

# **Resource Management Amendment Act (No 2) 2004**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Resource Management Amendment Act (No 2) 2004.
- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

**2 Commencement**

This Act comes into force on 1 January 2005.

**3 Purpose**

The purpose of this Act is—

- (a) to enable improved planning for aquaculture activities in the coastal marine area by—
  - (i) requiring aquaculture activities in the coastal marine area to take place in aquaculture management areas defined in regional coastal plans; and
  - (ii) providing regional councils with additional tools relating to the allocation of coastal space; and

- (iii) enabling regional councils to consider the effects of aquaculture activities on fishing and fisheries resources; and
  - (iv) providing for the allocation of authorisations to apply for coastal permits to undertake aquaculture activities by tender unless the regional coastal plan provides otherwise; and
  - (v) enabling regional councils to grant preferential authorisations to persons who privately initiate plan changes that establish aquaculture management areas; and
  - (vi) providing for existing permit holders to have their applications for new consents considered before any other applications for the same area; and
- (b) to empower the Minister of Conservation to direct regional councils in relation to the allocation of space in the coastal marine area.

#### 4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definitions of **marine farming**, **spat**, **spat catching**, and **taking**.
- (2) Section 2(1) of the principal Act is amended by repealing the definitions of **aquaculture activities** and **aquaculture management area**, and substituting the following definitions:
- “aquaculture activities—**
- “(a) means the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest if the breeding, hatching, cultivating, rearing, or ongrowing involves the occupation of a coastal marine area; and
  - “(b) includes the taking of harvestable spat if the taking involves the occupation of a coastal marine area; but
  - “(c) does not include an activity specified in paragraph (a) if the fish, aquatic life, or seaweed—
    - “(i) are not in the exclusive and continuous possession or control of the person undertaking the activity; or
    - “(ii) cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed

“**aquaculture management area**—

“(a) means a coastal marine area described as an aquaculture management area and included in a regional coastal plan or proposed regional coastal plan in accordance with section 165C; and

“(b) includes—

“(i) an interim aquaculture management area that becomes an aquaculture management area under section 44 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; and

“(ii) part of an aquaculture management area”.

(3) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**aquatic life** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**commercial fishing** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**determination** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**fish** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**fisheries resources** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**fishing** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**harvestable spat** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**occupy** means the activity of occupying any part of the coastal marine area—

“(a) where the occupation is reasonably necessary for another activity; and

“(b) where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and

“(c) for a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional

coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense

“**reservation** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**seaweed** has the same meaning as in section 2(1) of the Fisheries Act 1996

“**space**, in relation to the coastal marine area, means any part of the foreshore, seabed, and coastal water, and the air space above the water”.

(4) Section 4 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 is consequentially repealed.

## 5 Restrictions on use of coastal marine area

Section 12(4)(a) of the principal Act is repealed.

## 6 New sections 12A and 12B inserted

The principal Act is amended by inserting, after section 12, the following sections:

### “12A Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas

“(1) No person may occupy a coastal marine area for the purpose of an aquaculture activity—

“(a) except in an aquaculture management area in a regional coastal plan; and

“(b) if the coastal marine area is vested in the Crown or a regional council, unless expressly authorised by a coastal permit.

“(2) In an aquaculture management area, any other activity requiring occupation may be undertaken only as—

“(a) a restricted discretionary activity; or

“(b) a discretionary activity; or

“(c) a non-complying activity.

“(3) However, an activity that is not an aquaculture activity may not be undertaken in an aquaculture management area, except

to the extent that the activity is compatible with aquaculture activities.

**“12B Continuation of coastal permit for aquaculture activities if aquaculture management area ceases to exist**

To avoid doubt, a coastal permit for aquaculture activities does not expire because the area or part of the area that the permit relates to subsequently ceases to be in an aquaculture management area.”

**7 Functions of regional councils under this Act**

Section 30 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- “(2) A regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate—
- “(a) the effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities:
  - “(b) the effects on fishing and fisheries resources of aquaculture activities.
- “(3) However, a regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), or (vii) to control the harvesting or enhancement of aquatic organisms for the purpose of conserving, using, enhancing, or developing any fisheries resources controlled under the Fisheries Act 1996.”

**8 Administrative charges**

Section 36(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) charges payable by persons seeking authorisations under Part 7A, for the carrying out by the local authority of its functions in relation to the allocation of authorisations (whether by tender or any other method), including its functions preliminary to the allocation of authorisations:”.

**9 Preparation and change of regional coastal plans**

- (1) Section 64(1) of the principal Act is amended by adding the words “and Schedule 1A”.
- (2) Section 64(4) of the principal Act is amended by adding the words “and Schedule 1A”.

**10 Contents of regional plans**

- (1) Section 67(2)(b) of the principal Act is amended by adding the expression “; or”.
- (2) Section 67(2) of the principal Act is amended by adding the following paragraph:  
“(c) a determination or reservation of the chief executive of the Ministry of Fisheries made under section 186E of the Fisheries Act 1996.”

**11 Section 68A repealed**

- (1) Section 68A of the principal Act is repealed.
- (2) Section 6 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 and section 30 of the Resource Management Amendment Act 2003 are consequentially repealed.

**12 Sections 150D and 150E repealed**

Sections 150D and 150E of the principal Act are repealed.

**13 New section 151AA inserted**

The principal Act is amended by inserting, before section 151, the following section:

**“151AA Part not to apply to applications to occupy coastal marine area**

This Part does not apply to applications for coastal permits to authorise the occupation of a coastal marine area.”

**14 Order in Council may be made requiring holding of authorisation**

- (1) Section 152(1) of the principal Act is amended by—
  - (a) repealing paragraph (a); and
  - (b) omitting the expression “occupation,”.

- (2) Section 152(3) of the principal Act is amended by omitting the words “subsection (1)(a) or (c)”, and substituting the expression “subsection (1)(c)”.

**15 Application of Order in Council**

- (1) Section 153(b)(ii) of the principal Act is amended by omitting the words “section 152(1)(a) to (c)”, and substituting the words “section 152(1)(b) or (c)”.
- (2) Section 153(c) of the principal Act is amended by omitting the expression “395, and 397”, and substituting the expression “and 395”.

**16 Effect of Order in Council**

Section 156 of the principal Act is amended by—

- (a) repealing paragraph (a); and  
(b) omitting the expression “occupation,”.

**17 Calling of public tenders for authorisations**

Section 157(3) of the principal Act is amended by repealing paragraph (a).

**18 Requirements of tender**

Section 158 of the principal Act is amended by repealing subsections (1)(b) and (d)(ii) and (1A).

**19 Authorisation not to confer right to coastal permit, etc**

Section 162(2) of the principal Act is amended by repealing paragraphs (a) to (c), and substituting the following paragraphs:

- “(a) in the case of an activity to which section 152(1)(b) applies,—  
“(i) must not be granted for a period greater than the period specified in the authorisation; and  
“(ii) must not authorise the removal of any material at a rate, or of a total quantity, greater than that specified in the authorisation; and  
“(b) is subject to section 112.”

**20 New Part 7A inserted**

The principal Act is amended by inserting, after Part 7, the following Part:

**“Part 7A****“Occupation of coastal marine area****“Subpart 1—Aquaculture management areas  
and authorisations****“165A Interpretation**

In this subpart and subpart 2, unless the context otherwise requires,—

“**aquaculture agreement** has the same meaning as in section 186ZD of the Fisheries Act 1996

“**authorisation** means the right to apply for a coastal permit to occupy space in a coastal marine area

“**available space**, in relation to an aquaculture management area,—

“(a) means space vested in the Crown or a regional council that is not the subject of—

“(i) a coastal permit to occupy space in a coastal marine area for aquaculture activities; or

“(ii) an authorisation; or

“(iii) a deemed coastal permit under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 that authorises occupation of the space; or

“(iv) an application for a coastal permit to occupy space in a coastal marine area for aquaculture activities; or

“(v) a lease or licence under the Marine Farming Act 1971 until the lease or licence becomes a deemed coastal permit under section 10 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or

“(vi) a coastal permit, or an application for a coastal permit, to occupy space in an aquaculture management area for activities that are not aquaculture activities; and

“(b) does not include an actual space (as defined in section 53(12) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004)

“**chief executive** means the chief executive of the Ministry of Fisheries

“**Minister** means the Minister of Conservation

“**public notice** has the same meaning as in section 151

“**trustee** has the same meaning as in section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

“**165B Power of consent authorities to refuse to receive applications for coastal permits**

For the purposes of this subpart, a consent authority may refuse to receive an application for a coastal permit for activities within 1 year after a consent authority has refused to grant an application for a permit for an activity of the same or a similar type in respect of the same space or in respect of space in close proximity to the space concerned.

*“Aquaculture management areas and occupation of coastal marine area*

“**165C Provisions about aquaculture management areas**

- “(1) A regional coastal plan or proposed regional coastal plan—
- “(a) may provide for 1 or more aquaculture management areas in a coastal marine area; and
  - “(b) may provide for 1 or more aquaculture management areas in a coastal marine area for the express purpose of providing for the allocation of space to the trustee under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004; and
  - “(c) in relation to an aquaculture management area, may—
    - “(i) specify the aquaculture activities that may be undertaken; and
    - “(ii) specify other activities involving occupation that may be undertaken; and
    - “(iii) specify that no application (other than under an authorisation) can be made for a coastal permit to occupy space in an aquaculture management area

- before a date to be specified in a public notice;  
and
- “(iv) provide that the consent authority may process and hear together applications for coastal permits for the occupation of—
    - “(A) the same space in a coastal marine area; or
    - “(B) different spaces in a coastal marine area that are in close proximity to each other; and
  - “(v) specify limits on—
    - “(A) the character, intensity, or scale of activities associated with occupation of space or the aquaculture management area generally; and
    - “(B) the size of space that may be the subject of a coastal permit granted for the purposes of section 12(2) and the proportion of an aquaculture management area that may be occupied for the purpose of specified activities; and
  - “(vi) provide for the management of competition for the occupation of space vested in the Crown or a regional council in an aquaculture management area.
- “(2) A regional coastal plan or proposed regional coastal plan that provides for an aquaculture management area must include provisions to ensure that an aquaculture management area is principally for aquaculture activities.
- “(3) A regional coastal plan or proposed regional coastal plan that provides for an aquaculture management area under subsection (1)(b) must provide that authorisations are to be allocated to the trustee only when and to the extent required by section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(4) A regional coastal plan or proposed regional coastal plan that provides for aquaculture management areas must be prepared in the manner set out in Schedule 1A.
- “(5) To avoid doubt,—
  - “(a) subsections (2) and (4)—

- “(i) do not apply to a proposed regional coastal plan notified under clause 5 of Schedule 1 before the commencement of this Part; but
- “(ii) do apply to a variation to a proposed regional coastal plan referred to in subparagraph (i) if the variation is notified on or after the commencement of this Part:
- “(b) this section applies subject to section 12A.

**“165D Provisions about occupation of coastal marine area**

- “(1) This section applies only in relation to areas in a coastal marine area that are not aquaculture management areas.
- “(2) A regional coastal plan or proposed regional coastal plan may include provisions to address the effects of occupation of a coastal marine area and to manage competition for the occupation of space, including rules specifying—
  - “(a) that no application can be made for a coastal permit to occupy space before a date to be specified in a public notice:
  - “(b) that the consent authority may process and hear together applications for coastal permits for the occupation of—
    - “(i) the same space in a coastal marine area; or
    - “(ii) different spaces in a coastal marine area that are in close proximity to each other:
  - “(c) limits on—
    - “(i) the character, intensity, or scale of activities associated with the occupation of space:
    - “(ii) the size of space that may be the subject of a coastal permit and the proportion of any space that may be occupied for the purpose of specified activities.
- “(3) However, a rule made for the purposes of subsection (2)(a) does not apply to an application made for a coastal permit under an authorisation.

*“Allocation of space in coastal marine area***“165E Offer of authorisations for available space in aquaculture management area**

- “(1) If a regional coastal plan provides for an aquaculture management area, the regional council may, by public notice, offer authorisations for available space in the area for 1 or more aquaculture activities for which the area may be occupied—
- “(a) by public tender, if paragraph (b) does not apply; or
  - “(b) by another method, if the plan provides for allocation by another method.
- “(2) Subsection (1) applies subject to section 165O.
- “(3) A regional council must not offer authorisations for available space in an aquaculture management area (for activities that are not aquaculture activities) by public tender or another method unless the regional coastal plan provides for the allocation of authorisations for available space by public tender or the other method.

**“165F Offer of authorisations for activities other than aquaculture activities**

A regional council may, by public notice and in accordance with its regional coastal plan, offer authorisations for coastal permits for the occupation of space in the coastal marine area for activities other than aquaculture activities.

**“165G Chief executive to be notified of proposed allocation**

- “(1) This section applies only in relation to space that is the subject of a reservation relating to commercial fishing.
- “(2) A regional council must give the chief executive not less than 6 months’ notice of—
- “(a) an offer of authorisations under section 165E;
  - “(b) the date on and from which applications for coastal permits for the occupation of space for aquaculture activities may be made in accordance with the regional coastal plan or this Act;
  - “(c) the operative date of the regional coastal plan or a change to a regional coastal plan that provides for an aquaculture management area.

“(3) A regional council must also give not less than 6 months’ public notice of the matters referred to in subsection (2)(a) to (c).

“**165H Plan may specify allocation methods**

A regional coastal plan or proposed regional coastal plan may provide for a method of allocating space vested in the Crown or a regional council in a coastal marine area.

“**165I Duty to adopt most efficient and effective allocation mechanism**

“(1) Before adopting a rule in relation to the method of allocation of space in a coastal marine area, other than as provided for in this Act, a regional council must—

“(a) have regard to—

“(i) the reasons for and against adopting the proposed method; and

“(ii) the principal alternative means available; and

“(b) be satisfied that the adoption of the proposed method is—

“(i) necessary in the circumstances of the region; and

“(ii) the most appropriate for allocation in the circumstances of the region, having regard to its efficiency and effectiveness compared with other methods.

“(2) Section 32(1) to (3) does not apply to the adoption of a rule in accordance with subsection (1).

“(3) Subsection (1) applies subject to an Order in Council made under section 165O.

“**165J Allocation of space in aquaculture management area for aquaculture activities subject to reservation relating to commercial fishing**

“(1) This section applies to an aquaculture management area to the extent that the area is subject to a reservation relating to commercial fishing.

“(2) A regional council must not allocate authorisations relating to aquaculture activities in an area subject to a reservation, except to a person specified in a notice given by the chief executive

- under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act relating to the area.
- “(3) No person may apply for or be granted a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation in relation to commercial fishing, except a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act.
- “(4) Before allocating an authorisation referred to in subsection (2), the regional council must have received advice from the chief executive that—
- “(a) the time for registering aquaculture agreements has expired; and
  - “(b) at least 1 aquaculture agreement has been registered.
- “(5) If a coastal permit is granted for the area that is subject to the reservation, the regional council must delete from the regional coastal plan the reservation in relation to the area to which the coastal permit relates.
- “(6) If the chief executive advises the regional council that no aquaculture agreement has been registered in respect of the area or part of the area, the regional council must amend its regional coastal plan by deleting the area or part of the area from the aquaculture management area.
- “(7) If an authorisation lapses under section 165N and the holder of the authorisation does not hold a coastal permit granted under it, the regional council must amend its regional coastal plan by deleting the area from the aquaculture management area.
- “(8) Schedule 1 and Schedule 1A do not apply to an amendment made under any of subsections (5), (6), or (7).
- “(9) This section applies subject to section 14 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

**“165K Applications not to be made or granted unless applicant holds authorisation**

If this Act or a regional coastal plan provides for space in the coastal marine area to be allocated by tender of authorisations or other allocation of authorisations, a person must not apply for, and a consent authority must not grant, a coastal permit

authorising occupation of a space in a coastal marine area unless the person is the holder of an authorisation for the space.

**“165L Authorisation not to confer right to coastal permit**

- “(1) The granting of an authorisation does not confer any right to the grant of a coastal permit in respect of the space that the authorisation relates to.
- “(2) However, if a coastal permit is granted to the holder of an authorisation, the permit must not be granted for a period greater than the period specified in the authorisation.

**“165M Authorisation transferable**

An authorisation or any part of it may be transferred by its holder to any other person, but the transfer does not take effect until written notice of it has been received by the regional council concerned.

**“165N Authorisation lapses in certain circumstances**

- “(1) An authorisation lapses at the close of 2 years after the day on which it is granted unless subsection (3) applies.
- “(2) Subsection (3) applies if,—
- “(a) before the second anniversary of the date on which an authorisation is granted, its holder has applied for a coastal permit in respect of the activity that the authorisation relates to; and
  - “(b) on the second anniversary date—
    - “(i) no decision has been made by the consent authority on the application; or
    - “(ii) the consent authority has made a decision, but the time for lodging appeals to the Environment Court has not expired, or an appeal has been lodged but no decision has been made by the Court on the appeal.
- “(3) The authorisation does not lapse until—
- “(a) the time for lodging an appeal in respect of the decision has expired and no appeal has been lodged; or
  - “(b) an appeal has been lodged and the Court has given its decision on the appeal.

**“1650 Power of Minister of Conservation to give directions relating to allocation of space**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, direct a regional council—
- “(a) not to proceed with a proposed allocation of space in a coastal marine area; or
  - “(b) in proceeding with a proposed allocation of space in a coastal marine area, to give effect to the matters specified in the Order in Council.
- “(2) The Minister may make a recommendation under subsection (1) only for either or both of the following purposes:
- “(a) to give effect to Government policy in the coastal marine area:
  - “(b) to preserve the ability of the Crown to give effect to any of its obligations under any agreement in principle or deed of settlement between the Crown and any group of Maori claimants or representative of any group of Maori claimants in relation to a claim arising from, or relating to, any act or omission by or on behalf of the Crown or by or under any enactment before 21 September 1992.
- “(3) The matters referred to in subsection (1)(b) include—
- “(a) the allocation method to be used:
  - “(b) the maximum width of a coastal permit available for allocation:
  - “(c) the allocation of authorisations relating to specific spaces within a coastal marine area to the Crown.
- “(4) If an Order in Council contains a direction under subsection (3)(a), the Order must be made before—
- “(a) the relevant proposed plan is notified under clause 5 or clause 26 of Schedule 1; or
  - “(b) the Minister approves the relevant regional coastal plan under clause 19 of Schedule 1.
- “(5) If an Order in Council contains a direction under subsection (3)(b) or (c), the Order must be made before the regional council publicly notifies the offer under section 165E(1) or section 165F.
- “(6) A regional council must give the Minister of Conservation not less than 4 months’ notice of an offer of authorisations under section 165E or section 165F.

- “(7) The Minister must not make a recommendation except within 3 months after receiving notification from the regional council under subsection (6).
- “(8) The Order in Council does not affect any allocation of authorisations advertised or a plan approved under clause 19 of Schedule 1 or an application for a coastal permit made before the Order in Council comes into force.

*“Allocation by offer of authorisations*

**“165P Public notice of offer of authorisations**

- “(1) A notice given under section 165E(1) or section 165F must—
  - “(a) specify the range of activities that the authorisation will apply to after it is issued; and
  - “(b) describe the space in the coastal marine area that the authorisation will apply to after it is issued, including the size, shape, and location of the space; and
  - “(c) specify the maximum term of the coastal permit; and
  - “(d) note whether or not the space is subject to a reservation relating to commercial fishing and, if so, the details of the reservation; and
  - “(e) if the space is subject to a reservation relating to commercial fishing, note that only a person who holds a registered aquaculture agreement as specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 may be granted the authorisation; and
  - “(f) specify the closing date for offers; and
  - “(g) specify the criteria that the regional council will apply in selecting the successful offer; and
  - “(h) include details of any direction given under section 165O in relation to the offer; and
  - “(i) specify the manner in which offers must be submitted; and
  - “(j) specify any charge payable under section 36(ca); and
  - “(k) specify any other matter that the regional council considers appropriate in the circumstances.
- “(2) If an offer of authorisations is to be by tender, the notice must also—

- “(a) specify the form of remuneration required, whether all by advance payment, or by deposit and annual rental payments; and
  - “(b) specify whether or not there is a reserve price.
- “(3) This section applies subject to an Order in Council made under section 165O.

**“165Q Requirements for offers**

- “(1) An offer for an authorisation must specify—
- “(a) the activity or range of activities in respect of which the authorisation is sought; and
  - “(b) the site it applies to.
- “(2) In the case of a tender for authorisations, the tender must also specify—
- “(a) the total remuneration offered (including any annual rental component); and
  - “(b) the form of payment of the remuneration.
- “(3) A tender must be accompanied by—
- “(a) a cash deposit (being payment in advance of part of the remuneration) or equivalent security to the satisfaction of the regional council; and
  - “(b) any additional information specified in the notice calling for tenders.
- “(4) An offer or a tender must be accompanied by any charge payable under section 36(ca).
- “(5) If a tender is accepted under section 165S, the amount of any annual rental component of the remuneration payable under subsection (2) must be reduced by the amount of any coastal occupation charges payable under section 64A for the occupation of the area concerned.

**“165R Preferential rights of iwi**

- “(1) In conducting a tender of authorisations under this Part, a regional council must give effect to any preferential right to purchase a proportion of the authorisations.
- “(2) Subsection (1) applies to preferential rights conferred by—
- “(a) section 316 of the Ngai Tahu Claims Settlement Act 1998:

- “(b) section 119 of the Ngati Ruanui Claims Settlement Act 2003:
  - “(c) section 79 of the Ngati Tama Claims Settlement Act 2003.
- “(3) For the purposes of subsection (1), provisions in the Acts referred to in subsection (2) relating to a preferential right that contain references to the Minister of Conservation apply as if the references were to the regional council.
- “(4) This section applies subject to section 165J.

**“165S Acceptance of offer**

- “(1) After considering the offers in accordance with the criteria specified under section 165P, the regional council may—
- “(a) accept any offer; or
  - “(b) reject all offers; or
  - “(c) reject all offers and call for new offers; or
  - “(d) negotiate with any person who made an offer with a view to reaching an agreement.
- “(2) If the offer is a tender, the regional council may accept any tender or negotiate with any tenderer, whether or not the tender was the highest received.
- “(3) As soon as practicable after deciding to accept an offer or to reject all offers or after reaching an agreement, the regional council must give written notice of the decision and the reasons for it to every person who made an offer.
- “(4) If an offer is accepted or an agreement is reached, the notice under subsection (3), must include details of the name of the person who made the offer and the nature of the activity that the offer or agreement relates to.

**“165T Grant of authorisation**

If the regional council accepts an offer or reaches an agreement with a person who made an offer under section 165S, the regional council must grant an authorisation to the person concerned.

**“165U Tender money**

- “(1) If the holder of an authorisation obtains a coastal permit authorising the holder to undertake an activity in respect of which the authorisation was granted, the regional council must forward to the Minister 50% of the remuneration received under the tender.
- “(2) The Minister must cause the money to be paid into the Crown Bank Account in accordance with the Public Finance Act 1989.
- “(3) If an authorisation granted to a successful tenderer has lapsed under section 165N, the regional council must, as soon as possible, refund the remuneration to the tenderer.
- “(4) If a tenderer who has failed to obtain an authorisation forwarded a payment to the regional council under section 165Q(3), the regional council must, as soon as possible, refund the payment to the tenderer.
- “(5) This section applies subject to section 26 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

**“165V Use of tender money**

The regional council must apply its share of the remuneration to achieving the purpose of this Act in the coastal marine area in its region.

**“Subpart 2—Privately initiated plan changes****“165W Excluded areas**

- “(1) A regional council may, by public notice, identify areas in the coastal marine area in its region as excluded areas.
- “(2) Before identifying an excluded area, the regional council must comply with the consultative requirements in clause 3 of Schedule 1, and that clause applies, with all necessary modifications, as if a proposal to identify an excluded area were a proposed plan.
- “(3) To avoid doubt, any consultation under subsection (2) does not constitute a request for an aquaculture decision under section 186D of the Fisheries Act 1996.

**“165X Aquaculture management areas may not be established in excluded areas as result of requests for changes**

A regional council must not seek nor accept, under this subpart, a request for a change to a regional coastal plan or proposed regional coastal plan from a person wishing to undertake aquaculture activities in any part of the coastal marine area that is an excluded area.

**“165Y Request for change may be made only in response to regional council seeking requests**

A person may not make a request for change under this subpart except in response to a regional council seeking requests under section 165Z.

**“165Z Invitation to request change to regional coastal plan or proposed regional coastal plan**

- “(1) A regional council may, by public notice, invite any person to request a change to a regional coastal plan or a proposed regional coastal plan to establish an aquaculture management area.
- “(2) Part 2 of Schedule 1 and Schedule 1A apply to a request made in response to an invitation under subsection (1) except to the extent modified by sections 165ZA to 165ZF.
- “(3) If the request relates to a proposed regional coastal plan, then Part 2 of Schedule 1 and Schedule 1A apply as if references to a plan were references to a proposed plan.
- “(4) For the purpose of carrying out its functions under subsection (1) and clause 25(1) of Schedule 1, the regional council must establish a process that is fair and reasonable in the circumstances.

**“165ZA Adoption of request or part of request for change, and combining requests**

- “(1) When considering a request under clause 25 of Schedule 1, the regional council may adopt a request or part of a request under clause 25(2)(a) of Schedule 1 and combine it with any other request or part of a request for a change to a plan or proposed plan to establish an aquaculture management area if, in the

council's opinion, combining requests is likely to assist the council—

- “(a) in allocating space of an economic size to the trustee under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004; or
  - “(b) to address more effectively the cumulative effects of aquaculture activities in the areas the requests relate to; or
  - “(c) in planning more effectively for aquaculture activities.
- “(2) A regional council may amend a request adopted under subsection (1) by increasing the amount of available space provided for in the part of the region the request relates to.
- “(3) If the regional council adopts a request and combines it with any other request or amends the request under subsection (2),—
- “(a) the council must specify that part of the available space in the aquaculture management area out of which a person who requested a change is to receive an authorisation under section 165ZF, being 80% of the available space requested by the person; and
  - “(b) the council may fix a charge under section 36(a) payable by each person who requested a change recognising the proportion of the available space to which the person's request relates.

**“165ZB Acceptance of request or part of request for change**

- “(1) If the regional council accepts the request under clause 25(2)(b) of Schedule 1, the council must specify that the person or persons who requested the change are to receive an authorisation under section 165ZF for 80% of the available space in the aquaculture management area.
- “(2) Schedule 1A applies to a request adopted and combined with another request under section 165ZA and clause 25(2)(a) of Schedule 1 or accepted under clause 25(2)(b) as if the reference to the regional council in clause 2 of Schedule 1A were a reference to the person who requested the change.
- “(3) Sections 186D and 186E of the Fisheries Act 1996 apply to a request adopted and combined with another request under section 165ZA and clause 25(2)(a) of Schedule 1 or accepted

under clause 25(2)(b) of Schedule 1 as if the reference to the regional council were a reference to the person who requested the change.

**“165ZC 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 Schedule 1, 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.

**“165ZD Notification of change**

When a change is notified under clause 5 or clause 26 of Schedule 1, the regional council must also include in the notice—

- “(a) the name of the person who requested the change; and
- “(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 165ZF, being 80% of the available space requested by the person.

**“165ZE Rejection of request for change**

The regional council may reject a request for a change if—

- “(a) clause 25(4)(a), (b), (c), or (d) of Schedule 1 applies; or
- “(b) the regional council is preparing a change to establish an aquaculture management area in the same area of its region; or
- “(c) more than 1 person has requested a change to establish an aquaculture management area in the same area of the region and the council has adopted another request.

**“165ZF Allocation of authorisations from privately initiated changes**

- “(1) This section applies if an aquaculture management area has been included in a regional coastal plan or proposed regional coastal plan as a result of a request for a change made in response to an invitation under section 165Z(1).

- “(2) The regional council must comply with section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004 before allocating any other authorisations in the aquaculture management area.
- “(3) As soon as practicable after complying with subsection (2), the regional council must—
- “(a) allocate authorisations for the remaining space to the person who requested the change in response to an invitation under section 165Z(1); and
  - “(b) publicly notify the allocation.
- “(4) To avoid doubt, section 165J(1), (3), and (5) to (9) and sections 165K to 165O apply to available space in an aquaculture management area established as a result of a request made in response to an invitation under section 165Z(1).

“Subpart 3—Order in which applications by  
existing consent holders are to be processed

“**165ZG Application**

- “(1) This subpart applies—
- “(a) only to applications and coastal permits for aquaculture activities, that relate to an aquaculture management area; and
  - “(b) in relation to such applications made on or after 23 August 2004.
- “(2) However, this subpart does not apply to an application if the relevant plan provides for a method of allocating space used for aquaculture activities at the time of an application for resource consent for aquaculture activities.

“**165ZH Processing applications for existing permit holders**

- “(1) This section applies if—
- “(a) a person holds—
    - “(i) a deemed coastal permit under section 10 or 20 or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
    - “(ii) a coastal permit to occupy space for the purpose of aquaculture activities, granted after the commencement of this Part; and

- “(b) the permit referred to in paragraph (a)(i) or paragraph (a)(ii)—
  - “(i) is in force at the time of any application under subsection (2); and
  - “(ii) applies in relation to an area located in an aquaculture management area.
- “(2) If the holder of a permit (**existing permit holder**) makes an application for a coastal permit and complies with section 124, then—
  - “(a) the application must be processed and determined before any other application for a coastal permit for the space that the permit applies to; and
  - “(b) no other application may be accepted for the space that the application relates to before the determination of the application.

**“165ZI Applications for space already used for aquaculture activities**

- “(1) This section applies to an application for a coastal permit to carry out aquaculture activities if—
  - “(a) the application relates to space that is subject to a permit referred to in section 165ZH; and
  - “(b) the application is made by a person who is not the existing permit holder.
- “(2) The application must be held by the consent authority without processing until 3 months before the expiry of the permit.
- “(3) While the application is being held under subsection (2), the consent authority must not accept any other applications by persons other than the existing permit holder for that space until after the application being held under subsection (2) is determined or has lapsed.
- “(4) After receiving an application referred to in subsection (1), the council must notify the existing permit holder—
  - “(a) of the application; and
  - “(b) that the holder can make an application in accordance with section 124.
- “(5) If an application to which section 165ZH(2) applies is made in accordance with section 124, then the application referred

to in subsection (1) remains on hold until that application is determined.

- “(6) If the application to which section 165ZH(2) applies is granted, then the application referred to in subsection (1) lapses.
- “(7) If no application to which section 165ZH(2) applies is made prior to the date 3 months before expiry of the relevant permit, then the application being held under subsection (2) must be processed and determined in accordance with this Act.
- “(8) However, the application may be processed and determined before the expiry of the 3-month period referred to in subsection (7) if the existing permit holder notifies the consent authority in writing that the holder does not propose to make an application under section 124.

**“165ZJ Additional criteria for considering applications for permits for space already used for aquaculture activities**

- “(1) When considering an application to which section 165ZH(2) or section 165ZI(7) or (8) applies, a consent authority must not only consider the relevant matters under this Act, but also consider the applicant’s conduct in relation to—
  - “(a) compliance with the relevant regional coastal plan; and
  - “(b) compliance with resource consent conditions for current or previous aquaculture activities undertaken by the applicant; and
  - “(c) the use of current industry good practice for any current aquaculture activities.
- “(2) In making an assessment under subsection (1)(a) and (b), the council must, in relation to any successful enforcement action under Part 12, consider—
  - “(a) the number of any breaches that have occurred; and
  - “(b) the seriousness of the breach; and
  - “(c) how recently the breach occurred; and
  - “(d) the subsequent behaviour of the applicant after enforcement action.”

- 21 Existing permissions to become coastal permits**  
Section 384 of the principal Act is amended by adding the following subsection:  
“(5) This section applies subject to section 12 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.”
- 22 Right of port companies to occupy coastal marine area**  
Section 384A(11) of the principal Act is amended by repealing the definition of **occupy**.
- 23 Applications for marine farming in coastal marine area**  
Section 396 of the principal Act is repealed.
- 24 Notification of lapsing, cancellation, or surrender of coastal permit for marine farming**  
Section 396A of the principal Act is repealed.
- 25 Notification of rule change affecting marine farming**  
Section 396B of the principal Act is repealed.
- 26 Existing applications for marine farming leases**  
Section 397 of the principal Act is repealed.
- 27 Regional councils not to accept applications for coastal permits in areas notified by Minister of Fisheries**  
Section 398 of the principal Act is repealed.
- 28 Transitional coastal occupation charges**
- (1) Section 401A(1) of the principal Act is amended by omitting the expression “30 June 1999”, and substituting the expression “30 June 2007”.
  - (2) Section 401A(3) of the principal Act is amended by omitting the expression “1 July 1999”, and substituting the expression “1 July 2007”.
  - (3) Section 401A(4) is amended—
    - (a) by omitting the expression “1 July 1999”, and substituting the expression “1 July 2007” ; and

- (b) by omitting the expression “30 June 1999”, and substituting the expression “30 June 2007”.

**29 Obligation to pay coastal occupation charge deemed condition of consent**

Section 401B(a) of the principal Act is amended by omitting the words “, within the meaning of section 12(4),”.

**30 Certain existing permitted uses may continue**

- (1) Section 418(6)(a)(ii) of the principal Act is amended by omitting the words “or any lease or licence described in section 426(1)”.
- (2) Section 67(2) and (3) of the Resource Management Amendment Act 1997 is consequentially repealed.

**31 Leases, licences, and other authorities under Harbours Act 1950**

Section 425 of the principal Act is amended by adding the following subsection:

- “(4) This section applies subject to section 12 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.”

**32 Section 426 repealed**

Section 426 of the principal Act is repealed.

**33 New Schedule 1A inserted**

The principal Act is amended by inserting, after Schedule 1, the Schedule 1A set out in the Schedule.

**34 Resource Management (Forms, Fees, and Procedure) Regulations 2003 amended**

Regulation 10(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 is amended by revoking paragraph (f), and substituting the following paragraph:

- “(f) the Minister of Fisheries, the Minister of Conservation, and the relevant Fish and Game Council, if an application relates

to fish farming (as defined in the Fisheries Act 1996) other than in the coastal marine area:”.

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**Schedule** s 33  
**New Schedule 1A inserted in principal Act**

**Schedule 1A** s 64  
**Preparation and change of regional coastal plans providing for aquaculture activities**

- 1 Preparation and change of regional coastal plans providing for aquaculture activities**
- (1) Schedule 1 applies, subject to this schedule, to the preparation of, and changes to, a regional coastal plan to the extent that the plan provides for aquaculture activities.
- (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.
- 2 Assessment of undue adverse effects on fishing**
- Before notifying a proposed regional coastal plan under clause 5 or clause 26 of Schedule 1, a regional council must request the chief executive of the Ministry of Fisheries to make an aquaculture decision.
- 3 Effect of assessment**
- (1) If the chief executive of the Ministry of Fisheries makes a reservation about customary or recreational fishing in relation to an aquaculture management area, the regional council must—
- (a) note the details on the plan; and
- (b) delete from the aquaculture management area, any areas that the reservation relates to.
- (2) If the chief executive of the Ministry of Fisheries makes a reservation (about commercial fishing) or a determination in relation to an aquaculture management area, the regional coun-

Schedule 1A—*continued*

cil must note the details of the reservation or determination on the plan.

- (3) If the chief executive of the Ministry of Fisheries makes a reservation about commercial fishing relating to fish, aquatic life, or seaweed that is not subject to the quota management system under the Fisheries Act 1996 and that is not listed in Schedule 4C or Schedule 4D of that Act, the regional council must exclude the area that the reservation relates to from the plan.
- (4) 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.
- (5) A determination or reservation does not form part of the plan.

**4 Effect of direction under section 165O**

- (1) If an Order in Council is made under section 165O in relation to a proposed regional coastal plan to be notified under clause 5 or clause 26 of Schedule 1, the regional council must amend its proposed regional coastal plan in accordance with the direction and record the details of the direction on the plan.
- (2) Schedule 1 does not apply to an amendment under this clause.
- (3) A direction does not form part of the plan.

**5 Notification of proposed plan**

The regional council must not notify its proposed regional coastal plan in accordance with clause 5 or clause 26 of Schedule 1 until the period provided for in section 186J of the Fisheries Act 1996 has expired.

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Schedule 1A—*continued*

**6 Provision of proposed regional coastal plan to chief executive**

A regional council must provide 1 copy of its proposed regional coastal plan, without charge, to the chief executive of the Ministry of Fisheries.

**7 Restriction on decisions affecting aquaculture management areas**

A decision under any of clauses 10, 16, 19, or 29(4) of Schedule 1 must not—

- (a) include an aquaculture management area in a coastal marine area that was not in the proposed regional coastal plan as notified under clause 5 or clause 26 of Schedule 1; or
- (b) alter the boundaries of an aquaculture management area except to reduce the size of the aquaculture management area within those boundaries; or
- (c) amend the rules applicable to the aquaculture management area in a way that changes the character or increases the intensity or scale or the occupation of the aquaculture management area by aquaculture activities in a manner contrary to the determination.

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**Legislative history**

14 December 2004

Divided from Aquaculture Reform Bill (Bill 181-2), third reading

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