

AQUACULTURE REFORM

INTRODUCTION

1. This article considers the Government's plans for the future shape of the aquaculture industry. We review the background to the aquaculture reform, the reasons for change, the aims of the reform and summarise some aspects of the reform that will be of specific interest to the aquaculture industry.

BACKGROUND TO REFORM

2. After a boom period in the aquaculture industry in the late 1990's, growth and demand for coastal space led the Government to legislate a national moratorium on new aquaculture applications. The 2004 Aquaculture Reform Act (the current law) lifted the moratorium and created a new regime based around prescribed Aquaculture Management Areas ("AMA") introduced into regional coastal plans via the Resource Management Act ("RMA") plan change process. Marine farming outside AMA is not possible. Regulatory "bottlenecks" have kept aquaculture planning in limbo, with no new aquaculture space having been created under the 2004 Act.

REASONS FOR CHANGE

3. The Government wants to boost the aquaculture industry's potential to generate sustainable economic growth for New Zealand. It intends to support the industry's goal of reaching \$1 billion in sales by 2025 (a 3 fold increase on the current sales level). The Government considers this will grow the economy, create more jobs and get more people into work. Fisheries and Aquaculture Minister Phil Heatley is "*confident this can be done while still protecting the environment and the interests of other users of our coastal areas*"¹
4. The recent budget announcement confirmed the Government's commitment to this goal, allocating \$2.7m to the implementation, support and monitoring of the aquaculture strategy.
5. The reforms are largely based upon the Aquaculture Technical Advisory Group ("TAG") recommending report which was published in October 2009. The reforms also respond to the 223 submissions that were received on the TAG report.

AIMS OF REFORM

6. The Government's reform package has a number of aims, including to:
 - Reduce costs, delays and uncertainty associated with the regulatory planning processes;
 - Create a framework that enables the sustainable development of aquaculture;
 - Promote investment and aquaculture development;
 - Enable integrated decision making on aquaculture management with other activities managed under the RMA.

¹ 'Government outlines plans for aquaculture reform' 27 April 2010 media release

POINTS OF INTEREST TO THE INDUSTRY

Central Government Leadership

7. To promote aquaculture development the Government has signalled it may allow direct Central Government intervention. Currently the Government has agreed in principle to amend the RMA to give the Aquaculture Minister a power to make regulations and amend Regional Coastal Plans for the purpose of managing aquaculture development. This power of intervention would be exercised when the matters concerned were of regional or national significance and relevant to achieving sustainable management of resources. There would be consultation with the Minister of Conservation, other relevant Ministers, the Regional Council concerned and any other persons the Minister considered appropriate. This reform proposal therefore provides the potential for regional planning matters to be removed from the regions and dealt with by Central Government.
8. An aquaculture business unit is being established within the Ministry of Fisheries. It will be the Government's principal advisor on marine and land based aquaculture. It will lead the aquaculture reform process and implement the new regime. It will take over responsibility for the Aquaculture Planning Fund from the Ministry for the Environment.

Aquaculture Planning and Consenting

9. Regional Councils will be able to use a range of allocation tools to manage high and/or competing demand in the Coastal Marine Area, without needing to write the tools into the Regional Plan via a Plan Change. Detailed proposals on the allocation tools available are expected to be announced in due course.
10. Where there are significant competing demands for aquaculture occupation of a coastal area, Regional Councils that are implementing regional plan changes and introducing aquaculture reform initiatives will be able to seek Ministerial direction to suspend the review of new aquaculture applications for up to one year pending the preparation of the Plan Change.
11. A simplified, streamlined process for re-consenting aquaculture activities (for the same activity as previously consented) will be introduced, limiting the information required to:
 - a. Effects that weren't considered when original consent was granted, or where the scale or significance of the effects have changed considerably over time;
 - b. Monitoring data;
 - c. Performance indicators – a statement on consent holder compliance and adoption of best practice.
12. All consents will be a minimum of 20 years and maximum of 35 years, unless a shorter term is requested or there is a significant risk or uncertainty about effects of a proposal that cannot be managed through consent conditions. The 20 year minimum term was recommended by the TAG report. It considered that lower terms affected the viability of farms with longer investment periods. The 20 year minimum will provide farmers with certainty. The Regional Council still has a discretion to reduce the term, which allows flexibility in suitable cases.
13. The period before a resource consent for aquaculture will lapse if not given effect or an extension granted, will be reduced from 5 to 3 years. This will require farmers to be in a position to promptly move forward with their plans.

Undue Adverse Effects

14. Removing the statutory restriction on aquaculture outside of AMA will make aquaculture consent applications possible in most New Zealand coastal waters, but they will remain

subject to the undue adverse effects (“UAE”) test under the Fisheries Act. This is considered necessary to help protect fishing rights against erosion by aquaculture. The UAE test will remain the threshold test for impacts on commercial, customary and recreational fishing.

15. UAE arise where aquaculture development (usually the cumulative effects of a number of aquaculture farms) would unduly prevent fishers from catching fish. Under the reform the UAE test and resource consent processes will be co-ordinated. The UAE test will only be done once for each area of coastal aquaculture space requested by the Applicant, at the consent stage.
16. UAE Decisions will not be subject to appeal, only subject to judicial review within 15 working days of public notification of the Decision.
17. In some circumstances, where the Ministry of Fisheries already has sufficient fishing related information, public notification of the Resource Consent Application for UAE purposes will not be required.
18. The cost of administering the UAE test will be met by the applicant. This will add to the overall cost of the consenting process.

Aquaculture Agreements between Aquaculture Applicants and Commercial Fishers

19. Aquaculture Agreements allow for a change in use from commercial fishing to aquaculture where, on an assessment under the UAE test, there would still be an undue adverse effect on commercial fishing. Applicants can register an Agreement with relevant quota holders before they lodge an Application for a UAE test. The Agreement has the effect of removing an assessment of those commercial fishing stocks from the UAE Assessment.
20. Under current law an aquaculture applicant needs consent of 90% of quota holders before they can apply to the High Court to gain consent to lodge an Agreement which binds all quota holders. The High Court only gives consent if sufficient compensation has been offered to each affected quota holder that has not agreed to the arrangement. To date, these provisions have not been used.
21. The reform proposal, which is still under review, would allow Agreements to be registered if agreement of over 75% of quota holders, and High Court agreement on behalf of the remainder, is obtained.
22. The Government intend that the process for completing aquaculture Agreements will be reviewed 3 years after the amending legislation is enacted, to ascertain how it is working in practice.

CONCLUSION

23. The next step in the aquaculture reform process will be drafting of an Aquaculture Reform Bill, expected in mid 2010. The main opportunity for input will be during the Select Committee process once the Reform Bill is introduced into Parliament.
24. We will review the Reform Bill when it is introduced and will be well placed to provide advice on any questions that may arise from it, and to assist with preparing submissions to the Select Committee.



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