

## MARINE FARMING AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill contains savings provisions relating to certain applications and decisions made under section 13 of the Marine Farming Act 1971.

Section 13 of the Marine Farming Act 1971, which provided for the variation of conditions, covenants, or agreements contained in marine farming leases and licences and also provided for the extension of the term of such leases and licences, was repealed by the Resource Management Act 1991. When the repeal took effect on 1 October 1991, a number of applications under section 13 seeking an extension of term of a lease or licence had been received by the relevant controlling authority but had not been finally dealt with. Also, some extensions had been granted and registered after the expiration of the leases or licences concerned, and consequently those extensions were ineffectual. The purpose of the Bill is to enable the applications to be dealt with as if section 13 were still in force and to validate the extensions that were registered out of time.

*Clause 1* relates to the Short Title of the Bill.

*Clause 2* applies to the following outstanding applications lodged in the period 1 October 1989 to 30 September 1991:

- (a) All applications lodged more than 6 months before the expiration of the lease or licence that were accepted by the controlling authority but not finally dealt with:
- (b) All applications lodged 6 months or less before the expiration of the lease or licence that were accepted by the controlling authority but not finally dealt with:
- (c) All applications lodged 6 months or less before the expiration of the lease or licence that were not accepted by the controlling authority and not dealt with.

The clause enables the affected applications to be dealt with as if section 13 of the Marine Farming Act 1971 were still in force, and as if it were not necessary to register extensions of the terms of such leases and licences before their expiration. Operations under such leases or licences are permitted to continue until a decision is made in each case.

*Clause 3* validates every extension of term granted before 1 October 1991 but not registered before the expiration of the lease or licence concerned. The clause also provides that the leases and licences concerned will be treated in the same way as those in force immediately before section 13 of the principal Act was

repealed. Section 426 of the Resource Management Act 1991 continues section 13 in force in relation to such leases and licences, and this enables them to be operated according to their tenor and to be extended.

*Clause 4* relates to applications lodged after 30 September 1991 and enables the holder of a lease or licence to operate under it while the application is pending.

*Clause 5* amends section 426 of the Resource Management Act 1991. Section 426 continues in force section 13 of the principal Act in relation to leases and licences in force on 30 September 1991. This clause modifies that provision by providing that—

- (a) An extension can be sought at any time and the requirement to register an extension of the term of a lease or licence before the expiration of the lease or licence shall not apply; and
- (b) Applications for extensions are required to be made within 2 years of the expiration of the lease or licence concerned (and not later than the expiration date).

*Clause 6* provides that the Bill prevails in the event of any conflict with the provisions of the principal Act or the Resource Management Act 1991.

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*Hon. Doug Kidd*

## MARINE FARMING AMENDMENT

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### ANALYSIS

Title	4. Operations under existing leases and licences may continue until application dealt with
1. Short Title	5. Amendments to Resource Management Act 1991
2. Saving of applications for leases or licences	6. Conflict with other Acts
3. Validation of extensions granted out of time	

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### A BILL INTITULED

#### **An Act to make provisions with respect to certain applications and decisions relating to marine farming leases and licences**

5 BE IT ENACTED by the Parliament of New Zealand as follows:

1. **Short Title**—This Act may be cited as the Marine Farming Amendment Act 1992, and shall be read together with and deemed part of the Marine Farming Act 1971\* (hereinafter referred to as the principal Act).

- 10     **2. Saving of applications for leases or licences**—(1) This section applies to every application described in subsection (2) of this section and lodged under section 13 of the principal Act in the period commencing with the 1st day of October 1989 and ending with the 30th day of September 1991, and being—
- 15     (a) An application lodged more than 6 months before the expiration of the term of the marine farming lease or licence concerned, where the application was accepted by the controlling authority but was not finally dealt with; or
- 20     (b) An application lodged 6 months or less before the expiration of the lease or licence, where the

\*R.S. Vol. 22, p. 695  
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application was accepted by the controlling authority but was not finally dealt with; or

- (c) An application lodged 6 months or less before the expiration of the lease or licence, where the application was not accepted by the controlling authority and was not dealt with. 5

(2) The applications referred to in **subsection (1)** of this section are written applications that were lodged with the Ministry of Agriculture and Fisheries and sought the extension of the term of a marine farming lease or licence granted under the principal Act. 10

(3) Section 426 (1) of the Resource Management Act 1991 (as amended by **section 5** of this Act) shall be deemed to apply in respect of every lease and licence that is subject to an application to which this section applies, and the provisions of the principal Act (including section 13) shall apply to such leases and licences in the manner specified in the said section 426 (1) (as so amended) as if the Minister were the controlling authority. 15

(4) While an application to which this section applies is pending, the holder of the lease or licence to which the application relates shall be deemed to have authority to operate under the lease or licence; and the holder shall be deemed always to have had such authority. 20

(5) The authority conferred by **subsection (4)** of this section shall expire,— 25

- (a) In the case a successful application, when the extension is granted and registered; or  
 (b) In the case of an application that is declined, when the holder is notified by the controlling authority of his or her or its decision. 30

(6) For the purposes of this section, every lease or licence that is subject to an application to which this section applies—

- (a) Shall be deemed to be and always to have been in force; and  
 (b) Shall continue in force until the expiration of the authority conferred in respect of that application by **subsection (4)** of this section. 35

### **3. Validation of extensions granted out of time—**

(1) Every extension granted in respect of a lease or licence under section 13 of the principal Act before the 1st day of October 1991, but not registered under section 15 of the principal Act before the expiration of the lease or licence, shall be deemed to be and always to have been lawful. 40

(2) For the purposes of section 426 of the Resource Management Act 1991 (as amended by **section 5** of this Act), every lease or licence to which **subsection (1)** of this section applies shall be deemed to have been in force immediately before the commencement of the Resource Management Act 1991 and that section (as so amended) shall apply to it accordingly.

**4. Operations under existing leases and licences may continue until application dealt with—**

(1) This section applies to every application lodged with the Ministry or the relevant controlling authority after the 30th day of September 1991 that seeks an extension of the term of a marine farming lease or licence under the principal Act (as applied by section 426 (1) of the Resource Management Act 1991).

(2) While an application to which this section applies is pending, the holder of the lease or licence to which the application relates shall be deemed to have authority to operate under the licence; and the holder shall be deemed always to have had such authority.

(3) The authority conferred by **subsection (2)** of this section shall expire,—

(a) In the case a successful application, when the extension is granted and registered; or

(b) In the case of an application that is declined, when the holder is notified by the controlling authority of his or her or its decision.

(4) For the purposes of this section, every lease or licence that is subject to an application to which this section applies—

(a) Shall be deemed to be and always to have been in force; and

(b) Shall continue in force until the expiration of the authority conferred in respect of that application by **subsection (2)** of this section.

**5. Amendments to Resource Management Act 1991—**

(1) Section 426 (1) of the Resource Management Act 1992 is hereby amended by inserting, before the words “all the provisions of that Act”, the words “, except as provided in **subsection (1A)**,”.

(2) Section 426 of the Resource Management Act 1991 is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The provisions of the Marine Farming Act 1971 shall apply to leases and licences referred to in subsection (1) with the following modifications:

- “(a) Section 13 (2) of that Act (as amended by section 6 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972) shall be read as if the words ‘before the expiration of the lease’ and the proviso were omitted: 5
- “(b) Section 13 (4) of that Act (as so amended) shall be read as if the words ‘before the expiration of any licence’ and the proviso were omitted: 10
- “(c) Every application for the extension of the term of any such lease or licence is required to be made not more than 2 years before the expiration of that lease or licence and not later than the date of the expiration of that lease or licence.” 15

**6. Conflict with other Acts**—The provisions of this Act shall apply notwithstanding anything in the principal Act or the Resource Management Act 1991, and notwithstanding that the lease or licence concerned may have expired before the commencement of this Act. 20