

House of Representatives

Supplementary Order Paper

Tuesday, 14 December 2004

Aquaculture Reform Bill

Proposed amendments

Hon David Benson-Pope, in Committee, to move the following amendments:

Clause 6(2)

To omit this subclause (lines 32 and 33 on page 11).

Clause 21: new section 165A

To insert, after the word “subpart” (line 27 on page 15), the words “and **subpart 2**”.

Clause 21: new section 165G

To insert, before *subsection (1)* (before line 17 on page 21), the following subsection:

(1AA) This section applies only in relation to space that is the subject of a reservation relating to commercial fishing.

Clause 21: new section 165J

To omit from *subsection (2)* the word “identified” (line 33 on page 22), and substitute the words “specified in a notice given”.

To insert in *subsection (3)*, after the word “occupy” (line 5 on page 23), the word “space”.

To omit from *subsection (3)* the word “identified” (line 7 on page 23), and substitute the words “specified in a notice given”.

Clause 21: new section 165P(1)(e)

To omit the word “identified” (line 3 on page 27), and substitute the words “specified in a notice given”.

Clause 21: new section 165U

To add (after line 34 on page 29) the following subsection:

“(5) This section applies subject to **section 76 of the Aquaculture Reform Act 2004**.

Clause 21: new section 165Y

To omit from the heading to this section the words “**plan change**” (line 28 on page 32), and substitute the words “**change to regional coastal plan or proposed regional coastal plan**”.

To omit from *subsection (3)* the word “applies” (line 5 on page 33), and substitute the words “and **Schedule 1A** apply”.

Clause 21: new section 165Z(3)(b)

To omit the words “for which a person is to receive an authorisation under **section 165ZB**” (lines 3 and 4 on page 34), and substitute the words “to which the person’s request relates”.

Clause 21: new section 165ZA(1)

To omit the word “plan” (line 8 on page 34).

Clause 21: new section 165ZAA

To insert, after new section 165ZA (after line 21 on page 34), the following section:

“**165ZAA Regional council to notify chief executive of acceptance or adoption of request**

As soon as practicable after accepting or adopting a request under clause 25 of the First Schedule, the regional council must notify the chief executive of—

- “(a) the name of the person who requested the change; and
- “(b) a description of the space that the request relates to.

Clause 21: new section 165ZAB(b)

To omit this paragraph (lines 27 to 30 on page 34), and substitute the following paragraph:

- “(b) a description of the space in the aquaculture management area out of which the person who requested the change is to receive an authorisation under **section 165ZB**, being 80% of the available space requested by the person.

Clause 21: new section 165ZAC(b) and (c)

To omit the word “plan” (lines 1 and 4 on page 35).

Clause 21: new section 165ZB

To omit from the heading to this section the word “**plan**” (line 9 on page 35).

To omit from *subsection (6)* the words “Not later than 5 working days” (line 30 on page 35), and substitute the words “As soon as practicable”.

To omit from *subsection (8)* the words “**sections 165J to 165O**” (line 7 on page 36), and substitute the words “**section 165J(1), (3), and (5) to (9) and sections 165K to 165O**”.

Clause 21: new section 165ZD(2)

To omit the words “resource consent” in both places where they occur (lines 8 and 11 on page 37), and substitute in each case the words “coastal permit”.

Clause 21: new section 165ZE(1)

To omit the words “resource consent” (line 18 on page 37), and substitute the words “coastal permit”.

Clause 36A(d)

To omit this paragraph (lines 10 to 13 on page 41), and substitute the following paragraph:

- (d) provide for aquaculture agreements between the holders of fisheries rights and persons who wish to undertake aquaculture activities in a part of an aquaculture management area that is subject to a reservation relating to commercial fishing.

Clause 37

To omit the definition of **fish farm** in *subclause (1)* (lines 18 and 19 on page 41), and substitute the following definition:

fish farm means,—

- (a) in relation to a person registered as a fish farmer under **Part 9A**, the area and premises specified in the fish farmer's registration:
- (b) in relation to a person who holds a current licence under the Freshwater Fish Farming Regulations 1983, the area and premises specified in the licence

To omit from *paragraph (a)* of the definition of **fish farmer** in *subclause (1)* the word “and” (line 23 on page 41), and substitute the word “or”.

To omit from *paragraph (b)* of the definition of **fish farmer** in *subclause (1)* the words “a person” (line 24 on page 41).

To omit from the definition of **farmed fish** in *subclause (4)* the word “registered” (line 27 on page 42).

To insert in *paragraph (a)* of the definition of **farmed fish** in *subclause (4)*, after the word “registration” (line 29 on page 42), the words “or licence under the Freshwater Fish Farming Regulations 1983”.

To omit the definition of **harvestable spat** in *subclause (4)* (lines 34 and 35 on page 42 and lines 1 and 2 on page 43), and substitute the following definition:

harvestable spat means the species of fish, aquatic life, or seaweed specified in **Schedule 8A** at the stage of the life cycle specified in that Schedule

Clause 39

To omit from the heading to this clause the expression “**section 89A**” (line 24 on page 43), and substitute the words “**sections 89A and 89B**”.

To omit the word “section” (line 26 on page 43), and substitute the word “sections”.

To omit from *new section 89A(a)* the expression “**186U(1)**” (line 6 on page 44), and substitute the expression “**186U**”.

To insert, after *new section 89A* (after line 7 on page 44), the following section:

“**89B Exemption relating to customary rights orders**

Section 89(1) does not apply to the taking of fish, aquatic life, or seaweed if—

- “(a) the fish, aquatic life, or seaweed is taken from a site at which fish farming is being undertaken under a customary rights order under the Foreshore and Seabed Act 2004; and
- “(b) the fish, aquatic life, or seaweed has been lawfully acquired and transferred to that site and ongrown, or bred or cultivated at that site, in accordance with the customary rights order.”

Clause 41: new section 186G(d)

To omit the word “and” (line 22 on page 47).

Clause 41: new section 186H(2)

To insert in *paragraph (a)*, before the word “combination” (line 12 on page 48), the word “a”.

To insert in *paragraph (b)*, before the words “stocks or species” in the second place where they occur (line 18 on page 48), the word “other”.

Clause 41: new section 186HA(1)(a)

To omit this paragraph (lines 33 and 34 on page 48), and substitute the following paragraph:

- “(a) the person who requested the aquaculture decision, being the regional council or the person specified in a notice given under **section 165ZAA** of the Resource Management Act 1991:

Clause 41: new section 186M(2)

To omit the words “or a customary rights order under the Foreshore and Seabed Act 2004” (lines 31 and 32 on page 50).

Clause 41: new section 186Q(2)

To omit the words “or a customary rights order under the Foreshore and Seabed Act 2004 held by the applicant” (lines 24 to 26 on page 52), and substitute the words “that applies to the area and premises specified in the application”.

Clause 41: new section 186R(2)

To omit from *paragraph (a)(i)* the words “or a customary rights order under the Foreshore and Seabed Act 2004” (lines 3 and 4 on page 53).

To omit from *paragraphs (a)(i) and (ii)* the words “fish farming” in both places where they occur (lines 5, 9, and 10 on page 53), and substitute in each case the words “aquaculture activities”.

To omit from *paragraph (b)* the words “or a customary rights order under the Foreshore and Seabed Act 2004” (lines 13 and 14 on page 53).

Clause 41: new section 186S

To add to the heading to this section (line 18 on page 54) the words “**of Aquaculture Reform Act 2004**”.

Clause 41: new section 186ZAB

To insert, after *new section 186ZAA* (after line 18 on page 58), the following section:

**“186ZAB Subpart does not apply to fish farming under
customary rights order**

This subpart does not apply to fish farming undertaken in accordance with a customary rights order made under the Foreshore and Seabed Act 2004.”

Clause 41: new section 186ZA

To omit from *subsection (2)(b)* the word “must” (line 6 on page 59), and substitute the word “may”.

To omit from *subsection (2)(b)(i)* the words “life cycles,” (line 7 on page 59).

To omit from *subsection (3)* the words “the taking of the spat is not likely to have an adverse effect on recruitment to the adult population of the species concerned or any other species already specified in **Schedule 8A**” (lines 14 to 17 on page 59), and substitute the words “including the species in **Schedule 8A** is not likely to have an adverse effect on recruitment to the adult population of the species concerned”.

Clause 41: new section 186ZD

To omit from *subsection (2)(b)(ii)* the words “persons holding the stock” (line 5 on page 61), and substitute the words “permit holders”.

To omit from *subsection (2)(c)(i)* the words “permit holders who hold catch history in relation to the stock or species” (lines 11 to 13 on page 61), and substitute the words “persons who hold permits and would hold provisional catch history, as provided for in section 29A(2), for the stock if the stock or species were to become subject to the quota management system”.

To insert in *subsection (2A)*, after the words “receive quota” (line 21 on page 61), the words “shares for the relevant quota management system stock”.

To omit from *subsection (4)* the expression “**165G**” (line 29 on page 61), and substitute the expression “**165G(1)(a)**”.

Clause 41: new section 186ZDA

To add, after *subsection (4)* (after line 25 on page 62), the following subsection:

- “(5) A person who makes an application to the High Court under **subsection (1)** must, as soon as practicable after making the application, give a copy of the application to the chief executive.

Clause 41: new section 186ZF(1)(b)

To omit this paragraph (lines 23 and 24 on page 63), and substitute the following paragraph:

- “(b) within 6 months after—
 “(i) the date referred to in **section 186ZD(4)**; or
 “(ii) the date on which a notice of receipt is given
 under **section 66(3) of the Aquaculture Reform Act 2004**.”

Clause 41: new section 186ZH(2)

To omit from *paragraphs (c) and (d)* the word “and” (line 31 on page 64 and line 3 on page 65).

Clause 41: new section 186ZI

To omit from *subsection (1)* the word “identified” (line 13 on page 65), and substitute the words “specified in a notice given”.

To omit *subsection (3)(b)* (lines 26 and 27 on page 65).

To omit *subsection (4)* (lines 28 to 31 on page 65), and substitute the following subsection:

- “(4) If a memorial recorded in a register under *subsection (1)* applies to space that is the subject of an authorisation allocated to the trustee under **section 63 of the Aquaculture Reform Act 2004**, the memorial does not expire until the end of the period specified in **section 186ZF(1)(b)**.

Clause 43

To add to the heading to this clause the word “inserted” (line 4 on page 66).

Clause 44(1): new paragraph (hf)

To omit this paragraph (lines 25 and 26 on page 67).

Clause 45

To omit the words “**section 186S** or **section 186T**” (lines 9 and 10 on page 68), and substitute the expression “**1860**”.

To insert, after the word “excluding” (line 10 on page 68), the words “fish farm”.

Clause 60

To omit *paragraph (b)(iii)* from the definition of **new space** (lines 28 and 29 on page 74).

Clause 61(4)(b)

To omit the word “or” in the second place where it occurs (line 32 on page 78).

Clause 63

To insert, after *subclause (1)* (after line 2 on page 80), the following subclause:

- (1A) However, a regional council may, for the purposes of **subsection (1)**, identify new space that comprises or includes new space in the region concerned in an aquaculture management area established under **section 165C(1)(aa)** of the Resource Management Act 1991.

To omit from *subclause (9)* the expression “**subsection (6)**” (line 8 on page 82), and substitute the words “**subsection (1)** or has been identified as part of an aquaculture management area established under **section 165C(1)(aa)** of the Resource Management Act 1991”.

Clause 66(3A)

To omit the expression “**165G**” (line 27 on page 85), and substitute the expression “**165G(1)(a)**”.

Clause 69(1)(a)

To insert, after the word “company” (line 25 on page 87), the words “under the Companies Act 1993”.

Clause 72A(b)

To omit this paragraph (lines 26 and 27 on page 89), and substitute the following paragraph:

- (b) space—
 - (i) that is the subject of an application under **section 152** that is granted; and
 - (ii) in relation to which a permit under section 67J or section 67P of the Fisheries Act 1983 is subsequently granted; and

Clause 75(6A)

To omit the expression “**63(7)**” (line 16 on page 93), and substitute the expression “**63(8A)**”.

Clause 76

To omit from the heading to this clause the words “**Application of section 165U of Resource Management Act 1991**” (lines 22 and 23 on page 93), and substitute the words “**Regional Council may retain proportion of tender remuneration**”.

Clause 80

To omit from *subclause (1)* the words “aquaculture claims” (line 17 on page 96), and substitute the words “claims for settlement assets allocation entitlements”.

To insert in *subclause (2)*, after the word “assets” (line 19 on page 96), the word “allocation”.

To insert in *subclause (3)*, after the word “assets” where it first occurs (line 23 on page 96), the word “allocation”.

To insert in *subclause (4)*, after the word “assets” where it first occurs (line 26 on page 96), the word “allocation”.

To insert in *subclause (5)*, after the word “assets” (line 29 on page 96), the word “allocation”.

Clause 87(1)(f)(i)

To insert, after the word “assets” (line 19 on page 99), the words “allocation entitlements”.

Clause 90(3)(b)

To insert, after the word “assets” (line 37 on page 100), the word “allocation”.

Clause 91

To omit from *paragraph (a)* the words “an aquaculture” (line 19 on page 101), and substitute the word “a”.

To insert in *paragraph (b)*, after the word “assets” (line 21 on page 101), the word “allocation”.

Clause 93AA

To omit the word “determination” (line 5 on page 102), and substitute the word “determinations”.

To insert, after the word “assets” (line 6 on page 102), the word “allocation”.

Clause 93

To insert in *subclause (2)(b)*, after the word “assets” (line 16 on page 102), the word “allocation”.

To insert in *subclause (3)*, after the word “assets” (line 19 on page 102), the word “allocation”.

To insert in *subclause (4)*, after the word “assets” (line 25 on page 102), the word “allocation”.

To insert in *subclause (5)*, after the word “assets” (line 28 on page 102), the word “allocation”.

Clause 94

To insert in *subclause (1)*, after the word “assets” (line 12 on page 103), the word “allocation”.

To insert in *subclause (2)*, after the words “coastline as” (line 17 on page 103), the words “described in a settlement assets allocation entitlement”.

To insert in *subclause (4)(b)*, after the word “assets” (line 29 on page 103), the word “allocation”.

Clause 95(1)

To insert, after the word “assets” (line 2 on page 104), the word “allocation”.

To omit the words “an aquaculture management area” (line 3 on page 104), and substitute the words “a regional coastline or harbour”.

Clause 96(1)

To omit the words “entitlement to” (line 30 on page 105), and substitute the words “allocation entitlement for”.

Clause 99(d)

To insert, after the words “determination of” (line 12 on page 109), the words “settlement assets allocation”.

To insert, after the word “harbour” (line 13 on page 109), the words “settlement assets allocation”.

Clause 102

To omit from *subclause (2)* the expression “**26A**” (line 5 on page 111), and substitute the expression “**26P**”.

To omit from *subclause (3)* the expression “**26B**” (line 12 on page 111), and substitute the expression “**26Q**”.

Clause 103(2)

To omit the expression “**26B**” (line 29 on page 111), and substitute the expression “**26Q**”.

Clause 105B

To omit from *subclause (2)* the expression “aa” (line 4 on page 114), and substitute the expression “ab”.

Clause 107: new section 26O

To omit the expression “**section 60**” (line 32 on page 114), and substitute the words “**sections 60 and 60A**”.

Clause 107: new section 26P(a)

To omit the expression “**101(1)**” (line 5 on page 115), and substitute the expression “**101**”.

Clause 107: new section 26R(7)

To omit the expression “**101(1)**” (line 35 on page 115), and substitute the expression “**101**”.

Clause 117

To omit from *subclause (6)* the words “of conditions” (line 19 on page 130).
To omit from *subclause (7)* the words “**Section 131** applies” (line 22 on page 130), and substitute the words “**Sections 130B and 131** apply”.

Clause 123

To add, as *subclause (2)* (after line 15 on page 134), the following subclause:

- (2) **Subsection (1)** does not apply to an application to extend the term or period of a lease or licence, if the lease or licence has expired before the commencement of this Part.

Clause 124

To insert, after *subclause (1)* (after line 20 on page 134), the following subclause:

- (1A) An application to which **section 123(2)** applies must be continued and determined as if this **Part** had not been enacted.

Clause 125

To omit this clause (lines 1 to 10 on page 135).

Clause 129

To omit from *subclause (4)* the words “regional council” (line 19 on page 136), and substitute the words “consent authority”.

To omit from *subclause (5)* the words “regional council” (line 26 on page 136), and substitute the words “consent authority”.

New clause 130B

To insert, after *clause 130A* (after line 14 on page 138), the following clause:

130B Regional councils may charge for review

Section 36 of the Resource Management Act 1991 applies in relation to the functions of a consent authority under **sections 117, 129, and 130** as if a review under any of those sections were a review under section 128 of the Resource Management Act 1991.

Clause 131(1)

To omit the words “regional council” (line 18 on page 138), and substitute the words “consent authority”.

To omit the words “regional council’s” (line 19 on page 138), and substitute the words “consent authority’s”.

Clause 136(2)

To omit the expression “**186R**” (line 10 on page 142), and substitute the expression “**186V**”.

Clause 138

To insert in *subclause (2)*, after the words “has had an application under” (line 19 on page 143), the words “the Marine Farming Act 1971 or”.

Clause 140(2A)

To insert, after the word “repealing” (lines 8 and 9 on page 144), the words “**paragraph (b)** of the definition of **fish farm** and”.

Clause 145(1A)

To omit the word “fisher” (line 10 on page 147), and substitute the word “person”.

Clause 147

To omit from *paragraph (a)(ii)* the word “and” in the second place where it occurs (line 13 on page 148).

To omit from *paragraph (e)* the word “and” (line 11 on page 149).

Clause 148A(3)

To omit the word “position” (line 31 on page 150), and substitute the word “decision”.

Clause 153

To insert, after *subclause (3)* (after line 4 on page 154), the following subclause:

- (3A) However, a consent authority must not grant a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation relating to commercial fishing, except to a person specified in a notice given by the chief executive under **section 186ZH** of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act.

Schedule 1: new Schedule 1A

To add to *clause 1* as *subclause (2)* (after line 11 on page 164), the following subclause:

- (2) The provisions of this Schedule apply, with all necessary modifications, to a variation to a proposed plan or proposed change of a plan as if it were a change.

To omit *clause 3(1)(a)* (lines 22 to 26 on page 164), and substitute the following paragraph:

- (a) note the details on the plan; and

To insert in *clause 3(2A)*, after the word “reservation” in the first place where it occurs (line 3 on page 165), the words “about commercial fishing”.

To insert, after *clause 3(2A)* (after line 7 on page 165), the following subclause:

- (2B) If the chief executive of the Ministry of Fisheries makes a reservation relating to commercial fishing, the regional council must note the details of the reservation on the plan, specifying any stocks subject to the quota management system, any stocks or species specified in Schedules 4C or 4D of the Fisheries Act 1996, and any other stocks or species not subject to the quota management system.

To omit from *clause 4(1)* the expression “**1650(3)(a)**” (line 10 on page 165), and substitute the expression “**1650**”.

Schedule 2A: new Schedule 8A

To insert, above the words “**Harvestable spat**” (line 4 on page 169), the words “**Schedule 8A**”.

To insert, above the word “Echinoderms” (line 5 on page 169), the words “The planktonic stage of the following species:”.

Schedule 3: heading above clause 3

To omit the word “allocation” (line 3 on page 171), and add the words “for allocation entitlement”.

Schedule 3: clause 1(a)

To omit the expression “9” (line 8 on page 170), and substitute the expression “9A”.

Schedule 3: clause 3

To omit from the heading to this clause the words “**an allocation claim**” (line 4 on page 171), and substitute the words “**claim for allocation entitlement**”.

To omit from *subclause (1)* the words “marine farming space” (lines 5 and 6 on page 171), and substitute the words “settlement assets”.

To omit from *subclause (1)(a)* the word “allocation” (line 9 on page 171).

To omit from *subclause (1)(b)* the word “allocation” (line 12 on page 171).

To omit from *subclause (2)* the word “allocation” (line 15 on page 171).

To omit from *subclause (2A)* the word “allocation” (line 31 on page 171).

Schedule 3: clause 4(3)(c)

To omit the words “marine farming space allocation claim” (lines 22 and 23 on page 172), and substitute the words “claim for a settlement assets allocation entitlement”.

Schedule 3: clause 7(2)(a)

To omit the word “allocation” (line 25 on page 173).

Schedule 3: heading above clause 8

To omit the word “allocation” (line 30 on page 173).

Schedule 3: clause 8

To omit from the heading to this clause the words “**an allocation**” (line 32 on page 173).

To add to the heading to this clause the words “**for entitlement**” (line 32 on page 173).

To omit from *subclause (1)* the word “allocation” (line 33 on page 173).

To omit from *subclause (2)* the word “coastline” (line 23 on page 174).

Schedule 3: clause 9

To insert in *subclause (1)*, after the word “coastal” (line 28 on page 174), the words “settlement assets”.

To insert in *subclause (2)*, after the word “coastal” (line 36 on page 174), the words “settlement assets”.

To omit from *subclause (2)(a)* the word “allocation” (line 1 on page 175).

To omit from *subclause (3)* the word “aquaculture” (line 13 on page 175).

Schedule 3: clause 9A

To omit the word “allocation” in the first place where it occurs (line 18 on page 175).

To insert, before the words “allocation entitlement” (line 21 on page 175), the words “settlement assets”.

Schedule 3: clause 11

To omit from *subclause (3)* the word “region” in both places where it occurs (lines 1 and 3 on page 177), and substitute in each case the words “regional planning area”.

To omit from *subclause (4)(d)* the words “recorded under **paragraph (b)**” (lines 20 and 21 on page 177), and substitute the words “on which the alteration to the planning area becomes operative”.

Explanatory note

This Supplementary Order Paper contains a range of amendments to the Aquaculture Reform Bill. The amendments are of a technical or drafting nature. However, there are 2 significant changes.

The first is an amendment to *clause 39* to insert *new section 89B* into the Fisheries Act 1996. This contains an exemption from section 89 of that Act. Section 89 prohibits, subject to exceptions, the taking of fish, aquatic life, or seaweed except under the authority of and in accordance with a current fishing permit. The new exemption inserted in *clause 39* relates to the taking of fish, aquatic life, or seaweed from a site at which fish farming is being undertaken under a customary rights order under the Foreshore and Seabed Act 2004.

The second change relates to whether a person fish farming under a customary rights order under the Foreshore and Seabed Act 2004 is required to be registered as a fish farmer under *subpart 2 of Part 9A* inserted by *clause 41*. As currently drafted the Bill requires such a person to be registered as a fish farmer. *New section 186ZAB* is inserted in *clause 41* to provide that *subpart 2* does not apply to a person fish farming under a customary rights order and therefore such a person is not required to register as a fish farmer. There are consequential amendments to remove references to customary rights orders in a number of other provisions.
