

Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

Government Bill

Explanatory note

General policy statement

There are approximately 1,200 existing marine farms in New Zealand that require one or more resource consents under the Resource Management Act 1991 (the **RMA**) to operate. Around 300 of these marine farms have consents due to expire by the end of 2024, and a further 150 have consents due to expire by 2030.

Those representing the marine farming industry have expressed concerns that obtaining a replacement resource consent is costly and time-consuming. They have indicated that the process of renewing consents creates uncertainty, acts as a barrier to growth, and impacts their ability to invest in farms, improvements, and assets.

To give marine farm consent holders certainty and greater confidence to invest, and to give effect to the National and New Zealand First Party Coalition Agreement to deliver longer durations for marine farming permits, the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill (the **Bill**) amends the RMA to extend the duration of existing marine farm consents.

The Bill extends the current duration of all coastal permits currently issued under the RMA authorising aquaculture activities by 20 years, but not beyond 2050. The extension—

- covers all of the RMA consents (coastal permits) needed for a marine farm to operate; and
- applies to all marine farms that hold a current resource consent at the time the Bill commences; and
- does not extend the duration of any marine farm past 31 December 2050 (though it will not change current expiry dates if they are already beyond 2050); and

- does not require an application to extend the duration of a coastal permit from the consent holder.

The Bill also provides a bespoke mechanism for consent authorities (councils) to review consent conditions of extended consents, in order to better promote the sustainable management of natural and physical resources in relation to a marine farm without preventing the consent holder from continuing to carry out the consented aquaculture activity. The review of consent conditions is a one-off review that—

- is optional for councils and must be initiated within 24 months of the extension; and
- can only proceed with the concurrence of the Director-General of the Ministry for Primary Industries (the **Director-General**), which is an agreement at the start of the review that the review can proceed with an agreed scope; and
- is not cost-recoverable; and
- allows for notification to iwi organisations (with ability to make a submission). This includes iwi authorities as defined in the RMA, post-settlement governance entities, ngā hapū o Ngāti Porou, and hapū and iwi that are party to Mana Whakahono a Rohe under the RMA, and rights and title holders under the Marine and Coastal Area (Takutai Moana) Act 2011 where the marine farm consent is within their rohe; and
- limits appeal rights on the review outcomes to the consent holder and any party who was notified of the review and made a submission.

Departmental disclosure statement

The Ministry for Primary Industries is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=56>

Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement on 4 April 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mpi.govt.nz/dmsdocument/62167-Resource-Management-Extended-Duration-of-Marine-Farm-Coastal-Permits-Amendment-Bill>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that this Bill comes into force on the day after Royal assent.

Clause 3 provides that this Bill amends the Resource Management Act 1991 (the **principal Act**).

Part 1

Amendments to Part 7A of Resource Management Act 1991

Clause 4 inserts *new subparts 1A and 1B of Part 7A*.

New subpart 1A—Duration of coastal permits for marine farms extended

New section 165ZFH sets out some key definitions for the new subparts.

New sections 165ZFHB to 165ZFHH provide for—

- the duration of certain existing marine farm coastal permits to be extended by a period of 20 years, subject to no permit being extended beyond 31 December 2050 (*new section 165ZFHC*);
- the options under which coastal permit holders may elect to operate under an extant permit or a replacement permit (*new sections 165ZFHE and 165ZFHF*);
- the application of an extension if a coastal permit is under appeal (*new section 165ZFHH*).

New subpart 1B—Review of conditions applying to extended coastal permits

New section 165ZFHI provides the power for a consent authority to undertake a review of the conditions applying to coastal permits extended under *new subpart 1A*. *New section 165ZFHI* also sets out certain process requirements, the limits as to what may be amended in the course of the review, the time in which any review must be initiated and completed, and that a consent authority undertaking a review must itself meet the costs of the review. Time limits are prescribed for this stage of the review.

New section 165ZFHI provides that the purpose of a review is to better promote the sustainable management of the natural and physical resources that are associated with the relevant marine farm, but without preventing the permit holder from carrying out the activity permitted by the coastal permit.

New section 165ZFHK provides that, before a review begins, the opinion of the Director-General Industries must be sought as to whether the proposed review meets the purpose of a review under this subpart. Only with that concurrence can the review be undertaken. Time limits are prescribed for this stage of the review process.

New section 165ZFHL states that, with the Director-General's concurrence with the proposed review, the consent authority may begin the review, giving notice of it to specified groups or persons. Those groups or persons may make submissions to the

consent authority on the proposal. No hearing may be held in the course of the review. Time limits are again prescribed for this stage of the process.

New section 165ZFHM provides for the decision to be made by the consent authority, applying section 131 of the principal Act.

New section 165ZFHN provides for a right of appeal to the permit holder and those notified and who made a submission of the review under *new section 165ZFHL*. The procedure set out in section 121 of the principal Act is applied. Under *new section 165SFHO* there is a further right of appeal to the High Court on a question of law, with the requirements of sections 299 to 304 of the principal Act applying.

Part 2

Other amendment to Resource Management Act 1991

Clause 5 inserts *new section 123A(5)*, providing that the duration of a coastal permit to which this section applies is subject to any extension that may apply under *new subpart 1A of Part 7A*.

Hon Shane Jones

Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

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Part 2

Other amendment to Resource Management Act 1991

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Act **2024**.

2 Commencement

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This Act comes into force on the day after Royal assent.

3 Principal Act

This Act amends the Resource Management Act 1991.

Part 1

Amendments to Part 7A of Resource Management Act 1991 10

4 New subparts 1A and 1B of Part 7A inserted

After section 165ZFH, insert:

Subpart 1A—Duration of coastal permits for marine farms extended

165ZFHA Interpretation

In this subpart and **subpart 1B**, unless the context otherwise requires,— 15

extant coastal permit means a coastal permit that—

- (a) is for an aquaculture activity in the coastal marine area; and
- (b) is current on the day on which this subpart comes into force; and
- (c) expires earlier than 31 December 2050

extended permit review of conditions or **review** means a review carried out under **subpart 1B** 20

replacement permit means a coastal permit that—

- (a) replaces an extant coastal permit; and

- (b) has a commencement date later than the date on which this subpart comes into force; and
- (c) is not being exercised by the permit holder.

165ZFHB Application of subpart

This subpart applies to—

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- (a) extant coastal permits; and
- (b) coastal permits within the meaning of section 87(c), if they relate to an aquaculture activity to which **paragraph (a)** applies; and
- (c) replacement permits; and
- (d) extended coastal permits as provided for in **section 165ZFHD(1)**.

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165ZFHC Extension of coastal permits for marine farms

- (1) The expiry date of the coastal permits to which this subpart applies is extended to whichever is the sooner of—
 - (a) the date that is 20 years after the date on which the permit would otherwise expire; and
 - (b) 31 December 2050.
- (2) No extension may be made under this subpart that applies beyond 31 December 2050.
- (3) The conditions applying to an extant coastal permit that is extended under this section continue to apply, unless—
 - (a) a change to a condition is required as a consequence of extending the duration of the permit; or
 - (b) the permit is subject to an appeal at the date on which this subpart comes into force, in which case the conditions are those set by the decision made on the final appeal.
- (4) This section does not affect the power under **subpart 1B** to undertake a review of the conditions of a coastal permit that is extended under this section.

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165ZFHD Updating of extended coastal permits

- (1) If, on the day on which this subpart comes into force, the holder of an extant coastal permit has lodged an application under section 165ZH and at the same time the duration of the extant coastal permit is extended under this subpart, the holder must, not later than 2 months after this subpart comes into force,—
 - (a) decide whether—
 - (i) to continue operating under the extant coastal permit; or
 - (ii) to continue with the application; and
 - (b) notify the relevant consent authority of that decision.
- (2) A consent authority—

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- (a) must, within 6 months of this subpart coming into force, update each extant coastal permit to record the expiry date of each, as extended under this subpart; but
- (b) may, for a period of 2 months after this subpart comes into force, suspend processing applications made under section 165ZH while holders of extant coastal permits make, and give notice of, the decision required under **subsection (1)**. 5
- (3) A permit holder who decides to continue operating under an extant coastal permit as extended under this subpart must withdraw the application lodged under section 165ZH within 2 months of this subpart coming into force. 10
- (4) However, if a permit holder decides to continue with the application lodged under section 165ZH, a coastal permit granted under that application does not qualify for the 20-year extension to the expiry date provided for under this subpart.
- 165ZFHE Consent holder must confirm which permit is operational** 15
- (1) This section applies to a consent holder who—
- (a) is operating under an extant coastal permit when this subpart comes into force; but
- (b) already holds a permit to replace the extant coastal permit referred to in **paragraph (a) (replacement permit)**. 20
- (2) Not later than 2 months after this subpart comes into force, a permit holder must confirm with the relevant consent authority whether the holder will operate under—
- (a) the extant coastal permit; or
- (b) a replacement permit. 25
- 165ZFHF Decision to operate under extant coastal permit**
- (1) If a permit holder decides to operate under an extant coastal permit (*see section 165ZFHE(2)*), the holder must surrender the replacement permit referred to in **section 165ZFHE(1)(b)**.
- (2) The surrender under **subsection (1)** takes effect when the permit holder receives a written acknowledgement from the consent authority that it has received notice that the replacement permit is surrendered. 30
- 165ZFHG Decision to operate under replacement coastal permit**
- (1) This section applies if the holder of an extant coastal permit decides to operate under a replacement coastal permit (*see section 165ZFHE(2)*). 35
- (2) A permit holder is entitled to operate under the extant coastal permit until the replacement permit comes into force.

- (3) A permit holder who surrenders an extant coastal permit and uses a replacement permit under **section 165ZFHE(2)(b)** remains liable under this Act for—
- (a) any breach of the conditions of the extant coastal permit occurring before that permit is surrendered; and 5
 - (b) completing any work to give effect to that permit, unless the consent authority directs otherwise when it acknowledges the surrender.

165ZFHH Application of extension where coastal permit under appeal

- (1) The extension of a coastal permit described in **section 165ZFHC(1)** applies to a coastal permit that— 10
- (a) was granted or declined before the date on which this subpart comes into force; and
 - (b) is the subject of an appeal that results in the granting of a coastal permit.
- (2) The extension does not apply—
- (a) until all rights of appeal are exhausted; or 15
 - (b) if, on appeal, the application for a coastal permit is declined or withdrawn.

Subpart 1B—Review of conditions applying to extended coastal permits

165ZFHI Power to undertake review

- (1) A consent authority may review the conditions of any coastal permit that is extended under **subpart 1A**. 20
- (2) This subpart is in addition to, and does not affect the application of,—
- (a) sections 127 to 129, which provide for—
 - (i) a consent authority to review the conditions of a coastal permit; and 25
 - (ii) the holder of a coastal permit to apply to change or cancel any condition of a coastal permit; or
 - (b) section 133, which preserves the power of the Environment Court under Part 12 to change or cancel a coastal permit by an enforcement order.
- (3) A review undertaken under this subpart— 30
- (a) must commence not later than 2 years after this subpart comes into force; and
 - (b) must not be undertaken more than once in relation to any coastal permit; and
 - (c) must not amend the duration of a coastal permit extended under **section 165ZFHC(1)**, or change the species or consented area to which the coastal permit relates. 35

- (4) Despite section 36, a consent authority is not entitled to recover the costs of a review undertaken under this subpart.

165ZFHJ Purpose of review

The purpose of undertaking a review is to better promote the sustainable management of the natural and physical resources associated with the marine farm, without preventing the permit holder from carrying out the aquaculture activity to which the permit relates.

165ZFHK Concurrence of Director-General required for review to proceed

- (1) Before a consent authority may undertake a review under this subpart, it must provide a proposal to the Director-General of the Ministry for Primary Industries (the **Director-General**) that sets out how the consent authority considers the proposed review meets the purpose of a review under this subpart. 10
- (2) Not later than 20 working days after receiving a proposal, the Director-General must—
- (a) decide whether to concur with the consent authority that the proposal is consistent with the purpose of the review; and 15
- (b) notify the relevant consent authority in writing of that decision.
- (3) For the purpose of making that decision, the Director-General may request the relevant consent authority and permit holders to provide information in writing to the Director-General not later than 20 working days after the request is received. the relevant consent authority and permit holders who may, provide the information in writing. 20
- (4) The information requested—
- (a) must be provided as requested, in the case of a request to the consent authority; and 25
- (b) may be provided in the case of a request to a permit holder.
- (5) The time that the Director-General may need to obtain information from the relevant consent authority and permit holders is in addition to the 20 working days specified in **subsection (2)**.
- (6) If the information is not received in full within the time specified in **subsection (3)**, the Director-General may decide whether to concur with the review proposal under **subsection (2)(a)**, taking into account the information received within that time. 30

165ZFHL Process applying to review

- (1) Not later than 20 working days after a consent authority has received written notice of the Director-General's concurrence with the proposed review, the consent authority may initiate a review of the conditions of an extended coastal permit by notifying that intention to— 35

- (a) any of the following groups or persons if the extended coastal permit applies in their rohe:
- (i) iwi authorities:
 - (ii) post-settlement governance entities:
 - (iii) Ngā Hapū o Ngāti Porou as defined in section 10 of Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019: 5
 - (iv) iwi and hapū that are party to a Mana Whakahono ā Rohe under this Act:
 - (v) rights and title holders under the Marine and Coastal Area (Taketai Moana) Act 2011; and 10
- (b) the permit holder.
- (2) Groups or persons notified under this section may make submissions on the proposed review to the relevant consent authority—
- (a) within 20 working days after limited notification was given under **subsection (1)**; and 15
 - (b) in accordance with section 96(5) to (7).
- (3) A consent authority undertaking a review under this subpart must not hold a hearing as part of that review and nothing in sections 99 to 103B applies to a review under this subpart.
- 165ZFHM Decision on review** 20
- (1) A consent authority that undertakes a review under this subpart must, not later than 2 years after beginning the review, decide whether to add to, amend, or make no change to, any condition of the coastal permit under review.
- (2) In making that decision, the consent authority must—
- (a) apply section 131 (with any necessary modifications); and 25
 - (b) consider any submissions received under **section 165ZFHL(2)**.
- (3) The consent authority must, as soon as is reasonably practicable, give written notice of the outcome of the review to the persons notified if they made a submission (*see section 165ZFHL(1) and (2)*).
- 165ZFHN Right of appeal** 30
- (1) The following persons may appeal to the Environment Court against the whole or part of any decision made by the consent authority in the review of conditions under this subpart:
- (a) the permit holder; and
 - (b) any person or group who was notified under **section 165ZFHL(1)** and who made a submission under **section 165ZFHL(2)**. 35
- (2) Section 121 applies to an appeal under this section.

165ZFHO Final right of appeal

There is a final right of appeal on a question of law to the High Court, subject to sections 299 to 304.

Part 2

Other amendment to Resource Management Act 1991

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5 Section 123A amended (Duration of consent for aquaculture activities)

After section 123A(4), insert:

- (5) The duration of a coastal permit to which this section applies is subject to any extension that may apply under **subpart 1A of Part 7A**.