act 1991 by *clause 63* which provides for the grant of coastal permits for experimental aquaculture activities.

Part 3

Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004

Clause 27 provides that this Part amends the Maori Commercial Aquaculture Claims Settlement Act 2004.

Clause 28 amends section 4 to insert a definition of **regional council**.

Clause 29 amends section 9 which requires a regional council to identify 20% of new space for allocation to the trustee. The amendment clarifies that the relevant date in relation to allocating authorisations is the date on which new space becomes available for applications for coastal permits for aquaculture activities.

Clause 30 amends section 20 which defines **pre-commencement space**. The amendments—

- clarify that space in relation to certain forfeited leases or licences under the Marine Farming Act 1971 is excluded:
- clarify that space that was not subject to leases or licences under the Marine Farming Act 1971 before 21 September 1992 is included.

Part 4

Amendments to Resource Management Act 1991

Clause 31 provides that this Part amends the Resource Management Act 1991.

Clause 32 amends section 2(1) which contains definition of terms. The amendments—

- exclude from the definition of **aquaculture activities** activities for the sole purpose of monitoring the state of the coastal marine area:
- include a definition of **experimental aquaculture activities**.

Clause 33 amends section 10 which protects certain existing uses in relation to land. It excludes from its application any use of land restricted under section 12. The amendment adds references to section 12A and *new section 12C*.

Clause 34 amends section 12 which specifies activities in the coastal marine area that are not to be done unless allowed by a rule in a re-

gional coastal plan or proposed regional coastal plan or by a resource consent. The amendment clarifies that section 12(2)(a) does not apply to anything to which section 12A and *new section 12C* apply.

Clause 35 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 or under *new subpart 4* of Part 7A (as inserted by *clause 63*);
- clarify that coastal permits for aquaculture activities granted before the commencement of the Bill are to be treated as granted for the purpose of subsection (1)(b).

Clause 36 inserts *new section 12C* which prohibits a person from occupying a coastal marine area for experimental aquaculture activities unless authorised by coastal permit granted in accordance with *new subpart 4* of Part 7A as inserted by *clause 63*. However, the new section does not apply to occupation for experimental aquaculture activities authorised by or under section 12A.

Clauses 37 and 38 consequentially amend sections 16 and 18 to insert references to *new section 12C*.

Clause 39 amends section 36 which authorises a local authority to fix certain charges. The amendment adds a new provision referring to certain matters relating to expressions of interest which are provided for in *new sections 165ZFA to 165ZFI* as inserted by *clause 61*.

Clauses 40 and 41 consequentially amend sections 43 and 87 to insert reference to *new section 12C*.

Clause 42 amends section 123 which specifies the duration of resource consents. The amendment provides that a coastal permit authorising experimental aquaculture activities that would otherwise contravene *new section 12C* is any period, not exceeding 5 years specified in the consent or, if no period is specified, 5 years.

Clause 43 amends section 124 which provides for the continuation of a resource consent while an application for a new consent is being processed. The amendment provides that the section does not apply to coastal permits for experimental aquaculture activities granted under *new section 165ZK* as inserted by *clause 63*.

Clause 44 amends section 125 which specifies when resource consents lapse. The amendment parallels the amendment made by *clause 43* and provides that no application can be made to extend the period of a permit granted under *new section 165ZK*.

Clause 45 amends section 135 which provides for the transferability of coastal permits. The amendment precludes the transfer of permits for experimental aquaculture activities granted under *new subpart 4* of Part 7A.

Clause 46 amends section 165A to clarify the definition of available space.

Clause 47 consequentially amends section 165C to insert reference to section 12A and *new section 12C* as inserted by *clause 36*.

Clause 48 amends section 165J which precludes applications for coastal permits for aquaculture activities in an aquaculture management area that is subject to a reservation in relation to commercial fishing unless an applicant holds an aquaculture agreement. The amendment provides an exception for coastal permits granted under *new subpart 4* of Part 7A.

Clause 49 amends the heading to subpart 2 of Part 7A so that it reads “Invited private plan changes”.

Clause 50 inserts a *new section 165VA* which provides that—

- it is a general outline of subpart 2 of Part 7A and is not to limit or affect the meaning of the other sections of the subpart.
- this subpart provides for regional councils to invite requests for a change to a regional coastal plan or proposed regional coastal plan to establish an aquaculture management area.
- a regional council may invite requests by public notice—
 - (a) inviting requests under section 165Z; or
 - (b) inviting expressions of interest in making a request under *new section 165ZFA*.
- before a regional council invites requests or expressions of interest for a change to a regional coastal plan or proposed regional coastal plan, the regional council must consider whether it should identify areas in the coastal marine area as excluded areas.

- if the regional council decides that it should identify excluded areas, then before doing so it must comply with the consultation requirements in clauses 3 and 3B of Schedule 1.
- a regional council must not invite requests or expressions of interest in relation to excluded areas.
- a regional council cannot invite requests under section 165Z or expressions of interest under *new section 165ZFA* in relation to the same coastal marine area at the same time.
- the purpose of inviting expressions of interest (as opposed to inviting requests for plan changes at the outset) is to enable a regional council to identify and resolve competition for the same space in the coastal marine area due to overlapping proposals for the establishment of aquaculture management areas.
- if a regional council invites expressions of interest,—
 - (a) no person can request a plan change under this subpart unless the person is the holder of an accepted expression of interest:
 - (b) persons who submit overlapping expressions of interest must be provided with an opportunity to negotiate among themselves and amend their expressions of interest so that they are not overlapping:
 - (c) to the extent that that process does not resolve overlapping expressions of interest, then the regional council must invite the persons concerned to submit tenders and accept the highest tender. However, the regional council must use an alternative process if the alternative process is fair and reasonable and it has been adopted using the special consultative procedure in the Local Government Act 2002.
- a person whose expression of interest has been accepted may request a plan change within the time specified in the notice under *new section 165ZFI*.
- a regional council must process a request in accordance with section 165Z whether the request is made—
 - (a) in response to an invitation under section 165Z; or
 - (b) as a result of an acceptance of an expression of interest under *new section 165ZFD(2)*, *165ZFE(2)*, or *165ZFG(2)*.

Clause 51 inserts a new heading “*Excluded areas*” above section 165W.

Clause 52 makes drafting changes to section 165X consequential on the new provisions for expressions of interest as inserted by *clause 61*.

Clause 53 inserts a new heading “*Limitations on requests and expressions of interest*” above section 165Y.

Clause 54 substitutes a *new section 165Y* which takes into account the new provisions for expressions of interest as inserted by *clause 61*.

Clause 55 inserts a new heading “*Invitations to request change*” above section 165Z.

Clause 56 amends section 165Z(1A) consequential on the new provisions for expressions of interest inserted by *clause 61*, and to clarify the interrelationship between the section and section 165W.

Clause 57 repeals section 165ZB(2) and (3), and relocates and updates them in a *new section 165ZBA* inserted by *clause 58*.

Clause 59 makes drafting changes to section 165ZE.

Clause 60 makes drafting changes to section 165ZF.

Clause 61 inserts new heading “*Expressions of interest*” and *new sections 165ZFA to 165ZFI* after section 165ZF. The general scheme of these provisions and their relationship with the provisions relating to invited private plan changes is set out in relation to *clause 50*.

Clause 62 amends section 165ZH which provides for an application for a coastal permit by an existing holder of certain coastal permits to be processed before other applications for the same space. The amendment excludes the section applying to coastal permits granted under *new subpart 4* of Part 7A as inserted by *clause 63*.

Clause 63 inserts a *new subpart 4* in Part 7A (comprising *new sections 165ZK to 165ZQ*) to provide for experimental aquaculture activities in the coastal marine area in areas that are not in an aquaculture management area in a regional coastal plan.

New section 165ZK provides for a consent authority to grant such permits.

New section 165ZL requires applications for coastal permits for experimental aquaculture activities to include a research proposal explaining why occupation of the coastal marine area, to the extent and

period applied for, is reasonably necessary to undertake experimental aquaculture activities.

New section 165ZM lists a number of circumstances in which a consent authority must not grant a coastal permit for experimental aquaculture activities. An instance that applies to all applications is that a consent authority must decline an application unless the consent authority has received a notice from the chief executive of the Ministry of Fisheries that an assessment under *new section 186ZO* of the Fisheries is not required or, after an assessment, that the chief executive is satisfied that the application will not have an undue adverse effect on fishing.

New section 165ZN precludes a coastal permit for experimental aquaculture activities authorising occupation of more than 2 hectares of the coastal marine area.

New section 165ZO requires an application for a coastal permit for experimental aquaculture activities not to be processed if the area it relates to becomes an aquaculture management area in a regional coastal plan.

New section 165ZP clarifies that if, after a coastal permit for experimental aquaculture activities is granted, the area it relates to becomes an aquaculture management area in a regional coastal plan, then the permit does not lapse and is to be treated as having been granted for the purposes of *new section 12C*.

New section 165ZQ clarifies that Part 6 of the principal Act applies (subject to this subpart) to applications for coastal permits under the subpart to coastal permits granted under this subpart.

Clauses 64 to 68 make consequential drafting amendments to sections 165ZF, 330, 330A, 338, and 341.

Clause 69 amends section 401A which provides for transitional coastal occupation changes. The amendments defer the requirement for a regional coastal plan that is notified to include provisions relating to coastal occupation charges (if the plan does not already deal with charges) until 12 months after a new New Zealand Coastal Policy Statement has been published in the *Gazette* after the commencement of the Bill.

Hon Trevor Mallard

Aquaculture Legislation Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Aquaculture Legislation Amendment Act (No 2) **2008**.

2 Commencement 5
This Act comes into force on the day after the date 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 Leases and licences deemed to be coastal permits 15
(1) Section 10(2) is amended by repealing paragraph (b) and substituting the following paragraph:
“(b) if—

- “(i) section 16(1) applies, the date on which the application referred to in that subsection is determined:
- “(ii) section 16(2) applies, the date on which the forfeiture referred to in that subsection is discontinued.” 5
- (2) Section 10 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) The consent authority may commence a review of a deemed coastal permit, including the conditions of the permit,— 10
- “(a) within 12 months after—
- “(i) the lease or licence becomes a deemed coastal permit; or
- “(ii) the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008** if— 15
- “(A) section 16(2) applies; and
- “(B) the date on which the forfeiture is discontinued is after 1 January 2006 but before the commencement of that **Part**; and 20
- “(b) if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.”
- (3) Section 10 is amended by repealing subsection (6) and substituting the following subsection: 25
- “(6) If a consent authority decides to vary, add, or delete, or not to vary, add, or delete, any condition of a deemed coastal permit under **subsection (4)**, the holder of the deemed coastal permit may—
- “(a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions: 30
- “(b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.” 35
- (4) Section 10(7) is repealed.

5 Marine farming permits deemed to be coastal permits

(1) Section 20 is amended by repealing subsection (3) and substituting the following subsection:

“(3) The consent authority may,—

“(a) within 12 months after the commencement of this Act 5
commence a review of the conditions of a coastal permit referred to in subsection (2); and

“(b) if it considers it necessary to do so, vary, add, or delete 10
conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.”

(2) Section 20 is amended by repealing subsection (5) and substituting the following subsection:

“(5) If a consent authority decides to vary, add, or delete, or not to 15
vary, add, or delete, any condition of a deemed coastal permit under **subsection (3)**, the holder of the deemed coastal permit may—

“(a) appeal to the Environment Court against the decision, 20
and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions:

“(b) object to the consent authority against the decision, and 25
sections 357C, 357D, and 358 of Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.”

6 Certain spat catching permits deemed to be coastal permits

(1) Section 21 is amended by repealing subsection (3) and substituting the following subsection:

“(3) The consent authority may,— 30

“(a) within 12 months after the commencement of this Act, 35
commence a review of the conditions of a coastal permit referred to in subsection (2); and

“(b) if it considers it necessary to do so, vary, add, or delete
conditions for the purpose of making the conditions 35
consistent with the Resource Management Act 1991.”

(2) Section 21 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) If a consent authority decides to vary, add, or delete, or not to vary, add, or delete, any condition of a deemed coastal permit under **subsection (3)**, the holder of the deemed coastal permit may—
- “(a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions: 5
 - “(b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.” 10
- 7 Section 24 repealed** 15
Section 24 is repealed.
- 8 Completion of certain matters pending at commencement of Act**
Section 25 is amended by adding the following subsection:
“(8) This section applies subject to **section 25A**.”
- 9 New sections 25A and 25B inserted** 20
The following sections are inserted after section 25:
- “(25A) **Assessment of effect on fishing and fisheries resources of applications pending at commencement of Act**
- “(1) This section applies to an application—
 - “(a) to which section 25(1) applies; and 25
 - “(b) which, as at the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**, has not been determined.
 - “(2) The chief executive must decline the application if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources. 30
 - “(3) However, the chief executive must not decline the application under section 67J(8) of the principal Act if—

- “(a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing (other than commercial fishing) or the sustainability of fisheries resources; but
- “(b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing. 5
- “(4) If **subsection (2)** applies but **subsection (3)** does not, the chief executive must give the applicant a notice—
- “(a) that the application is declined; and 10
- “(b) giving the chief executive’s reasons for declining the application.
- “(5) If **subsection (3)** applies, the chief executive must give the applicant a notice accordingly. The notice must also—
- “(a) specify— 15
- “(i) the area concerned; and
- “(ii) any stocks concerned that are subject to the quota management system that are in the area; and
- “(iii) any stocks or species concerned that are specified in Schedules 4C and 4D of the Fisheries Act 1996 20
that are in the area; and
- “(b) specify the chief executive’s reasons for deciding that **subsection (3)** applies; and
- “(c) contain a copy, or statement to the effect, of **subsections (6) and (7)**. 25
- “(6) The chief executive must decline the application, if the applicant does not lodge an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 30
- “(7) The chief executive may grant the application and issue the permit if the applicant lodges an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 35
- “(8) The provisions in the **Schedule** have effect in relation to aquaculture agreements for the purpose of this section.
- “(9) In this section,—

“**aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in the **Schedule**

“**commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of— 5

- “(a) stocks subject to the quota management system; and
- “(b) stocks or species specified in Schedules 4C and 4D of the Fisheries Act 1996.

“**25B Further provisions relating to applications to which section 25A applies** 10

“(1) This section applies to applications to which **section 25A** applies.

“(2) The chief executive may request the applicant and any fisher whose interests may be affected to provide him or her with further information about the effects that the application would have on access to or displacement of fishing if it were granted. 15

“(3) Before making a decision on the application, the chief executive must—

- “(a) consult the persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the application if it were granted; and 20

- “(b) consider any submissions made by those persons and organisations. 25

“(4) The following persons may appeal to the High Court against a decision made under **section 25A(2)**:

- “(a) the applicant;
- “(b) any person consulted or who ought to have been consulted under **subsection (3)**; 30
- “(c) any person who has an interest in the decision greater than the public generally.

“(5) An appeal must be filed within 3 months after notification of the decision is given to the applicant.

“(6) The High Court may confirm or modify the decision appealed against or substitute a different decision. 35

“(7) Any person wishing to seek, under Part 1 of the Judicature Amendment Act 1972, judicial review of a decision must do so within 3 months after the notification of the decision.”

10 Applications after commencement of Act

Section 26 is amended by adding the following subsection: 5

“(5) This section applies subject to **section 26A**.”

11 New sections 26A and 26B inserted

The following sections are inserted after section 26:

“26A Assessment of effect on fishing and fisheries resources of applications after commencement of Act” 10

“(1) This section applies to an application—

“(a) to which section 26 applies whether the application is made before, on, or after the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**; and 15

“(b) which, if made before the commencement of that **Part**, has not been determined as at the commencement of that **Part**.

“(2) The chief executive must decline the application if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources. 20

“(3) However, the chief executive must not decline the application under section 67J(8) of the principal Act if—

“(a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing (other than commercial fishing) or the sustainability of fisheries resources; but 25

“(b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing. 30

“(4) If **subsection (2)** applies but **subsection (3)** does not, the chief executive must give the applicant a notice—

“(a) that the application is declined; and

“(b) giving the chief executive’s reasons for declining the application. 35

- “(5) If **subsection (3)** applies, the chief executive must give the applicant a notice accordingly. The notice must also—
- “(a) specify—
- “(i) the area concerned; and
- “(ii) the stocks and species concerned; and 5
- “(iii) any stocks concerned that are subject to the quota management system that are in the area; and
- “(iv) any stocks or species concerned that are specified in Schedules 4C and 4D of the Fisheries Act 1996 that are in the area; and 10
- “(b) specify the chief executive’s reasons for deciding that **subsection (3)** applies; and
- “(c) contain a copy, or statement to the effect, of **subsections (6) and (7)**.
- “(6) The chief executive must decline the application, if the applicant does not lodge an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 15
- “(7) The chief executive may grant the application and issue the permit if the applicant lodges an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 20
- “(8) The provisions in the **Schedule** have effect in relation to aquaculture agreements for the purpose of this section. 25
- “(9) In this section,—
- “**aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in the **Schedule** 30
- “**commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of—
- “(a) stocks subject to the quota management system; and
- “(b) stocks or species specified in Schedules 4C and 4D of the Fisheries Act 1996. 35

“26B Further provisions relating to applications to which section 26A applies

- “(1) This section applies to applications to which **section 26A** applies.
- “(2) The chief executive may request the applicant and any fisher whose interests may be affected to provide him or her with further information about the effects that the application would have on access to or displacement of fishing if it were granted. 5
- “(3) Before making a decision on the application, the chief executive must— 10
- “(a) consult the persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the application if it were granted; and 15
- “(b) consider any submissions made by those persons and organisations.
- “(4) The following persons may appeal to the High Court against a decision made under **section 26A(2)**: 20
- “(a) the applicant;
- “(b) any person consulted or who ought to have been consulted under **subsection (3)**;
- “(c) any person who has an interest in the decision greater than the public generally.
- “(5) An appeal must be filed within 3 months after notification of the decision is given to the applicant. 25
- “(6) The High Court may confirm or modify the decision appealed against or substitute a different decision.
- “(7) Any person wishing to seek, under Part I of the Judicature Amendment Act 1972, judicial review of a decision must do so within 3 months after the notification of the decision.” 30

12 Order of processing applications and requests for aquaculture decision in relation to aquaculture management area or interim aquaculture management area 35

Section 27(1)(b) is amended by adding “or section 37 of this Act”.

13 Existing coastal permits deemed to be aquaculture management areas

(1) Section 45 is amended by repealing subsection (3) and substituting the following subsection:

“(3) The area to which a coastal permit that this section applies to is deemed to be an aquaculture management area in a regional coastal plan for the purposes of the principal Act.”

(2) Section 45 is amended by repealing subsection (5) and substituting the following subsection:

“(5) An area that is deemed to be an aquaculture management area by **subsection (3)** ceases to be, or is modified as, an aquaculture management area only by a regional coastal plan that—

“(a) expressly provides that the area ceases to be, or is modified as, an aquaculture management area; and

“(b) was notified under clause 5 or 26 of Schedule 1 of the principal Act after the commencement of this Act.”

“(6) If a coastal permit is deemed to be coastal permit under section 10, 20, or 21 after the commencement of this Act, subsections (2) and **(5)** apply, as if every reference to commencement of this Act were a reference to the date on which the coastal permit is deemed to be a coastal permit.”

14 Certain coastal permits granted during moratorium not to be exercised until end of moratorium

Section 48(8) is amended by omitting “357” and substituting “357A, 357C, 357D”.

15 Pre-moratorium and pre-commencement applications for coastal permits not subject to moratorium

Section 50 is amended by adding the following subsection:

“(8) This section applies subject to **section 50A**.”

16 New sections 50A and 50B inserted

The following sections are inserted after section 50:

“50A Assessment of effect on fishing and fisheries resources of applications to which section 50(3) applies

“(1) This section applies to an application under section 67J or 67Q(2) referred to in section 50(3)—

- “(a) whether the application is made before, on, or after the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**; and
- “(b) which, if made before the commencement of that **Part**, has not been determined as at the commencement of that **Part**. 5
- “(2) The chief executive must decline the application if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources. 10
- “(3) However, the chief executive must not decline the application under section 67J(8) of the Fisheries Act 1983 if—
- “(a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing (other than commercial fishing) or the sustainability of fisheries resources; but 15
- “(b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing.
- “(4) If **subsection (2)** applies but **subsection (3)** does not, the chief executive must give the applicant a notice— 20
- “(a) that the application is declined; and
- “(b) giving the chief executive’s reasons for declining the application.
- “(5) If **subsection (3)** applies, the chief executive must give the applicant a notice accordingly. The notice must also— 25
- “(a) specify—
- “(i) the area concerned; and
- “(ii) the stocks or species concerned; and
- “(iii) any stocks concerned that are subject to the quota management system that are in the area; and 30
- “(iv) any stocks or species concerned that are specified in Schedules 4C and 4D of the Fisheries Act 1996 that are in the area; and
- “(b) specify the chief executive’s reasons for deciding **subsection (3)** applies; and 35
- “(c) contain a copy, or statement to the effect, of **subsections (6) and (7)**.

- “(6) The chief executive must decline the application, if the applicant does not lodge an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 5
- “(7) The chief executive may grant the application and issue the permit if the applicant lodges an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 10
- “(8) The provisions in the **Schedule** have effect in relation to aquaculture agreements for the purpose of this section.
- “(9) In this section,—
- “**aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in the **Schedule** 15
- “**commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of—
- “(a) stocks subject to the quota management system; and
- “(b) stocks or species specified in Schedules 4C and 4D of the Fisheries Act 1996. 20
- “**50B Further provisions relating to applications to which section 50A applies**
- “(1) This section applies to applications to which **section 50A** applies. 25
- “(2) The chief executive may request the applicant and any fisher whose interests may be affected to provide him or her with further information about the effects that the application would have on access to or displacement of fishing if it were granted.
- “(3) Before making a decision on the application, the chief executive must— 30
- “(a) consult the persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the application if it were granted; and 35

- “(b) consider any submissions made by those persons and organisations.
- “(4) The following persons may appeal to the High Court against a decision made under **section 50A(2)**:
- “(a) the applicant: 5
- “(b) any person consulted or who ought to have been consulted under **subsection (3)**:
- “(c) any person who has an interest in the decision greater than the public generally.
- “(5) An appeal must be filed within 3 months after notification of the decision is given to the applicant. 10
- “(6) The High Court may confirm or modify the decision appealed against or substitute a different decision.
- “(7) Any person wishing to seek, under Part 1 of the Judicature Amendment Act 1972, judicial review of a decision must do so within 3 months after the notification of the decision.” 15
- 17 Off-site farms**
- (1) Section 53(2) is amended by omitting “within 2 years after the commencement of this Act” and substituting “within 12 months after the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**”. 20
- (2) Section 53 is amended by repealing subsection (10) and substituting the following subsection:
- “(10) The holder of the deemed coastal permit may object to the consent authority about any decision under **subsection (5)(b)**, 25
and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.”
- 18 Schedule added** 30
- The Act is amended by adding the **Schedule** set out in the **Schedule** to this Act.

Part 2 Amendments to Fisheries Act 1996

- 19 Principal Act amended**
This **Part** amends the Fisheries Act 1996.
- 20 Interpretation** 5
Section 186C is amended by inserting the following definition in its appropriate alphabetical order:
“**experimental aquaculture activities** has the same meaning as in section 2 of the Resource Management Act 1991”.
- 21 New section 186DA inserted** 10
The following section is inserted after **section 186D**:
“**186DA Order in which certain requests for aquaculture decisions to be processed**
“(1) This section applies to requests for aquaculture decisions if—
“(a) the requests are made by persons who have requested changes to a regional coastal plan or proposed regional coastal plan in response to an invitation under section 165Z(1) or **165ZFA(1)** of the Resource Management Act 1991; and
“(b) the requests for changes have been accepted by the regional council under clause 25(2)(b) of Schedule 1 of the Resource Management Act 1991. 20
“(2) The chief executive must process the requests in the order in which they are received.
“(3) However, if requests are received at the same time, then **subsection (2)** applies subject to **subsections (4) to (7)**. 25
“(4) If all of the persons who make the requests agree that the requests should be processed in a particular order, the chief executive must process the requests in that order.
“(5) **Subsection (6)** applies if— 30
“(a) **subsection (4)** does not apply; and
“(b) the chief executive is satisfied that making an aquaculture decision about 1 or more of the requests may have an effect on making an aquaculture decision on 1 or more of the other requests. 35”

- “(6) If the chief executive is satisfied that he or she has sufficient information to determine the order in which aquaculture decisions should be made in relation to proposed aquaculture management areas, the chief executive must (having regard to the matters specified in section 186G)— 5
- “(a) rank the proposed aquaculture management areas according to the extent of their impact on fishing; and
 - “(b) make aquaculture decisions starting with the proposed aquaculture management area that would have the least impact on fishing and finishing with the proposed aquaculture management that would have the greatest impact on fishing. 10
- “(7) If **subsection (6)** does not apply, then the chief executive must determine by ballot the order in which the proposed aquaculture management areas will be processed.” 15

22 Decision on application

Section 186S is amended by inserting the following subsection after subsection (2):

- “(2A) The chief executive may decline an application if the activity proposed by the applicant is the subject of an exemption under section 186Q.” 20

23 Fisheries whose consent is necessary for aquaculture agreement

Section 186ZF is amended by repealing subsection (5) and substituting the following subsection: 25

- “(5) Where the regional council makes an offer of authorisations for available space in an aquaculture management area under section 165E of the Resource Management Act 1991, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which notice is given under section 165G(2)(a) of the Resource Management Act 1991. 30
- “(6) Where authorisations are required to be allocated to a person under section 165ZF(3)(a) of the Resource Management Act 1991, subsection (2) applies to the person specified in that subsection as at 5 pm on the date on which public notice is given under section 165G(2)(c) of the Resource Management Act 1991. 35

“(7) Where the regional coastal plan provides for allocation of space other than by an offer of authorisations, subsection (2) applies to the person specified in that subsection as at 5 pm on the date on which notice is given under section 165G(2)(b) of the Resource Management Act 1991.” 5

24 Period within which aquaculture agreements must be lodged for registration

Section 186ZI(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) within 6 months after,— 10
- “(i) where an offer of authorisations is made under section 165E of the Resource Management Act 1991, the date referred to in section 186ZF(5); or
 - “(ii) where authorisations are required to be allocated to a person under section 165ZF(3)(a) of the Resource Management Act 1991, the date referred to in section 186ZF(6); or 15
 - “(iii) where the regional coastal plan provides for allocation of space other than by offer of authorisations, the date referred to in section 186ZF(7); or 20
 - “(iv) the date on which a notice of receipt is given under section 15(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004.”

25 Memorials

Section 186ZL(1) is amended by— 25

- (a) omitting “notifies its intention” and substituting “gives notice”; and
- (b) omitting “to allocate space to undertake aquaculture activities in” and substituting “in relation to”.

26 New subpart 5 of Part 9A inserted 30

The following subpart is added after subpart 4 of Part 9A:

“Subpart 5—Experimental aquaculture
activities

“**186ZM Request for initial evaluation of proposals to
undertake experimental aquaculture activities**

- “(1) A person may apply to the chief executive for an initial evaluation about whether an assessment of the effect on fishing will be required for a proposal to undertake experimental aquaculture activities in the following areas: 5
- “(a) a coastal marine area that is not in an aquaculture management area; or 10
 - “(b) an aquaculture management area in a proposed regional coastal plan that is subject to—
 - “(i) a reservation; or
 - “(ii) a determination based on a rule in the plan under section 186H(1)(d). 15
- “(2) An application under **subsection (1)** must be made on an approved form and be accompanied by the prescribed fee (if any).

“**186ZN Initial evaluation**

- “(1) The chief executive must notify the applicant, within 15 working days after receiving an application under **section 186ZM**, about whether or not an assessment under **section 186ZO** is required. 20
- “(2) If the chief executive notifies the applicant that an assessment is not required, the chief executive must also notify the applicant of the factors that were material in deciding that an assessment is not required, including— 25
- “(a) the size of the area concerned; and
 - “(b) the location of the area concerned; and
 - “(c) the duration of the proposed experimental aquaculture activities. 30
- “(3) The chief executive must send a copy of the notice to the regional council concerned.

“**186ZO Assessment of effects on fishing**

- “(1) A person who has received a notice from the chief executive under **section 186ZN** that an assessment is required may ap- 35

- ply to the chief executive for an assessment of whether the proposal will have an undue adverse effect on fishing.
- “(2) An application under **subsection (1)** must be made on an approved form and be accompanied by the prescribed fee (if any). 5
- “(3) The chief executive may request the applicant and any fisher whose interests may be affected to provide the chief executive with further information about the effects that the proposed experimental aquaculture activities would have on access to or displacement of fishing. 10
- “(4) If the chief executive requests further information under **subsection (3)**, then the period beginning on the day when the further information is requested and ending on the day when the information is provided or the day that is 15 working days after the day when the further information is requested (whichever is the shorter) is excluded from the periods referred to in **subsection (5) and section 186ZP**. 15
- “(5) Within 10 working days after receiving the application, the chief executive must—
- “(a) identify the persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the proposal; and 20
 - “(b) notify the persons and organisations identified of the application. 25
- “(6) A person who is notified under **subsection (5)(b)** may make submissions on the application within 20 working days after being notified.
- “(7) In considering, for the purposes of making an assessment, whether the proposal will have an undue adverse effect on fishing, the chief executive must have regard only to the following matters: 30
- “(a) the location of the area concerned in relation to areas in which fishing is carried out:
 - “(b) the effect of the proposal on fishing of any fishery, including the proportion of any fishery likely to become affected: 35

- “(c) the degree to which experimental aquaculture activities within the area concerned will lead to the exclusion of fishing:
 - “(d) the extent to which fishing for a species in the area concerned can be carried out in other areas: 5
 - “(e) the extent to which the proposal will increase the cost of fishing:
 - “(f) the cumulative effect on fishing of any previous aquaculture activities.
- “**186ZP Decision after making assessment** 10
- “(1) Within 25 working days after the end of the period for making submissions under **section 186ZO(2A)**, the chief executive must complete the assessment and make a decision in relation to the area concerned that either—
 - “(a) he or she is satisfied that the proposal will not have an undue adverse effect on fishing; or 15
 - “(b) he or she is not satisfied that the proposal will not have an undue adverse effect on fishing.
 - “(2) As soon as the chief executive has made a decision under **subsection (1)**, the chief executive must notify the applicant of the decision. 20
 - “(3) If the chief executive makes a decision under **subsection (1)(a)**, the notice must specify the factors that were material in making the decision, including—
 - “(a) the size of the area concerned; and 25
 - “(b) the locations of the area; and
 - “(c) the duration of the proposed experimental aquaculture activities.
 - “(4) The chief executive must send a copy of the notice to the regional council concerned.” 30

Part 3

Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004

27 Principal Act amended

This **Part** amends the Maori Commercial Aquaculture Claims Settlement Act 2004. 35

28 Interpretation

Section 4 is amended by inserting the following definition in its appropriate alphabetical order:

“**regional council** has the same meaning as in section 2(1) of the Resource Management Act 1991”.

5

29 Allocation of authorisations to trustee

Section 9 is amended by repealing subsection (4) and substituting the following subsection:

“(4) The regional council must allocate to the trustee authorisations for the space identified under subsection (1) as soon as practicable after the date on which the new space becomes available for—

10

“(a) applications for coastal permits to authorise occupation for the purpose of an aquaculture activity; or

“(b) the allocation of authorisations.”

15

30 Interpretation

(1) Section 20(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

“(ii) was, at the close of 31 December 2004, still the subject of a lease or licence under the Marine Farming Act 1971, unless it was subject to forfeiture and the forfeiture (pursuant to section 16 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004) was subsequently completed under the Marine Farming Act 1971; and”.

20

25

(2) Section 20(b)(ii) is amended by omitting “67P” and substituting “67Q(2)(a)”.

(3) Section 20 is amended by inserting the following paragraph after paragraph (b):

30

“(ba) space—

“(i) that was not subject to a lease or licence issued under the Marine Farming Act 1971 before 21 September 1992; and

“(ii) that is the subject of an application under section 26 or 50 of the Aquaculture Reform (Repeals

35

- and Transitional Provisions) Act 2004 that was granted; and
- “(iii) in relation to which a permit under section 67J or 67Q(2)(a) of the Fisheries Act 1983 is subsequently issued.” 5
- (4) Section 20 is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) space that—
- “(i) was not subject to a lease or licence issued under the Marine Farming Act 1971 before 21 September 1992; and 10
- “(ii) was, at the close of 31 December 2004, subject to an application for a permit under section 67J or 67Q(2)(a) of the Fisheries Act 1983 which was subsequently granted; and”. 15
- (5) Section 20(d) is amended by inserting the following subparagraph before subparagraph (i):
- “(iaa) was not subject to a lease or licence issued under the Marine Farming Act 1971 before 21 September 1992; and”. 20
- (6) Section 20 is amended by inserting the following paragraph after paragraph (d):
- “(da) space—
- “(i) that was not the subject of a lease or licence to occupy for aquaculture activities under the Marine Farming Act 1971 issued before 21 September 1992; and 25
- “(ii) that was the subject of a lease or licence to occupy for aquaculture activities under the Marine Farming Act 1971 that— 30
- “(A) was issued on or after 21 September 1992; and
- “(B) expired before 1 January 2005; and
- “(iii) that, on 1 January 2005, was the subject of an application to extend the term of the lease or licence to which section 16(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applied; and 35

“(iv) in relation to which the application to extend the term is granted; and”.

Part 4 Amendments to Resource Management Act 1991

5

31 Principal Act amended

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

32 Interpretation

- (1) The definition of **aquaculture activities** in section 2(1) is amended by adding “; and” and also by adding the following paragraph: 10

“(d) does not include any activity specified in paragraph (a) or (b) if the activity is carried out solely for the purpose of monitoring the state of the coastal marine area”.

- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order: 15

“**experimental aquaculture activities** means aquaculture activities undertaken to research or investigate 1 or more of the following:

“(a) the suitability of an area for aquaculture activities: 20

“(b) new species of fish, aquatic life, or seaweed:

“(c) new structures:

“(d) new techniques”.

33 Certain existing uses in relation to land protected

Section 10(4)(b) is amended by inserting “, 12A, or **12C**” after “12”. 25

34 Restrictions on use of coastal marine area

Section 12 is amended by inserting the following subsection after subsection (5):

- “(5A) Subsection (2)(a) does not apply to anything to which section 12A or **12C** applies.” 30

- 35 Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas**
- (1) Section 12A is amended by adding the following subsection:
“(4) This section applies subject to **section 12C.**” 5
- (2) To avoid doubt, a coastal permit granted before the commencement of this **Part** to authorise the occupation of a coastal marine area for the purpose of an aquaculture activity is to be treated as a coastal permit that expressly authorises occupation of the coastal marine area for the purposes of an aquaculture activity under section 12A(1)(b) of the principal Act. 10
- 36 New section 12C inserted**
The following section is inserted after section 12B:
- “12C Restriction on experimental aquaculture activities in coastal marine area outside aquaculture management area in regional coastal plan** 15
- “(1) No person may, for the purpose of an experimental aquaculture activity, occupy a coastal marine area unless expressly authorised by a coastal permit granted in accordance with **subpart 4** of Part 7A. 20
- “(2) However, **subsection (1)** does not apply to occupation of a coastal marine area for the purpose of an experimental aquaculture activity if the occupation is authorised by or under section 12A.”
- 37 Duty to avoid unreasonable noise** 25
Section 16(2) is amended by inserting “12A, **12C,**” after “12,”.
- 38 Possible defence in case of unforeseen emergencies**
Section 18(1) is amended by inserting “12A, **12C,**” after “12,”.
- 39 Administrative charges** 30
Section 36(1) is amended by inserting the following paragraph after paragraph (ca):
“(cab) charges payable by persons submitting expression of interest in response to an invitation in a public notice given by a regional council under **section 165ZFA**, for

the carrying out by the local authority of its functions in relation to such expressions of interest, including inviting expressions of interest, tendering under **section 165ZFF(2)** or carrying out any other process adopted by a council under **section 165ZFF(3)**.”

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40 Regulations prescribing national environmental standards

Section 43(1)(a) is amended by inserting “section 12A, **section 12C**,” after “section 12,”.

41 Types of resource consents

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Section 87(c) is amended by inserting “12A, **12C**,” after “12,”.

42 Duration of consent

Section 123 is amended by adding the following subsection as subsection (2):

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“(2) The period for which a coastal permit for experimental aquaculture activities that would otherwise contravene **section 12C** is granted is—

“(a) the period, not exceeding 5 years, specified in the consent; and

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“(b) if no period is specified, 5 years from the date of commencement of the consent under section 116.”

43 Exercise of resource consent while applying for new consent

Section 124 is amended by adding the following subsection:

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“(4) This section does not apply to a coastal permit granted under **section 165ZK**.”

44 Lapsing of consents

Section 125 is amended by adding the following subsection:

“(4) A coastal permit for experimental aquaculture activities that would otherwise contravene **section 12C** lapses 5 years after the date of commencement of the consent or after the expiry of any shorter period specified in the permit, and no application

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may be made under this section to extend the period of the permit after which it lapses.”

45 Transferability of coastal permits

Section 135 is amended by adding the following subsection:

- “(3) The holder of a coastal permit granted under **subpart 4** of Part 7A may not transfer the whole or any part of the holder’s interest in the permit to another site.” 5

46 Interpretation

- (1) The definition of **available space** in section 165A(a)(i) is amended by inserting “(other than a coastal permit granted under **section 165ZK**)” after “coastal permit”. 10
- (2) The definition of **available space** in section 165A(a)(iv) is amended by inserting “(other than an application for the grant of a coastal permit under **section 165ZK**)” after “permit”. 10

47 Provisions about aquaculture management areas 15

Section 165C(1)(c)(v)(B) is amended by inserting “, 12A, and **12C**” after “12(2)”.

48 Allocation of space in aquaculture management area for aquaculture activities subject to reservation relating to commercial fishing 20

Section 165J is amended by inserting the following subsection after subsection (3):

- “(3A) Subsection (3) does not apply in relation to applications for coastal permits, and coastal permits granted, under **subpart 4** of Part 7A.” 25

49 Subpart heading amended

The heading to subpart 2 of Part 7A is amended by omitting “Privately initiated” and substituting “Invited private”.

50 New section 165VA inserted

The following section is inserted after the heading to subpart 2 of Part 7A: 30

“165VA Outline of subpart

- “(1) This section provides a general outline of this subpart and is not to limit or affect the meaning of the other sections of this subpart.
- “(2) This subpart provides for regional councils to invite requests for a change to a regional coastal plan or proposed regional coastal plan to establish an aquaculture management area. 5
- “(3) A regional council may invite requests by public notice—
“(a) inviting requests under section 165Z; or
“(b) inviting expressions of interest in making a request under **section 165ZFA**. 10
- “(4) Before a regional council invites requests or expressions of interest for a change to a regional coastal plan or proposed regional coastal plan, the regional council must consider whether it should identify areas in the coastal marine area as excluded areas. 15
- “(5) If the regional council decides that it should identify excluded areas, then before doing so it must comply with the consultation requirements in clauses 3 and 3B of Schedule 1.
- “(6) A regional council must not invite requests or expressions of interest in relation to excluded areas. 20
- “(7) A regional council cannot invite requests under section 165Z or expressions of interest under **section 165ZFA** in relation to the same coastal marine area at the same time.
- “(8) The purpose of inviting expressions of interest (as opposed to inviting requests for plan changes at the outset) is to enable a regional council to identify and resolve competition for the same space in the coastal marine area due to overlapping proposals for the establishment of aquaculture management areas. 25
- “(9) If a regional council invites expressions of interest,— 30
“(a) no person can request a plan change under this subpart unless the person is the holder of an accepted expression of interest:
“(b) persons who submit overlapping expressions of interest must be provided with an opportunity to negotiate among themselves and amend their expressions of interest so that they are not overlapping: 35

- “(c) to the extent that that process does not resolve overlapping expressions of interest, then the regional council must invite the persons concerned to submit tenders and accept the highest tender. However, the regional council must use an alternative process if the alternative process is fair and reasonable and it has been adopted using the special consultative procedure in the Local Government Act 2002. 5
- “(10) A person whose expression of interest has been accepted may request a plan change within the time specified in the notice under **section 165ZFI**. 10
- “(11) A regional council must process a request in accordance with section 165Z whether the request is made—
- “(a) in response to an invitation under section 165Z; or 15
- “(b) as a result of an acceptance of an expression of interest under **section 165ZFD(2), 165ZFE(2), or 165ZFG(2)**.”
- 51 New heading inserted**
The following heading is inserted above section 165W: “*Excluded areas*”. 20
- 52 Aquaculture management areas may not be established in excluded areas as a result of requests for changes**
- (1) Section 165X is amended by omitting the heading and substituting the following heading: “**Requests and expressions of interest not to be invited in relation to excluded areas**” 25
- (2) Section 165X is amended by—
- (a) omitting “seek nor accept” and substituting “invite”; and
- (b) omitting “from a person wishing to undertake aquaculture activities” and substituting “to establish an aquaculture management area”. 30
- (3) Section 165X is amended by adding the following subsection as subsection (2):
- “(2) A regional council must not invite, under this subpart, an expression of interest in making a request for a change to a regional coastal plan or proposed regional coastal plan to estab- 35

lish an aquaculture management area in any part of the coastal marine area that is an excluded area.”

53 New heading inserted

The following heading is inserted above section 165Y: “*Limitation on requests and expressions of interest*”.

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54 New section 165Y substituted

Section 165Y is repealed and the following section substituted:

“165Y When request can be made or expression of interest can be submitted

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“(1) A person may not make a request for change under this subpart except—

“(a) in response to a regional council inviting requests under section 165Z; or

“(b) unless the person has submitted an expression of interest which has been accepted under **section 165ZFD(2), 165ZFE(7), or 165ZFG(3)**.

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“(2) A person may not submit an expression of interest under this subpart except in response to a regional council seeking expressions of interest under **section 165ZFA**.”

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55 New heading inserted

The following heading is inserted above section 165Z: “*Invitations to request change*”.

56 Invitation to request change to regional coastal plan or proposed regional coastal plan

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Section 165Z(1A) is amended by repealing paragraph (a) and substituting the following paragraphs:

“(a) the council has not sought expressions of interest under **section 165ZFA** in relation to any area that is to be subject to a notice under subsection (1); and

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“(ab) the council has considered whether it should identify areas as excluded areas under section 165W and, if it decides that it should, has complied with that section; and”.

- 57 Acceptance of request or part of request for change**
Section 165ZB is amended by repealing subsections (2) and (3).
- 58 New section 165ZBA inserted**
The following section is inserted after section 165ZB: 5
- “165ZBA Application of Schedule 1A, and Part 9A of Fisheries Act 1996, to requests adopted or accepted under this subpart**
- “(1) Schedule 1A applies to a request made under this subpart and— 10
- “(a) adopted under clause 25(2)(a) of Schedule 1; or
- “(b) adopted and combined with another request under section 165ZA and clause 25(2)(a) of Schedule 1; or
- “(c) accepted under clause 25(2)(c) of Schedule 1.
- “(2) Sections **186D** and 186E of the Fisheries Act apply to a request to which **subsection (1)** applies as if the references to a regional council, where references to the person who requested the change.” 15
- 59 Rejection of request for change**
- (1) Section 165ZE is amended by inserting “, in whole or in part,” after “reject”. 20
- (2) Section 165ZE(c) is amended by inserting “or accepted” after “adopted”.
- 60 Allocation of authorisations from privately initiated changes** 25
- (1) The heading to section 165ZF is amended by omitting “**privately initiated**” and substituting “**invited private plan**”.
- (2) Section 165ZF(1), (3)(a), and (4) are amended by inserting “**or 165ZFA(1)**” after “section 165Z(1)” in each place where it appears. 30
- (3) Section 165ZF(3)(a) is amended by inserting “available” after “remaining”.

61 New heading and sections 165ZFA to 165ZFI inserted

The following heading and sections are inserted after section 165ZF:

“Expressions of interest

- “165ZFA Invitation to submit expression of interest** 5
- “(1) A regional council may, by public notice, invite any person to submit to the council an expression of interest (**expression of interest**) in making a request for a change to a regional coastal plan or a proposed regional coastal plan to establish an aquaculture management area. 10
- “(2) A regional council may give an invitation under **subsection (1)** only if all the following apply:
- “(a) the council has not invited requests under **section 165Z** in relation to any area that is to be subject to a notice under **subsection (1)**; and 15
- “(b) the council has considered whether it should identify areas as excluded areas under section 165W and, if it decides that it should, has complied with that section.
- “165ZFB Requirements for notice under section 165ZFA**
- “(1) A public notice given under **section 165ZFA** must— 20
- “(a) specify that an expression of interest must contain a description of the space in the coastal marine area that it relates to:
- “(b) specify any other information that the expression of interest must contain: 25
- “(c) state the terms or effect of **sections 165ZFC to 165ZFI**:
- “(d) specify whether the process set out in **sections 165ZFF to 165ZFH** or an alternative process decided by the regional council will be used to select an expression of interest where negotiations do not resolve the position with 2 or more expressions of interest that relate to the same space: 30
- “(e) specify the closing date for the receipt of expressions of interest: 35
- “(f) specify any charges fixed under section 36(1)(**cab**)

- “(2) A regional council may amend, replace, or revoke a notice given under **section 165ZFA**, and may do so—
- “(a) whether before or after the date specified as the closing date for the receipt of expressions of interest; but
 - “(b) in the case of an amendment or replacement, only if the amended or replaced notice specifies another closing date for the receipt of expressions of interest. 5

“**165ZFC Rejection of expression of interest**

- “(1) Before complying with **section 165ZFD**, a regional council must consider whether it should reject any expressions of interest submitted to it. 10
- “(2) A regional council may reject an expression of interest, but only on the grounds that the expression of interest—
- “(a) does not contain the information required by the public notice given under **section 165ZFA**; or 15
 - “(b) has been received after the closing date; or
 - “(c) is not accompanied by the appropriate charge (if fixed by the regional council under section 36(1)(cab)); or
 - “(d) is frivolous or vexatious.

“**165ZFD Process after closing date for expressions of interest** 20

- “(1) After the closing date for receipt of expressions of interest, the regional council must, if it receives 2 or more expressions of interest, determine whether any of them relate wholly or in part to the same space.
- “(2) If an expression of interest relates to space that is not, wholly or in part, the subject of 1 or more other expressions of interest, the regional council must accept the expression of interest and **section 165ZFI** applies accordingly. 25
- “(3) If an expression of interest relates wholly or in part to space that is also the subject of 1 or more other expressions of interest **sections 165ZFE to 165ZFH** apply. 30

“**165ZFE Expressions of interest relating to the same space**

- “(1) If 2 or more expressions of interest relate, wholly or in part, to the same space, the regional council must notify all the per-

sons concerned, specifying the space concerned and providing contact details of the persons concerned.

- “(2) The notice must also state—
- “(a) the terms or effect of **subsections (3) to (6)** and **sections 165ZFF to 165ZFH**; and 5
 - “(b) the date by which negotiations are to be completed for the purposes of **subsection (3)**.
- “(3) The persons notified under **subsection (1)** may negotiate with each other in the period expiring on the close of the date specified for the purposes of this subsection in the notice 10 given under **subsection (2)**.
- “(4) The purpose of the negotiations is to reach an agreement so that the expressions of interest do not relate to the same space.
- “(5) For the purpose of **subsection (4)**, a person who has submitted an expression of interest may— 15
- “(a) withdraw the expression of interest; or
 - “(b) substitute an amended expression of interest.
- “(6) However, the regional council must refuse substituted expressions of interest if they relate to the same space.
- “(7) If, as a result, of expressions of interest being substituted or 20 withdrawn, an expression of interest no longer relates to the same space as any other expression of interest, then the regional council must accept the expression of interest and **section 165ZFI** applies accordingly.

“**165ZFF Expressions of interest that continue to overlap after expiry of period for negotiations** 25

- “(1) This section applies in relation to expressions of interest that, after the period for negotiations provided by **section 165ZFE**, continue to relate, wholly or in part, to the same space.
- “(2) The regional council must notify in writing the persons concerned and invite them to submit tenders for acceptance of an expression of interest to the extent that they relate to the same space, specifying the manner in which and the date by which tenders for the same space must be submitted to the council. 30
- “(3) However, instead of complying with **subsection (2)**, the regional council must use an alternative process if— 35
- “(a) the alternate process is fair and reasonable; and

“(b) the alternative process has been adopted using the special consultative procedure in the Local Government Act 2002.

“**165ZFG Tenders**

“(1) The regional council must reject a tender for acceptance of an expression of interest if it is submitted after the closing date for receipt of tenders. 5

“(2) The regional council must notify the person who submitted the highest tender that, subject to the payment of the tender money, the person’s tender will be accepted. 10

“(3) As soon as the regional council has received the tender money, the council must notify—

“(a) the person who paid the tender money that the person’s expression of interest has been accepted; and

“(b) all the other persons who submitted tenders that their tenders have been unsuccessful and their expressions of interest have therefore been rejected. 15

“**165ZFH Tender money**

“(1) The regional council must apply the money received under **section 165ZFG** as follows: 20

“(a) the regional council must apply 50% of the money to achieving the purpose of this Act in the coastal marine area in its region; and

“(b) the regional council must forward 50% of the money to the Minister. 25

“(2) The Minister must cause the money received under **subsection (1)(b)** to be paid into a Crown Bank Account in accordance with the Public Finance Act 1989.

“(3) Money paid under **section 165ZFG** is not refundable.

“**165ZFI Acceptance of expression of interest** 30

“(1) The regional council must notify a person whose expression of interest is accepted under **section 165ZFD(2), 165ZFE(7), or 165ZFG(3)**—

“(a) that the expression of interest has been accepted; and

- “(b) of the last day by which the person may lodge a request to change a regional coastal plan or proposed regional coastal plan.
- “(2) A person whose expression of interest is accepted by a regional council may lodge with the regional council a request to change a regional coastal plan or proposed regional coastal plan to establish an aquaculture management area for the space the person’s expression of interest relates to. 5
- “(3) The regional council must reject a request if— 10
- “(a) it is given to the council after the date specified in the notice given under **subsection (1)** for the lodgement of requests; or
- “(b) it does not relate to the same space as the accepted expression of interest relates to; or
- “(c) it is inconsistent with the expression of interest to which it relates. 15
- “(4) A request accepted by a regional council must be dealt with in accordance with section 165Z(2) and (3), and those provisions apply with all necessary modification.”
- 62 Processing applications for existing permit holders** 20
Section 165ZH(1)(a)(ii) is amended by inserting “(other than a coastal permit issued under **subpart 4** of Part 7A)” after “permit”.
- 63 New subpart 4 of Part 7A inserted**
The following subpart is inserted after subpart 3 of Part 7A: 25
“Subpart 4—Experimental aquaculture activities
- “165ZK Grant of coastal permits authorising experimental aquaculture activities**
A consent authority may, in accordance with and subject to this subpart, grant a coastal permit authorising occupation of a coastal marine area for the purpose of an experimental aquaculture activity in a coastal marine area that is not in an aquaculture management area in a regional coastal plan. 30

“165ZL Applications for coastal permits for experimental aquaculture activities

An application for the grant of a coastal permit under **section 165ZK** must include a research proposal that explains why occupation of the coastal marine area, to the extent and the period applied for, is reasonably necessary to undertake the experimental aquaculture activities. 5

“165ZM When application must be refused

A consent authority must not grant a coastal permit under **section 165ZK**,— 10

- “(a) if the coastal marine area concerned—
 - “(i) has been occupied for the purpose of experimental aquaculture activities during the 6 months immediately preceding the date of the application; 15
 - or
 - “(ii) is subject to application to which section 150B(2) applies (unless the person who has made that application has agreed in writing to the grant of the coastal permit); or
 - “(iii) is subject to a request for a change to a regional coastal plan or a proposed regional coastal plan made in response to an invitation under section 165Z or **165ZFA** and the request has been accepted by the regional council under clause 25(2)(b) of Schedule 1 (unless the person whose request has been accepted has agreed in writing to the grant of a coastal permit); and 25
- “(b) unless the consent authority—
 - “(i) has received a notice from the chief executive of the Ministry of Fisheries— 30
 - “(A) under **section 186ZN** of the Fisheries Act 1996 that an assessment under **section 186ZO** of that Act is not required; or
 - “(B) under **section 186ZP** of the Fisheries Act 1996 that the chief executive is satisfied 35 that the proposal to which the application relates will not have an undue adverse effect on fishing; and

“(ii) is satisfied that the application does not differ from the notice from the chief executive of the Ministry of Fisheries, or if it does differ, it does not do so to the extent that it changes the character or increases the scale or intensity of the activities in or occupation of the coastal marine area. 5

“**165ZN Limitation relating to area**

“(1) A coastal permit granted under **section 165ZK** must not authorise the occupation of more than 2 hectares of the coastal marine area. 10

“(2) Space occupied by warps, lines, and anchors is to be excluded for the purposes of **subsection (1)**.

“**165ZO Application not to proceed if area become aquaculture management area in regional coastal plan**

If an application for the grant of a coastal permit under **section 165ZK** is made in relation to an aquaculture management area in a proposed regional coastal plan and, before the application is determined, the plan becomes operative, then the regional council— 15

“(a) must not process the application; and 20

“(b) must not determine the application; and

“(c) must return the application, and any fee accompanying the application, to the applicant as soon as practicable.

“**165ZP Permit not to lapse if area becomes aquaculture management area** 25

“(1) **Subsection (2)** applies if the area to which a coastal permit granted under **section 165ZK** becomes an aquaculture management area or part of an aquaculture management area in a regional coastal plan.

“(2) The coastal permit— 30

“(a) does not lapse; and

“(b) is to be treated as having been granted for the purposes of **section 12C**.

“165ZQ Application of Part 6

To avoid doubt, Part 6 applies (subject to this subpart) in relation to applications for coastal permits under this subpart and to coastal permits granted under this subpart.”

64 Allocation of authorisations from privately initiated changes 5

Section 165ZF(1), (3), and (4) is amended by inserting “or an expression of interest under **section 165ZFA**” after “section 165Z(1)” in each place where it appears.

65 Emergency works and power to take preventive and remedial action 10

(1) Section 330(1) is amended by inserting “12A, **12C**,” after “12,”.

(2) Section 330(2A) is amended by inserting “12A, **12C**,” after “12,”. 15

66 Resource consents for emergency works

Section 330A(2) is amended by inserting “12A, **12C**,” after “12,”.

67 Offences against this Act

Section 338(1)(a) is amended by inserting “12A, **12C**,” after “12,”. 20

68 Strict liability offences

Section 341(1) is amended by inserting “12A, **12C**,” after “12,”.

69 Transitional coastal occupation charges 25

(1) Sections 401A(3) is amended by omitting “1 July 2007” and substituting “the expiry date”.

(2) Section 401A(4) is amended by—
(a) omitting “1 July 2007” and substituting “the expiry date”; and 30
(b) omitting “after 30 June 2007” and substituting “on or after the expiry date”

- (3) Section 401A is amended by adding the following subsection:
“(5) In this section, **expiry date** means the date that is 12 months after the date on which a New Zealand coastal policy statement is issued under section 52(3)(a) after the commencement of **Part 4 of the Aquaculture Legislation Amendment Act (No 2) 2008.**” 5
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Schedule

s 20

New Schedule added

Schedule

ss 25A, 26A, 50A 5

Aquaculture agreements

- (1) Subpart 4 of Part 9A of the Fisheries Act 1996 applies in relation to aquaculture agreements entered into for the purposes of **sections 25A, 26A, and 50A** of this Act subject to the exclusion and modifications in clauses (2) to (5) of this Schedule. 10
- (2) Section 186ZF(5) applies as if “section 165G(2)(a) of the Resource Management Act 1991” were omitted and “**section 25A(5), 26A(5), or 50A(5)**, as the case may be” were substituted.
- (3) Section 186ZI(1)(b)(i) applies as if “186ZF(5)” were omitted and “the date on which notice is given under **section 25A(5), 26A(5), or 50A(5)**” were substituted. 15
- (4) Section 186ZK does not apply.
- (5) Section 186ZL applies as if —
 - (a) subsection (1) were repealed and the following subsection substituted: 20
“(1) If the chief executive gives a notice under **section 25A(5), 26A(5), or 50A(5)**, the chief executive must ensure that a memorial is recorded in the appropriate register against all quota for the stocks specified in the notice.”; and 25
 - (b) subsection (2)(a) were repealed and the following paragraph substituted:
“(a) the chief executive has determined that **section 25A(3), 26A(3), or 50A(3)** applies; and” 30