

Aquaculture Legislation Amendment Bill (No 2)

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Aquaculture Legislation Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

This bill addresses policy and technical issues associated with establishing aquaculture management areas (AMAs). The bill would provide some limited improvements to the regulatory framework for aquaculture, specifically by adding provision for aquaculture agreements regarding areas with applications that are subject to transitional processes, amending the invited private plan change process to enable regional councils to manage proposals which relate in part or wholly to the same space, and allowing experimental aquaculture and environmental monitoring outside of AMAs.

This commentary focuses on the main amendments we recommend and outlines the main issues we considered.

Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

Leases and licences deemed to be coastal permits

Clause 4 would amend section 10 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (the Transitional Act), which provides for certain leases and licences under the Marine Farming Act 1971 to be deemed coastal permits. We recommend two amendments to clause 4 to provide more certainty for holders of deemed coastal permits.

The first amendment we recommend is to clarify that under section 10(4) councils could amend conditions only as a result of a review conducted in accordance with section 10(4)(a).

We also recommend amending section 10(6) to clarify that a holder of a deemed permit could appeal or object against the decision of a consent authority to vary, add, or delete conditions of a deemed permit, whether the review was requested by the consent holder or not; and appeal or object against the decision of a consent authority not to commence a review or, following a review, the decision not to vary, add, or delete the conditions of a deemed permit, but only where the review has been requested by the consent holder.

Marine farm leases subject to forfeiture action (Waikare Inlet)

We recommend inserting new section 17A in clause 4A to amend the Transitional Act to extend the term of marine farm leases that are due to expire in the next three years, so that they would end three years after the date on which this legislation came into force. We also recommend reinstating Marine Farm Lease Number 42, which expired in December 2006 before forfeiture was completed or discontinued, with a term that would end 3 years after this legislation came into force.

This amendment was sought to extend the term of some marine farm leases in the Waikare Inlet, which are still the subject of forfeiture action under the Marine Farming Act 1971. The amendment would also allow all the farms in the Waikare Inlet that are subject to forfeiture action to continue to operate and the area to be cleaned up so forfeiture action can be discontinued and the farms' leases can become deemed coastal permits under the Transitional Act.

Marine farming permits deemed to be coastal permits

Clause 5 amends section 20 of the Transitional Act, providing for marine farming permits granted under section 67J of the Fisheries Act 1983 to be deemed coastal permits. We recommend two amendments to clarify the timing of review and rights of objection and appeal against council decisions.

We recommend amending section 20(3) to make it clear that councils could amend conditions only as a result of a review conducted in accordance with section 20(3)(a).

We also recommend amending section 20(5) to make it clear that a holder of a deemed permit could appeal against or object to the decision of a consent authority to vary, add, or delete conditions of a deemed permit whether the review was requested by the consent holder or not; or against the decision of a consent authority not to commence a review or following a review; or the decision not to vary, add, or delete the conditions of a deemed permit, but only where the review had been requested by the consent holder.

Waikato communal area—Marine Farming Permit 364

We recommend inserting new section 20A in clause 5A to validate the marine farming permit MFP 364. The Coromandel Marine Farmers Association raised the situ-

ation of the area in the Waikato that they farm communally under a single permit, and the difficulties that the Transitional Act creates in respect of it becoming a deemed AMA. The area is subject to ongoing litigation regarding the validity of the permit, and the treatment of the area in the proposed regional coastal plan. We recommend validating the permit to allow the area to become a deemed AMA under the Transitional Act. We do not support any intervention in the matter of the treatment of the area in the regional coastal plan. A coastal permit for occupation under the Resource Management Act 1991 will also be required.

Certain spat catching permits deemed to be coastal permits

Clause 6 amends section 21 of the Transitional Act, providing for spat catching permits granted under section 67Q(2) of the Fisheries Act 1983 to be deemed coastal permits. We recommend amendments to clarify the timing of review and rights of objection and appeal against council decisions.

First, we recommend amending clause 6 to make it clear that councils could amend conditions only as a result of a review conducted in accordance with section 21(3)(a).

We also recommend amending the legislation to make it clear that a holder of a deemed permit could appeal or object against the decision of a consent authority to vary, add to, or delete the conditions of a deemed permit, whether the review was requested by the consent holder or not; and against the decision of a consent authority not to commence a review; or following a review, the decision not to vary, add to, or delete the conditions of a deemed permit, but only where the review had been requested by the consent holder.

Expiry of Resource Management Act Coastal Permits while the Fisheries Act applications are in train

Clause 8 would apply to coastal permits that were not caught by the moratorium if the corresponding Fisheries Act permits were applied for before but not determined before the coastal permit expired (or could not be determined before the Resource Management Act coastal permit is due to expire). We recommend amending clause 8 to extend the duration of any pre-moratorium Resource Management Act coastal permits for occupation of the coastal marine area for aquaculture activities that have expired or might expire before the corresponding Fisheries Act 1983 applications have been determined. In respect of coastal permits that have expired their duration would only be extended if the Fisheries Act applications were applied for before the coastal permit expired. In addition, we recommend that Resource Management Act coastal permit holders be allowed to have a single Fisheries Act permit determination under section 25 of the Transitional Act from the date of enactment of this bill.

Parallel amendments to sections 26 and 50 of the Transitional Act would be made in clauses 10 and 15. A further amendment would be made in each of these clauses to ensure that once a Fisheries Act determination declining the permit had been made no further Fisheries Act applications could be made under sections 26 or 50 of the Transitional Act.

New sections inserted to provide an ability to negotiate aquaculture agreements where applications are assessed as having an undue adverse effect relating only to commercial fishing

Clause 9 inserts new sections 25A and 25B in the Transitional Act. Section 25A would ensure that if applications made under the Fisheries Act 1983 were assessed as having an undue adverse effect relating only to commercial fishing, then applicants would have the opportunity to seek aquaculture agreements with fisheries rights holders. Previously, such applications would have automatically been declined.

Section 25B provides a number of additional provisions associated with section 25A. Our proposed amendments would ensure that under section 25A notification of the Chief Executive's decision relating to undue adverse effects on fishing would extend to the parties consulted at the assessment stage. They would also clarify that the Chief Executive could not decline an application on the basis of undue adverse effects on commercial fishing if an aquaculture agreement had been lodged, within the legislated timeframe, to address the relevant adverse effects. The amendments would also simplify the aquaculture agreement process for "backlog" applications, without altering the proposed test and processes (as provided for in the Fisheries Act 1983).

Section 25B would clarify that the right of appeal would apply to all decisions regarding undue adverse effects on fishing, that is, decisions on approving or declining an application, or identifying areas in which there is an undue adverse effect on commercial fishing.

New sections 26A and 26B inserted

We recommend amending sections 26A and 26B in clause 11 to parallel the amendments to sections 25A and 25B.

Existing coastal permits deemed to be aquaculture management areas

Clause 13 amends section 45, which deems certain coastal permits to be aquaculture management areas. We recommend amending subsection (5) in clause 13 to delete all references to "is modified as" and to clarify that a deemed AMA would lose this status only to the extent that an operative plan provided that the area ceased to be deemed an AMA and the relevant plan was notified after the commencement of the Transitional Act.

We also recommend amendments to clarify the interaction between off-site reviews and section 45. In particular, we recommend making it clear that if, as a consequence of an off-site review, the council amended a deemed coastal permit to reflect the actual space involved, the actual space would be deemed to be an AMA. This would apply notwithstanding the rules in the plan or proposed plan; and the plan rules that applied to the authorised space would be deemed to apply to the actual space. We are aware that in some instances the physical location of an AMA is slightly different

from the location indicated on paper, for minor technical reasons, and to rectify this would have otherwise required a new plan change.

New sections 50A and 50B inserted

We recommend amending sections 50A and 50B in clause 16 to parallel the amendments to sections 25A and 25B.

Off-site farms

Clause 17 amends section 53 of the Transitional Act which applies to deemed coastal permits under any of sections 10, 20, or 21 for which the actual space being farmed is not the authorised space. We consider that an amendment to extend the time period is appropriate, as we are aware the timeframe in the 2004 reform legislation has proven too short for some regions.

We recommend amending clause 17 to provide for a 12-month period for the review of off-site farms whose marine farming leases or licenses are subject to forfeiture at the date of commencement of this Act. The period should run from the date that the lease or licence is deemed to be a coastal permit under section 10 of the Transitional Act.

Fisheries Act 1996

Order in which requests for aquaculture decisions to be processed

Clause 21 inserts new sections 186DA in the Fisheries Act 1996. We recommend amending clause 21 to replace any reference to “at the same time” with “before 5pm on the same working day” to remove any uncertainty; to ensure section 186DA covers all requests for aquaculture decisions and not just invited private plan change requests; to clarify that for the purposes of section 186DA, for each area to be included in a proposed regional coastal plan as an AMA, the Chief Executive would make a separate aquaculture decision (whether they were received as one request or not); and clarify that the Chief Executive would need to be satisfied that he or she had sufficient information about the impacts on fishing of each request to rank requests in terms of their relative impacts. This would provide a more transparent process for the Chief Executive of the Ministry of Fisheries to follow when a number of requests for aquaculture decisions were made on the same working day.

Decision on application

Clause 22 amends section 186S of the Fisheries Act, which deals with granting or declining applications to register a fish farmer. We recommend that clause 22 be amended to clarify that, where an application for registration as a fish farmer was received from a person for multiple fish farms, the Chief Executive could decline the application in part or in whole; and that the Chief Executive could decline an application in whole or in part only where the activity proposed by the application was subject to an exemption under section 186Q of the Fisheries Act where the fish or shellfish were to be used for the purpose of monitoring the environment. We also recommend two con-

sequential amendments to implement this change. One is an amendment to make it clear that an exemption could be granted where the fish or shellfish are to be used for the purpose of monitoring the environment. The second is an amendment to allow the person doing the monitoring to take the fish or shellfish without having a fishing permit. Overall these amendments will ensure that fish or shellfish that are used for the purpose of monitoring the environment cannot be sold.

Fishers whose consent is necessary for aquaculture agreement

Clause 23 amends section 186ZF of the Fisheries Act. We recommend that clause 23 be amended to specify a clear starting point for the negotiation of an aquaculture agreement under all possible allocation scenarios under the Resource Management Act 1991 as well as under the Maori Commercial Aquaculture Claims Settlement Act 2004, so that the appropriate fisheries rights holders (quota holders or permit holders) can be identified. The scenarios include the following:

- allocation of available space in a council-initiated AMA by way of offer of authorisations
- allocation of available space in a council-initiated AMA other than by offer of authorisations
- allocation of available space in an AMA established using the invited private plan change process
- allocation of space subject to existing pre-moratorium frozen application (referred to as section 150B(2) applications)
- allocation of space subject to existing SMW type applications (specifically recognised under section 165BC of the Resource Management Act)
- where authorisations for new space have been allocated to the trustee under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

This amendment is to ensure that potential marine farmers would continue to have the opportunity to seek aquaculture agreements with affected fisheries rights holders in situations where there were considered to be undue adverse effects only on commercial fishing.

Period within which aquaculture agreements must be lodged for registration

Clause 24 amends section 186ZI of the Fisheries Act to establish the period for negotiating an aquaculture agreement as 6 months commencing from the dates specified in the various allocation scenarios listed above. We recommend that clause 24 be amended to link the date for the start of the 6-month period for negotiation of an aquaculture agreement to the date established under section 186ZF for identifying affected fisheries rights holders; or where space is subject to authorisations provided to the trustees under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 1991, the date on which a notice of receipt is given under section 15(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004.

Memorials

Section 186ZL would ensure that a memorial was placed on all quota for stocks where there is a reservation in respect of an undue adverse effect on commercial fishing, once the 6-month period for negotiating an aquaculture agreement began. We recommend amending clause 25 in respect of section 186ZL of the Fisheries Act to ensure it covers all allocation scenarios, by linking the recording of a memorial with the notice provided to the Chief Executive under section 165G of the Resource Management Act, and with the application of section 15(1) and 15A(1) where the Chief Executive gives notice under section 15(3) and 15A(3) respectively of the Maori Commercial Aquaculture Claims Settlement Act; and providing for the cancellation of a memorial recorded on the expiry of the 6-month negotiating period under the relevant provisions of section 186ZL.

Notification of decision

Clause 26 inserts a new subpart 5 into Part 9A of the Fisheries Act (comprising new sections 186ZM to 186ZP) and sets out a two-stage process for the Chief Executive to consider the effect on fishing of a proposal for an experimental aquaculture activity.

We recommend amending clause 26 by inserting a new subsection in section 186ZP to require notification of the decision to persons and organisations notified of the application under section 186ZO(5).

Maori Commercial Aquaculture Claims Settlement Act 2004

Aquaculture agreements between iwi, aquaculture applicants and fishers within the same timeframe

We recommend amending section 15 of the Maori Commercial Aquaculture Claims Settlement Act 2004 and section 186ZF and 186ZL of the Fisheries Act 1996 to provide iwi with the option of authorising the trustee to negotiate an aquaculture agreement on their behalf within the same timeframe as other aquaculture interests and fishing interests. The statutory scheme currently provides that aquaculture agreements cannot be negotiated by iwi until their respective settlement asset entitlements within a region or harbour have been determined.

This amendment would give iwi the opportunity to reach an aquaculture agreement at the same time as other aquaculture interests if they chose to do so, but where they made this choice they would forgo the current option of waiting until iwi entitlements were determined before negotiating with affected fishers.

Legislative recognition of agreements on 20 percent new space to iwi

We recommend inserting new sections 18A to 18D into the Maori Commercial Aquaculture Claims Settlement Act 2004 to provide aquaculture applicants and the trustee or iwi with 6 months to negotiate an agreement on the 20 percent of new space to be allocated to iwi. If agreement could not be reached within this timeframe the current statutory process would then apply, whereby the regional council must identify the 20

percent of new space according to criteria set out in the Settlement Act, primarily requiring that it be “representative” space or of economic size.

Recognising the potential difficulty of identifying “representative” space, and the potential for one or more aquaculture applicants to be disproportionately affected by a regional council decision (and then to appeal the council’s decision), this amendment would provide aquaculture interests with an opportunity to reach an enduring agreement among themselves on the 20 percent of space to be allocated to iwi.

Time limit for reaching section 45(4) regional agreements on assets entitlements

We recommend inserting new sections 30A and 30B in the Maori Commercial Aquaculture Claims Settlement Act 2004 to change the point at which the 12 months to reach an agreement on assets allocation entitlements under section 45(4) would commence to the time of the delivery of the first settlement assets in a region.

We also recommend amendments to provide for continuation of the agreement process beyond the 12 months where all the iwi aquaculture organisations concerned remain committed to the process. If any of the organisations chose to withdraw from the process of seeking agreement after the initial 12-month period had passed, the current statutory scheme (the coastline methodology) would apply in default. The intention is that iwi have more flexibility to reach an agreement among themselves on their shares of settlement assets.

Resource Management Act 1991

Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture marine areas

Clause 35 amends section 12A of the Resource Management Act 1991, which contains restrictions on occupation of the coastal marine area for the purposes of aquaculture activities and on occupation of an AMA for other activities. The amendments we recommend would clarify that new subpart 4 of Part 7A relating to experimental aquaculture provides a limited exception to the requirement for all aquaculture activities to take place in areas that are AMAs in operative plans. The amendment would also clarify that coastal permits for occupation of the coastal marine area for aquaculture activities granted before the commencement of the bill would be treated as granted for the purpose of section 12A(1)(b).

As a consequence of clarifying section 12A, section 12C can be deleted.

New section 165VA inserted

Clause 50 inserts new section 165VA to provide a general outline of the invited private plan change process, and particularly the relationship between the new optional expressions of interest and the process for inviting private plan change requests to establish aquaculture management areas without using the expressions of interest route.

We recommend amending new section 165VA(7) to clarify that a regional council could not invite requests under section 165Z and expressions of interest in relation to the same coastal marine area at the same time.

We recommend amending new section 165VA(8) to describe the purpose of inviting expressions of interest as providing a process for identifying and resolving competition for the same space in the coastal marine area.

We also recommend that new section 165VA(9)(c) be amended to clarify that if a council decides to depart from the statutory default of financial tender and adopt an alternative process for resolving competition between expressions of interest it must undertake consultation in accordance with section 82 of the Local Government Act 2002; and to delete reference to the need for any alternative process to be “fair and reasonable”.

New section 165VA(11) should be amended to address the cross-references required; it would then require a regional council to process a request in accordance with sections 165Z(2) and (3) whether the request was made in response to an invitation under section 165Z(1), or as a result of an acceptance of expression of interest under section 165ZFD(2), 165ZFE(7), 165ZFF(3), or 165ZFG(3).

Invitation to request change to regional coastal plan or proposed regional coastal plan

We recommend amending clause 56 by amending new section 165Z(1A)(a) to clarify that a council must not invite requests and expressions of interest over the same area at the same time.

New heading and sections 165ZFA to 165ZFI inserted

Clause 61 inserts a new heading “Expressions of interest” and new sections 165ZFA to 165ZFI, which specifies technical details of the expression of interest process. Clause 61 introduces an optional expression of interest phase, and related mechanisms, to manage competition for overlapping proposals to establish aquaculture management areas. The process is intended to allow spatial overlaps to be identified and resolved before a full request for a plan change to establish an aquaculture management area in a regional coastal plan is lodged with a regional council.

We recommend a number of changes to clause 61 to clarify the expression of interest process. We recommend amending new section 165ZFA(2)(a) to clarify that a council must not invite requests and expressions of interest over the same area at the same time; to clarify that if a council intends to use an alternative process to the tender process set out in new sections 165ZFF(2) and 165ZFG it must have adopted that process after undertaking consultation in accordance with section 82 of the Local Government Act 2002; and to provide that if an alternative process involved payment of money by persons submitting expressions of interest then that money would have to be applied in the same way as under section 165ZFH.

We also recommend amending new section 165ZFB to clarify that a public notice inviting expressions of interest must specify the part of the coastal marine area in respect of which expressions of interest are sought. Similarly we recommend amending new section 165ZFC to clarify that a council must reject an expression of interest that relates to an excluded area or to an area outside the area specified in the public notice.

We recommend amending new section 165ZFE to clarify the parties that must be given the opportunity to negotiate with each other to resolve overlapping expressions of interest, and the area to be subject to those negotiations (165ZFE(7A)). We also recommend amending that section to clarify that the purpose of the negotiations is to reach an agreement so that expressions of interest do not overlap or that the area of overlap is reduced. Following negotiations, expressions of interest could be withdrawn or substituted. New subsections 165ZFE(6) and (6A) clarify when the council must refuse substituted expressions of interest. We recommend inserting new section 165ZFE(8) to provide examples for the purposes of illustrating section 165ZFE.

We recommend that new section 165ZFF, which would apply if expressions of interest continued to overlap after the expiry of the negotiation period, be amended to clarify that the tender process would apply to the overlapping expressions only in respect of the overlapping space. New section 165ZFF(3) would require that where a council had adopted a process other than tendering it must follow that process to resolve remaining overlaps.

We recommend that new section 165ZFG be amended to provide that if the person who submits the highest tender does not pay the tender money within the required time, the tender of the person submitting the next highest tender is accepted. That process would continue to apply to each next highest tender until the tender money was paid. This change would mean that even if the person submitting the highest tender did not wish to pursue a private plan change request in respect of the area, other persons would have an opportunity to do so. We also recommend amendments to clarify what would happen if the council did not receive any tenders, or received tenders but did not receive tender money.

We recommend that new section 165ZFI(1) be amended to include the required cross-reference to new section 165ZFF(3) and to provide that if a person holding an accepted expression of interest does not lodge a plan change request in the prescribed time, that the person who submitted the next highest tender must be given the opportunity, subject to the payment of tender money, to lodge a plan change request.

New subpart 4 of 7A inserted

Clause 63 inserts a new subpart 4 in Part 7A (comprising new sections 165ZK to 165ZQ) to provide for the grant of coastal permits for occupation of the coastal marine area for experimental aquaculture activities in areas that are not in an aquaculture management area in an operative regional coastal plan.

We recommend amending clause 63 to clarify that a council must decline an application if it considered that the proposed activities were not experimental aquaculture activities; that new section 165ZM(a)(iii) should not be limited only to circumstances

where a council has accepted an invited private plan change (IPPC) request, but should also apply where a council had adopted an IPPC request; that an experimental aquaculture permit authorising occupation would be required for all of the infrastructure, but that the area required by the anchoring infrastructure would not be used in calculating whether or not the 2-hectare size restriction was exceeded.

We received a number of submissions on increasing the size of experimental aquaculture areas, but we recommend that the area remain restricted to 2 hectares. We recommend amendments to clarify that this limit does not include the anchoring infrastructure. This would provide certainty about the maximum area for farmed space, whilst retaining flexibility regarding the area needed for anchoring structures, as this may vary depending on environmental conditions.

Transitional coastal occupation charges

Clause 69 amends section 401A of the Resource Management Act which provides for transitional coastal occupation changes. We recommend amending clause 69, replacing the term “12 months” with “3 years”. This would defer the requirement for a regional coastal plan that was notified to include provisions relating to coastal occupation charges (if the plan did not already deal with charges) until three years after a new New Zealand Coastal Policy Statement had been issued in the Gazette after the commencement of the bill. We accept that the 12-month timeframe is unworkable.

Appendix

Committee process

The Aquaculture Legislation Amendment Bill (No 2) was referred to the committee on 23 September 2008. The closing date for submissions was 5 February 2009. We received and considered 24 submissions from interested groups and individuals. We heard 15 submissions.

We received advice from the Ministry for the Environment, Ministry of Fisheries, and the Department of Conservation.

Committee membership

Shane Ardern (Chairperson)

Hon Jim Anderton

Brendon Burns (from 6 May 2009)

Hon John Carter (from 18 February 2009)

Dr Ashraf Choudhary

Sandra Goudie

Hon George Hawkins (until 6 May 2009)

Colin King

Moana Mackey (until 6 May 2009)

Hon Damien O'Connor (from 6 May 2009)

Eric Roy (until 18 February 2009)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Nick Smith

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Aquaculture Legislation Amendment Act (No 2) **2008**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1

Amendments to Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

3 Principal Act amended

10

This **Part** amends the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

4 Leases and licences deemed to be coastal permits

- (1) Section 10(2) is amended by repealing paragraph (b) and substituting the following paragraph:
- (b) if—
- (i) section 16(1) applies, the date on which the application referred to in that subsection is determined: 5
 - (ii) section 16(2) applies, the date on which the forfeiture referred to in that subsection is discontinued.
- (2) Section 10 is amended by repealing subsection (4) and substituting the following subsections: 10
- (4) ~~The consent authority may commence a review of a deemed coastal permit, including the conditions of the permit,—~~
- (a) ~~within 12 months after—~~
- (i) ~~the lease or licence becomes a deemed coastal permit; or~~
 - (ii) ~~the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008** if—~~ 15
 - (A) ~~section 16(2) applies; and~~
 - (B) ~~the date on which the forfeiture is discontinued is after 1 January 2006 but before the commencement of that **Part**; and~~ 20
- (b) ~~if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.~~
- (4) The consent authority may decide (and must decide if requested by the holder of a permit) whether to commence a review of a deemed coastal permit, including the conditions of the permit, within 12 months after— 25
- (a) the lease or licence becomes a deemed coastal permit; or
- (b) the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008** if—
- (i) section 16(2) applies; and 30
 - (ii) the date on which the forfeiture is discontinued is after 1 January 2006 but before the commencement of that **Part**.
- (4A) A deemed coastal permit may be reviewed only once under this section.
- (4B) If the consent authority decides to commence a review of a deemed coastal permit, it must commence the review within the period specified in **subsection (4)**. 35
- (4C) After completing a review commenced under this section, the consent authority may, if it considers it necessary to do so, vary, add, or delete conditions for the

purpose of making the conditions consistent with the Resource Management Act 1991.

- (2A) Subsection (5) is amended by repealing paragraph (a).
- (3) Section 10 is amended by repealing subsection (6) and substituting the following subsections: 5
- (6) The holder of a deemed coastal permit may appeal or object under **subsection (6A)**—
- (a) against a decision of the consent authority not to review the conditions of a deemed coastal permit, but only if the holder requested the consent authority to review the conditions: 10
- (b) against a decision of the consent authority to vary, add, or delete conditions of a deemed coastal permit, whether or not the holder requested the authority to review the conditions.
- (6A) ~~If a consent authority decides to vary, add, or delete, or not to vary, add, or delete, any condition of a deemed coastal permit under **subsection (4)**, the~~ The 15
holder of the deemed coastal permit may—
- (a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions:
- (b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act. 20
- (4) Section 10(7) is repealed.

4A **New section 17A inserted** 25
The following section is inserted after section 17:

- 17A** **Certain leases extended or reinstated**
- (1) The leases referred to in this section were granted under the Marine Farming Act 1971 and relate to that part of the coastal marine area in Waikare Inlet in the Bay of Islands. 30
- (2) **Subsection (3)** applies to leases 53, 64, 119, 137, and 160.
- (3) The term of each lease is extended to expire 3 years after the date on which **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008** comes into force.
- (4) **Subsection (5)** applies to lease 42. 35
- (5) The lease is to be treated as having been varied on and from its expiry to extend its term to expire 3 years after the date on which **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008** comes into force.

- (6) During the term of lease 42 as extended by **subsection (5)**, the lessee may continue to operate the marine farm that is subject to the lease, subject to the same terms and conditions as applied immediately before its expiry.
- (7) **Subsection (7)** applies to—
- (a) the leases specified in **subsection (2)**; and 5
- (b) leases 165, 170, and 171.
- (8) During the term of a lease specified in **subsection (7)**, the lessee may continue to operate the marine farm that is subject to the lease, subject to the same terms and conditions as applied immediately before the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008.** 10
- (9) To avoid doubt, **subsections (6) and (8)** do not prevent a lease specified in this section being forfeited.

5 Marine farming permits deemed to be coastal permits

- (1) Section 20 is amended by repealing subsection (3) and substituting the following subsections: 15
- (3) ~~The consent authority may,—~~
- (a) ~~within 12 months after the commencement of this Act commence a review of the conditions of a coastal permit referred to in subsection (2); and~~
- (b) ~~if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.~~ 20
- (3) The consent authority may decide (and must decide if requested by the holder of a permit) within 12 months after the commencement of this Act whether to commence a review of the conditions of a coastal permit referred to in subsection (2). 25
- (3A) The conditions of a coastal permit may be reviewed only once under this section.
- (3B) If the consent authority decides to commence a review of a coastal permit referred to in subsection (2), it must commence the review within the period specified in **subsection (3)**. 30
- (3C) After completing a review commenced under this section, the consent authority may, if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991. 35
- (1A) Subsection (4) is amended by repealing paragraph (a).
- (2) Section 20 is amended by repealing subsection (5) and substituting the following subsections:

- (5) The holder of a deemed coastal permit may appeal or object under **subsection (5A)**—
- (a) against a decision of the consent authority not to review the conditions of a deemed coastal permit, but only if the holder requested the consent authority to review the conditions: 5
 - (b) against a decision of the consent authority to vary, add, or delete conditions of a deemed coastal permit, whether or not the holder requested the authority to review the conditions.
- (5A) ~~If a consent authority decides to vary, add, or delete, or not to vary, add, or delete, any condition of a deemed coastal permit under **subsection (3)**, the~~ The holder of the deemed coastal permit may— 10
- (a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions:
 - (b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act. 15
- 5A New section 20A inserted**
- The following section is inserted after section 20: 20
- 20A Marine farming permit MFP 364**
- (1) This section applies to marine farming permit MFP 364 granted under the Fisheries Act 1983 on 7 May 1998 in relation to that part of the coastal marine area to the east of Esk Point in the Coromandel Harbour.
 - (2) The marine farming permit is to be treated— 25
 - (a) as having been lawfully granted on and from 7 May 1998; and
 - (b) as having been in force immediately before the commencement of this Act.
- 6 Certain spat catching permits deemed to be coastal permits**
- (1) Section 21 is amended by repealing subsection (3) and substituting the following subsections: 30
 - (3) The consent authority may,—
 - (a) ~~within 12 months after the commencement of this Act, commence a review of the conditions of a coastal permit referred to in subsection (2); and~~ 35
 - (b) ~~if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991.~~

- (3) The consent authority may decide (and must decide if requested by the holder of a permit) within 12 months after the commencement of this Act whether to commence a review of the conditions of a coastal permit referred to in subsection (2).
- (3A) The conditions of a coastal permit may be reviewed only once under this section. 5
- (3B) If the consent authority decides to commence a review of a coastal permit referred to in subsection (2), it must commence the review within the period specified in **subsection (3)**.
- (3C) After completing a review commenced under this section, the consent authority may, if it considers it necessary to do so, vary, add, or delete conditions for the purpose of making the conditions consistent with the Resource Management Act 1991. 10
- (1A) Section 21(4) is amended by repealing paragraph (a).
- (2) Section 21 is amended by repealing subsection (5) and substituting the following subsections: 15
- (5) The holder of a deemed coastal permit may appeal or object under **subsection (5A)**—
- (a) against a decision of the consent authority not to review the conditions of a deemed coastal permit, but only if the holder requested the consent authority to review the conditions: 20
- (b) against a decision of the consent authority to vary, add, or delete conditions of a deemed coastal permit, whether or not the holder requested the authority to review the conditions.
- (5A) If a consent authority decides to vary, add, or delete, or not to vary, add, or delete, any condition of a deemed coastal permit under **subsection (3)**, the holder of the deemed coastal permit may— 25
- (a) appeal to the Environment Court against the decision, and sections 120 and 121 of the Resource Management Act 1991 apply to the appeal as if it were an appeal against a decision on a review of consent conditions: 30
- (b) object to the consent authority against the decision, and sections 357C, 357D, and 358 of Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act.
- 7 Section 24 repealed** 35
Section 24 is repealed.
- 8 Completion of certain matters pending at commencement of Act**
- (1) Section 25 is amended by inserting the following subsection after subsection (3):

- (3A) If a coastal permit or certificate of compliance referred to in subsection (2) has expired or is due to expire before an application referred to in subsection (3) is determined, then the coastal permit or certificate of compliance is to be treated as not having expired or does not expire (as the case may be), but continues in force and expires,— 5
- (a) if the application is granted and the decision to grant the application is not subject to appeal or review, 12 months after application is granted:
- (b) if the application is granted and the decision to grant the application is subject to appeal or review, 12 months after the determination of the appeal or the decision on review: 10
- (c) if the application is declined and the decision to decline the application is not subject to appeal or review, 3 months after the application is declined:
- (d) if the application is declined and the decision to decline the application is subject to appeal or review,— 15
- (i) 12 months after the determination of the appeal or the decision on review, if the appeal or decision on review does not uphold the decision:
- (ii) 3 months after the determination of the appeal or the decision on review, if the appeal or decision on review upholds the decision. 20
- (2) Section 25 is amended by adding the following subsection:
- (8) This section applies subject to **section 25A**.

9 New sections 25A and 25B inserted

The following sections are inserted after section 25:

- 25A Assessment of effect on fishing and fisheries resources of applications pending at commencement of Act** 25
- (1) This section applies to an application—
- (a) to which section 25(1) applies; and
- (b) which, as at the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**, has not been determined. 30
- ~~(2) The chief executive must decline the application if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources.~~
- (2) The chief executive must—
- (a) grant the application under section 67J of the principal Act if the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources; but 35

- (b) decline the application under section 67J of the principal Act if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources.
- (3) However, the chief executive must ~~not decline~~ defer making a decision whether to grant or decline the application under section 67J(8) of the principal Act if— 5
- (a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing (other than commercial fishing) or the sustainability of fisheries resources; but
- (b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing. 10
- (4) If **subsection (2)** applies but **subsection (3)** does not, the chief executive must give the applicant and every person and organisation consulted under **section 25B(3)** a notice— 15
- (a) stating that the application is granted or declined; and
- (b) giving the chief executive's reasons for granting or declining the application.
- (5) If **subsection (3)** applies, the chief executive must give the applicant and every person and organisation consulted under **section 25B(3)** a notice accordingly. The notice must also— 20
- (a) specify—
- (i) the area concerned; and
- (ii) any stocks concerned that are subject to the quota management system that are in the area; and 25
- (iii) any stocks or species concerned that are specified in Schedules 4C and 4D of the Fisheries Act 1996 that are in the area; and
- (b) specify the chief executive's reasons for deciding that **subsection (3)** applies; and
- (c) contain a copy, or statement to the effect, of **subsections (6) and (7)**. 30
- (6) The chief executive must decline the application, if the applicant does not lodge an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996.
- (7) The chief executive ~~may~~ must grant the application and issue the permit if the applicant lodges an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 35
- (8) The provisions in the **Schedule** have effect in relation to aquaculture agreements for the purpose of this section. 40

- (9) In this section,—
- aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in the **Schedule**
- commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of—
- (a) stocks subject to the quota management system; and
 - (b) stocks or species specified in Schedules 4C and 4D of the Fisheries Act 1996.
- 25B Further provisions relating to applications to which section 25A applies**
- (1) This section applies to applications to which **section 25A** applies.
 - (2) The chief executive may request the applicant and any fisher whose interests may be affected to provide him or her with further information about the effects that the application would have on access to or displacement of fishing if it were granted.
 - (3) Before making a decision on the application, the chief executive must—
 - (a) consult the persons and organisations ~~that the chief executive considers represent that, in the opinion of the chief executive, are representative of~~ the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the application if it were granted; and
 - (b) consider any submissions made by those persons and organisations.
 - (4) The following persons may appeal to the High Court against a decision made under **section 25A(2)**:
 - (a) the applicant;
 - (b) ~~any person or organisation consulted or who ought to have been consulted under in accordance with~~ **subsection (3)**;
 - (ba) any person or organisation that ought to have been consulted in accordance with **subsection (3)**;
 - (c) any person who has an interest in the decision greater than the public generally.
 - (5) An appeal must be filed within 3 months after notification of the decision is given to the applicant.
 - (6) The High Court may confirm or modify the decision appealed against or substitute a different decision.
 - (7) Any person wishing to seek, under Part 1 of the Judicature Amendment Act 1972, judicial review of a decision must do so within 3 months after the notification of the decision.

10 Applications after commencement of Act

Section 26 is amended by adding the following subsection:

- (5) ~~This section applies subject to **section 26A**.~~

10 Applications after commencement of Act

Section 26 is amended by adding the following subsections:

- (5) If a coastal permit or certificate of compliance referred to in subsection (1)(a) has expired or is due to expire before an application referred to in subsection (1)(b) is determined, then the coastal permit or certificate of compliance is to be treated as not having expired or does not expire (as the case may be), but continues in force and expires,—

(a) if the application is granted and the decision to grant the application is not subject to appeal or review, 12 months after application is granted:

(b) if the application is granted and the decision to grant the application is subject to appeal or review, 12 months after the determination of the appeal or the decision on review:

(c) if the application is declined and the decision to decline the application is not subject to appeal or review, 3 months after the application is declined:

(d) if the application is declined and the decision to decline the application is subject to appeal or review,—

(i) 12 months after the determination of the appeal or the decision on review, if the appeal or decision on review does not uphold the decision:

(ii) 3 months after the determination of the appeal or the decision on review, if the appeal or the decision on review upholds the decision.

- (6) To avoid doubt, if, when an application is declined, the coastal permit or certificate of compliance is not due to expire until later, no further application can be made under this section.

- (7) This section applies subject to **section 26A**.

11 New sections 26A and 26B inserted

The following sections are inserted after section 26:

26A Assessment of effect on fishing and fisheries resources of applications after commencement of Act

- (1) This section applies to an application—

(a) to which section 26 applies whether the application is made before, on, or after the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**; and

- (b) which, if made before the commencement of that **Part**, has not been determined as at the commencement of that **Part**.
- (2) ~~The chief executive must decline the application if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources.~~ 5
- (2) The chief executive must—
- (a) grant the application under section 67J of the principal Act if the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources; but 10
- (b) decline the application under section 67J of the principal Act if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources.
- (3) However, the chief executive must ~~not decline~~ defer making a decision whether to grant or decline the application under section 67J(8) of the principal Act if— 15
- (a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing (other than commercial fishing) or the sustainability of fisheries resources; but
- (b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing. 20
- (4) If **subsection (2)** applies but **subsection (3)** does not, the chief executive must give the applicant and every person and organisation consulted under **section 26B(3)** a notice— 25
- (a) stating that the application is granted or declined; and
- (b) giving the chief executive's reasons for granting or declining the application.
- (5) If **subsection (3)** applies, the chief executive must give the applicant and every person and organisation consulted under **section 26B(3)** a notice accordingly. The notice must also— 30
- (a) specify—
- (i) the area concerned; and
- (ii) the stocks and species concerned; and
- (iii) any stocks concerned that are subject to the quota management system that are in the area; and 35
- (iv) any stocks or species concerned that are specified in Schedules 4C and 4D of the Fisheries Act 1996 that are in the area; and
- (b) specify the chief executive's reasons for deciding that **subsection (3)** applies; and 40

- (c) contain a copy, or statement to the effect, of **subsections (6) and (7)**.
- (6) The chief executive must decline the application, if the applicant does not lodge an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 5
- (7) The chief executive ~~may~~must grant the application and issue the permit if the applicant lodges an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996.
- (8) The provisions in the **Schedule** have effect in relation to aquaculture agreements for the purpose of this section. 10
- (9) In this section,—
- aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in the **Schedule** 15
- commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of—
- (a) stocks subject to the quota management system; and
- (b) stocks or species specified in Schedules 4C and 4D of the Fisheries Act 1996. 20
- 26B Further provisions relating to applications to which section 26A applies**
- (1) This section applies to applications to which **section 26A** applies.
- (2) The chief executive may request the applicant and any fisher whose interests may be affected to provide him or her with further information about the effects that the application would have on access to or displacement of fishing if it were granted. 25
- (3) Before making a decision on the application, the chief executive must—
- (a) consult the persons and organisations ~~that the chief executive considers represent that, in the opinion of the chief executive, are representative of~~ the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the application if it were granted; and 30
- (b) consider any submissions made by those persons and organisations.
- (4) The following persons may appeal to the High Court against a decision made under **section 26A(2)**: 35
- (a) the applicant;
- (b) any person or organisation consulted or who ought to have been consulted under in accordance with **subsection (3)**:

- (ba) any person or organisation that ought to have been consulted in accordance with **subsection (3)**:
- (c) any person who has an interest in the decision greater than the public generally.
- (5) An appeal must be filed within 3 months after notification of the decision is given to the applicant. 5
- (6) The High Court may confirm or modify the decision appealed against or substitute a different decision.
- (7) Any person wishing to seek, under Part ~~I~~ 1 of the Judicature Amendment Act 1972, judicial review of a decision must do so within 3 months after the notification of the decision. 10
- 12 Order of processing applications and requests for aquaculture decision in relation to aquaculture management area or interim aquaculture management area**
- Section 27(1)(b) is amended by adding “or section 37 of this Act”. 15
- 13 Existing coastal permits deemed to be aquaculture management areas**
- (1) Section 45 is amended by repealing ~~subsection~~ subsections (2) and (3) and substituting the following subsections:
- (2) This section—
- (a) does not apply— 20
- (i) to any space specified in a regional coastal plan or proposed regional coastal plan at the commencement of this Act as space in which aquaculture activities authorised by the coastal permit are prohibited; or
- (ii) to any space that a coastal permit no longer applies to as a result of being amended under section 53 or 54; but 25
- (b) does apply to space referred to in **paragraph (a)(i)** if the coastal permit applies to it as a result of the permit being amended under section 53 or 54.
- (3) The area to which a coastal permit that this section applies to is deemed to be an aquaculture management area in a regional coastal plan for the purposes of the principal Act. 30
- (1A) Section 45 is amended by inserting the following subsection after subsection (4):
- (4A) However, in the case of space referred to in **subsection (2)(b)**, the deemed aquaculture management area is subject to the provisions of the regional coastal plan or proposed regional coastal plan that applied to the space specified in the coastal permit immediately before the coastal permit was amended under 35

- section 53 or 54, subject to any subsequent amendment or replacement of those provisions.
- (2) Section 45 is amended by repealing subsection (5) and substituting the following subsection:
- (5) An area that is deemed to be an aquaculture management area by **subsection (3)** ceases to be, ~~or is modified as,~~ an aquaculture management area only by a regional coastal plan that—
- (a) expressly provides that the area ceases to be, ~~or is modified as,~~ an aquaculture management area; and
- (b) was notified under clause 5 or 26 of Schedule 1 of the principal Act after the commencement of this Act.
- (6) If a coastal permit is deemed to be coastal permit under section 10, 20, or 21 after the commencement of this Act, subsections (2) and **(5)** apply, as if every reference to commencement of this Act were a reference to the date on which the coastal permit is deemed to be a coastal permit.
- 14 Certain coastal permits granted during moratorium not to be exercised until end of moratorium**
- Section 48(8) is amended by omitting “357” and substituting “357A, 357C, 357D,”.
- 15 Pre-moratorium and pre-commencement applications for coastal permits not subject to moratorium**
- Section 50 is amended by adding the following subsections:
- (8) If an application referred to in subsection (1) is granted, but the coastal permit has expired or is due to expire before an application referred to in subsection (3) is determined, then the coastal permit or certificate of compliance is to be treated as not having expired or does not expire (as the case may be), but continues in force and expires,—
- (a) if the application is granted and the decision to grant the application is not subject to appeal or review, 12 months after application is granted:
- (b) if the application is granted and the decision to grant the application is subject to appeal or review, 12 months after the determination of the appeal or the decision on review:
- (c) if the application is declined and the decision to decline the application is not subject to appeal or review, 3 months after the application is declined:
- (d) if the application is declined and the decision to decline the application is subject to appeal or review,—

<p>(i) <u>12 months after the determination of the appeal or the decision on review, if the appeal or decision on review does not uphold the decision:</u></p> <p>(ii) <u>3 months after the determination of the appeal or the decision on review, if the appeal or decision on review upholds the decision.</u></p> <p>(9) <u>To avoid doubt, if, when an application is declined, the coastal permit or certificate of compliance is not due to expire until later, no further application can be made under this section.</u></p> <p>(810) This section applies subject to section 50A.</p>	<p>5</p>
<p>16 New sections 50A and 50B inserted</p> <p>The following sections are inserted after section 50:</p> <p>50A Assessment of effect on fishing and fisheries resources of applications to which section 50(3) applies</p> <p>(1) This section applies to an application under section 67J or 67Q(2) referred to in section 50(3)—</p> <p>(a) whether the application is made before, on, or after the commencement of Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008; and</p> <p>(b) which, if made before the commencement of that Part, has not been determined as at the commencement of that Part.</p> <p>(2) The chief executive must decline the application if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources.</p> <p>(2) The chief executive must—</p> <p>(a) <u>grant the application under section 67J of the principal Act if the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources; but</u></p> <p>(b) <u>decline the application under section 67J of the principal Act if the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of fisheries resources.</u></p> <p>(3) However, the chief executive must not decline <u>defer making a decision whether to grant or decline</u> the application under section 67J(8) of the Fisheries Act 1983 if—</p> <p>(a) the chief executive is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing (other than commercial fishing) or the sustainability of fisheries resources; but</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>

- (b) the chief executive is not satisfied that the activities contemplated by the application would not have an undue adverse effect on commercial fishing.
- (4) If **subsection (2)** applies but **subsection (3)** does not, the chief executive must give the applicant and every person and organisation consulted under **section 50B(3)** a notice— 5
- (a) stating that the application is granted or declined; and
- (b) giving the chief executive’s reasons for granting or declining the application.
- (5) If **subsection (3)** applies, the chief executive must give the applicant and every person and organisation consulted under **section 50B(3)** a notice accordingly. The notice must also— 10
- (a) specify—
- (i) the area concerned; and
- (ii) the stocks or species concerned; and 15
- (iii) any stocks concerned that are subject to the quota management system that are in the area; and
- (iv) any stocks or species concerned that are specified in Schedules 4C and 4D of the Fisheries Act 1996 that are in the area; and
- (b) specify the chief executive’s reasons for deciding **subsection (3)** applies; and 20
- (c) contain a copy, or statement to the effect, of **subsections (6) and (7)**.
- (6) The chief executive must decline the application, if the applicant does not lodge an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 25
- (7) The chief executive ~~may~~must grant the application and issue the permit if the applicant lodges an aquaculture agreement with the chief executive within 6 months after the date of the notice or before the expiry of any extension of time granted under section 186ZI of the Fisheries Act 1996. 30
- (8) The provisions in the **Schedule** have effect in relation to aquaculture agreements for the purpose of this section.
- (9) In this section,—
- aquaculture agreement** means an agreement that complies with subpart 4 of Part 9A of the Fisheries Act 1996, subject to the modifications set out in the **Schedule** 35
- commercial fishing** means the fishing, authorised by a permit issued under section 91 of the Fisheries Act 1996, of—
- (a) stocks subject to the quota management system; and

- (b) stocks or species specified in Schedules 4C and 4D of the Fisheries Act 1996.

50B Further provisions relating to applications to which section 50A applies

- (1) This section applies to applications to which **section 50A** applies.
- (2) The chief executive may request the applicant and any fisher whose interests may be affected to provide him or her with further information about the effects that the application would have on access to or displacement of fishing if it were granted. 5
- (3) Before making a decision on the application, the chief executive must—
- (a) consult the persons and organisations ~~that the chief executive considers represent that, in the opinion of the chief executive, are representative of~~ the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the application if it were granted; and 10
- (b) consider any submissions made by those persons and organisations. 15
- (4) The following persons may appeal to the High Court against a decision made under **section 50A(2)**:
- (a) the applicant:
- (b) ~~any person or organisation consulted or who ought to have been consulted under in accordance with subsection (3):~~ 20
- (ba) any person or organisation that ought to have been consulted in accordance with subsection (3):
- (c) any person who has an interest in the decision greater than the public generally.
- (5) An appeal must be filed within 3 months after notification of the decision is given to the applicant. 25
- (6) The High Court may confirm or modify the decision appealed against or substitute a different decision.
- (7) Any person wishing to seek, under Part 1 of the Judicature Amendment Act 1972, judicial review of a decision must do so within 3 months after the notification of the decision. 30

17 Off-site farms

- (1) Section 53(2) is amended by omitting “within 2 years after the commencement of this Act” and substituting “within 12 months after the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**”. 35
- (1A) Section 53 is amended by inserting the following subsection after subsection (2):
- (2A) An application under subsection (2) must be made within 12 months after—

- (a) the commencement of **Part 1 of the Aquaculture Legislation Amendment Act (No 2) 2008**; but
- (b) if—
- (i) section 16(1) applies, the date on which the application referred to in that subsection is determined: 5
- (ii) section 16(2) applies, the date on which the forfeiture referred to in that subsection is discontinued.
- (2) Section 53 is amended by repealing subsection (10) and substituting the following subsection:
- (10) The holder of the deemed coastal permit may object to the consent authority about any decision under **subsection (5)(b)**, and sections 357C, 357D, and 358 of the Resource Management Act 1991 apply to the objection as if it were an objection against a review of the conditions of a resource consent under sections 128 to 132 of that Act. 10
- 18 Schedule added** 15
- The Act is amended by adding the **Schedule** set out in the **Schedule** to this Act.

Part 2 Amendments to Fisheries Act 1996

- 19 Principal Act amended** 20
- This **Part** amends the Fisheries Act 1996.
- 19A All fishing to be authorised by fishing permit unless specific exemption held**
- (1) Section 89(2)(j) is amended by adding “; or”.
- (2) Section 89(2) is amended by adding the following paragraph: 25
- (k) fish, aquatic life, or seaweed in accordance with an exemption granted under section 186Q for the purpose of monitoring the environment.
- 20 Interpretation**
- Section 186C is amended by inserting the following definition in its appropriate alphabetical order: 30
- experimental aquaculture activities** has the same meaning as in section 2 of the Resource Management Act 1991
- 21 New section 186DA inserted**
- The following section is inserted after section 186D:

186DA Order in which ~~certain~~ requests for aquaculture decisions to be processed

- (1) This section applies to requests for aquaculture decisions if—
- (a) the requests are made by persons who have requested changes to a regional coastal plan or proposed regional coastal plan in response to an invitation under section 165Z(1) or **165ZFA(1)** of the Resource Management Act 1991; and
 - (b) the requests for changes have been accepted by the regional council under clause 25(2)(b) of Schedule 1 of the Resource Management Act 1991.
- (2) The chief executive must process the requests for aquaculture decisions in the order in which they are received.
- (3) However, if requests are received at the same time on the same working day before 5 pm, then **subsection (2)** applies subject to **subsections (4) to (7)** apply.
- (4) If all of the persons who make the requests agree that the requests should be processed in a particular order, the chief executive must process the requests in that order.
- (5) **Subsection (6)** applies if—
- (a) **subsection (4)** does not apply; and
 - (b) the chief executive is satisfied that making an aquaculture decision about 1 or more of the requests may have an effect on making an aquaculture decision on 1 or more of the other requests.
- (6) If the chief executive is satisfied that he or she has sufficient information about the impact of each request on fishing to determine the order in which aquaculture decisions should be made in relation to ~~proposed~~ aquaculture management areas, the chief executive must (having regard to the matters specified in section 186G)—
- (a) rank the ~~proposed~~ aquaculture management areas according to the extent of their impact on fishing; and
 - (b) make aquaculture decisions starting with the ~~proposed~~ aquaculture management area that would have the least impact on fishing and finishing with the ~~proposed~~ aquaculture management area that would have the greatest impact on fishing.
- (7) If **subsection (6)** does not apply, then the chief executive must determine by ballot the order in which the ~~proposed aquaculture management areas~~ requests will be processed.
- (8) For the purposes of this section, a single request for 2 or more aquaculture decisions is to be treated as separate requests in relation to each aquaculture decision.

21A Exemptions

Section 186Q is amended by inserting the following subsection after subsection (4):

- (4A) Without limiting subsection (4)(b), an exemption may be granted for fish farming for the on-growing of fish, aquatic life, or seaweed for the purpose of monitoring the environment. 5

22 Decision on application

(1) Section 186S is amended by inserting the following subsection after subsection (1):

- (1A) If an application relates to more than 1 fish farm, the chief executive may grant the application in relation to all or some of the fish farms. 10

(2) Section 186S is amended by inserting the following subsection after subsection (2):

- (2A) The chief executive may decline an application if the activity proposed by the applicant is the subject of an exemption under section 186Q. 15

(2A) The chief executive must decline an application if the applicant has been granted an exemption under section 186Q for fish farming for the purpose of monitoring the environment.

23 Fisheries—Fishers whose consent is necessary for aquaculture agreement

(1) Section 186ZF is amended by repealing subsections (5) and (6) and substituting the following subsection: 20

(5) Where the regional council makes an offer of authorisations for available space in an aquaculture management area under section 165E of the Resource Management Act 1991, subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which notice is given under section 165G(2)(a) of the Resource Management Act 1991. 25

(6) Where authorisations are required to be allocated to a person under section 165ZF(3)(a) of the Resource Management Act 1991, subsection (2) applies to the person specified in that subsection as at 5 pm on the date on which public notice is given under section 165G(2)(c) of the Resource Management Act 1991. 30

(7) Where the regional coastal plan provides for allocation of space other than by an offer of authorisations, subsection (2) applies to the person specified in that subsection as at 5 pm on the date on which notice is given under section 165G(2)(b) of the Resource Management Act 1991. 35

(5) Subsection (2) applies to the persons specified in that subsection as at 5 pm on the date on which notice is given under—

- (a) section 165G(2)(a) of the Resource Management Act 1991, in relation to an offer of authorisations under section 165E of the Resource Management Act 1991; or
- (b) section 165G(2)(b) of the Resource Management Act 1991, in relation to a regional coastal plan that provides for the allocation of available space other than by an offer of authorisations; or 5
- (c) section 165G(2)(c) of the Resource Management Act 1991, in relation to—
- (i) authorisations for available space that are required to be allocated to a person under section 165ZF(3)(a) of the Resource Management Act 1991; or 10
- (ii) space that is subject to an application to which section 150B(2) or 165BC of the Resource Management Act 1991 applies; or
- (d) section 15(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004, in relation to authorisations for new space that have been allocated to the trustee under section 9 of that Act; or 15
- (e) **section 15A(3)** of the Maori Commercial Aquaculture Claims Settlement Act 2004 in relation to authorisations for new space that have been allocated to the trustee under section 9 of that Act and in relation to which the trustee has been authorised to enter into an aquaculture agreement. 20
- (2) Section 6 of the Fisheries Amendment Act (No 2) 2008 is consequentially repealed.
- 24 Period within which aquaculture agreements must be lodged for registration** 25
- (1) Section 186ZI(1) is amended by repealing paragraph (b) and substituting the following paragraph:
- (b) within 6 months after,—
- (i) where an offer of authorisations is made under section 165E of the Resource Management Act 1991, the date referred to in section 186ZF(5); or 30
- (ii) where authorisations are required to be allocated to a person under section 165ZF(3)(a) of the Resource Management Act 1991, the date referred to in section 186ZF(6); or
- (iii) where the regional coastal plan provides for allocation of space other than by offer of authorisations, the date referred to in section 186ZF(7); or 35
- (iv) the date on which a notice of receipt is given under section 15(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004. 40

- (b) within 6 months after the date on which notice is given under **section 186ZF(5)**.
- (2) Section 7 of the Fisheries Amendment Act (No 2) 2008 is consequentially repealed.
- 25 Memorials** 5
- Section 186ZL(1) is amended by—
- (a) ~~omitting “notifies its intention” and substituting “gives notice”; and~~
- (b) ~~omitting “to allocate space to undertake aquaculture activities in” and substituting “in relation to”.~~
- 25 Memorials** 10
- (1) Section 186ZL is amended by repealing subsection (1) and substituting the following subsection:
- (1) Subsection (2) applies—
- (a) if a regional council gives the chief executive notice under section 165G of the Resource Management Act 1991 in relation to space that is subject to a reservation relating to commercial fishing; or 15
- (b) if section 15(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004 applies, and the chief executive gives notice under section 15(3) of that Act; or
- (c) if **section 15A(1)** of the Maori Commercial Aquaculture Claims Settlement Act 2004 applies and the chief executive gives notice under **section 15A(3)** of that Act. 20
- (2) Section 186ZL is amended by repealing subsection (4) and substituting the following subsection:
- (4) A memorial recorded in a register under subsection (2) that relates to a notice referred to in subsection (1) must be cancelled on the expiry of the period specified in section 186ZI(1)(b). 25
- (3) Section 186ZL(5) is repealed.
- 26 New subpart 5 of Part 9A inserted** 30
- The following subpart is added after subpart 4 of Part 9A:
- Subpart 5—Experimental aquaculture activities
- 186ZM Request for initial evaluation of proposals to undertake experimental aquaculture activities**
- (1) A person may apply to the chief executive for an initial evaluation about whether an assessment of the effect on fishing will be required for a proposal to undertake experimental aquaculture activities in the following areas: 35

- (a) a coastal marine area that is not in an aquaculture management area; or
- (b) an aquaculture management area in a proposed regional coastal plan that is subject to—
 - (i) a reservation; or
 - (ii) a determination based on a rule in the plan under section 186H(1)(d). 5
- (2) An application under **subsection (1)** must be made on an approved form and be accompanied by the prescribed fee (if any).

186ZN Initial evaluation

- (1) The chief executive must notify the applicant, within 15 working days after receiving an application under **section 186ZM**, about whether or not an assessment under **section 186ZO** is required. 10
- (2) If the chief executive notifies the applicant that an assessment is not required, the chief executive must also notify the applicant of the factors that were material in deciding that an assessment is not required, including— 15
 - (a) the size of the area concerned; and
 - (b) the location of the area concerned; and
 - (c) the duration of the proposed experimental aquaculture activities.
- (3) The chief executive must send a copy of the notice to the regional council concerned. 20

186ZO Assessment of effects on fishing

- (1) A person who has received a notice from the chief executive under **section 186ZN** that an assessment is required may apply to the chief executive for an assessment of whether the proposal will have an undue adverse effect on fishing. 25
- (2) An application under **subsection (1)** must be made on an approved form and be accompanied by the prescribed fee (if any).
- (3) The chief executive may request the applicant and any fisher whose interests may be affected to provide the chief executive with further information about the effects that the proposed experimental aquaculture activities would have on access to or displacement of fishing. 30
- (4) If the chief executive requests further information under **subsection (3)**, then the period beginning on the day when the further information is requested and ending on the day when the information is provided or the day that is 15 working days after the day when the further information is requested (whichever is the shorter) is excluded from the periods referred to in **subsection (5) and section 186ZP**. 35
- (5) Within 10 working days after receiving the application, the chief executive must—

- (a) identify the persons and organisations that the chief executive considers represent the classes of persons who have customary, commercial, or recreational fishing interests that may be affected by the proposal; and
- (b) notify the persons and organisations identified of the application.
- (6) A person who is notified under **subsection (5)(b)** may make submissions on the application within 20 working days after being notified. 5
- (7) In considering, for the purposes of making an assessment, whether the proposal will have an undue adverse effect on fishing, the chief executive must have regard only to the following matters:
- (a) the location of the area concerned in relation to areas in which fishing is carried out: 10
- (b) the effect of the proposal on fishing of any fishery, including the proportion of any fishery likely to become affected:
- (c) the degree to which experimental aquaculture activities within the area concerned will lead to the exclusion of fishing: 15
- (d) the extent to which fishing for a species in the area concerned can be carried out in other areas:
- (e) the extent to which the proposal will increase the cost of fishing:
- (f) the cumulative effect on fishing of any previous aquaculture activities.
- 186ZP Decision after making assessment** 20
- (1) Within 25 working days after the end of the period for making submissions under **section 186ZO(2A)**, the chief executive must complete the assessment and make a decision in relation to the area concerned that either—
- (a) he or she is satisfied that the proposal will not have an undue adverse effect on fishing; or 25
- (b) he or she is not satisfied that the proposal will not have an undue adverse effect on fishing.
- (2) As soon as the chief executive has made a decision under **subsection (1)**, the chief executive must notify the applicant and any person or organisation notified under **section 186ZO(5)(b)** of the decision. 30
- (3) If the chief executive makes a decision under **subsection (1)(a)**, the notice must specify the factors that were material in making the decision, including—
- (a) the size of the area concerned; and
- (b) the locations of the area; and
- (c) the duration of the proposed experimental aquaculture activities. 35
- (4) The chief executive must send a copy of the notice to the regional council concerned.

Part 3

Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004

- 27 Principal Act amended**
This **Part** amends the Maori Commercial Aquaculture Claims Settlement Act 2004. 5
- 28 Interpretation**
Section 4 is amended by inserting the following definition in its appropriate alphabetical order:
regional council has the same meaning as in section 2(1) of the Resource Management Act 1991 10
- 28 Purpose of sections 9 to 18**
Section 7 is amended by adding the following subsection as subsection (2):
(2) Sections 9 to 18 apply only if an agreement is not entered into in accordance with **section 18D**. 15
- 29 Allocation of authorisations to trustee**
Section 9 is amended by repealing subsection (4) and substituting the following subsection:
(4) The regional council must allocate to the trustee authorisations for the space identified under subsection (1) as soon as practicable after the date on which the new space becomes available for—
(a) applications for coastal permits to authorise occupation for the purpose of an aquaculture activity; or
(b) the allocation of authorisations. 20
- 29A Time within which iwi aquaculture organisation may lodge aquaculture agreement** 25
(1) Section 15(1)(b) is amended by adding “; and”.
(2) Section 15(1) is amended by adding the following paragraph:
(c) the trustee has not been authorised to enter into an aquaculture agreement under **section 15A**. 30
- 29B New section 15A inserted**
The following section is inserted after section 15:
15A Time within which trustee may lodge aquaculture agreement on behalf of all recognised iwi aquaculture organisations concerned
(1) This section applies if— 35

- (a) authorisations for new space have been allocated to the trustee under section 9; and
- (b) the new space is subject to a reservation relating to commercial fishing.
- (2) The trustee must notify in writing the chief executive of the Ministry of Fisheries as soon as practicable after— 5
- (a) the trustee has recognised iwi aquaculture organisations for all the iwi in relation to the regional coastline or harbour to which the aquaculture management area belongs; and
- (b) all the iwi aquaculture organisations referred to in **paragraph (a)** have authorised the trustee to enter into an aquaculture agreement on behalf of all the iwi aquaculture organisations. 10
- (3) The chief executive must, as soon as practicable after receiving the notice, notify in writing the trustee and every iwi aquaculture organisation and the regional council concerned of the receipt of the notice.
- (4) A notice given by the chief executive under **subsection (3)** has the same effect as if the notice were given under section 165G(2)(a) of the Resource Management Act 1991. 15

29C New heading and sections 18A to 18D inserted

The following heading and sections are inserted after section 18:

Agreements about allocation of new space 20

18A Purpose of sections 18B to 18D

The purpose of **sections 18B to 18D** is to provide an alternative process to the process set out in sections 9 to 18 by providing a negotiating period to try to reach an agreement about the allocation of authorisations in respect of 20% of new space in an aquaculture management area. 25

18B Notifications of period to negotiate and enter into agreement about new space

- (1) Before a regional coastal plan or a change to a regional coastal plan that provides for aquaculture activities in new space becomes operative, a regional council must notify the persons specified in **subsection (2)** that they have the period specified in **subsection (3)** to negotiate to enter into an agreement to identify 20% of new space in aquaculture management areas for allocation to the trustee. 30
- (2) The persons who must be notified under **subsection (1)** are—
- (a) the trustee; and 35
- (b) in the case of a private plan change, the person who requested the plan change; and
- (c) any applicant for a coastal permit.

(3) The period for negotiation is 6 months beginning on the day after the date on which the persons specified in **subsection (2)** are notified under **subsection (1)**.

(4) The period of 6 months specified in **subsection (3)** may, before the period expires, be extended by the regional council for a further 3 months if the regional council is satisfied that—

- (a) reasonable steps have been taken to reach an agreement; and
- (b) more time is required to reach an agreement.

18C Trustee to notify iwi aquaculture organisations of notice received from regional council

(1) The trustee must, as soon as practicable after receiving a notice under **section 18B**, notify iwi aquaculture organisations (in accordance with **subsection (2) or (3)**, as the case may require) that it has received the notice.

(2) If the notice received by the trustee relates to a regional coastline or harbour in respect of which the trustee has not made its determination as to settlement assets allocation entitlements, then, in the notice given under **subsection (1)**, the trustee must undertake to negotiate, on behalf of the iwi aquaculture organisations for all the iwi in relation to the regional coastline or harbour to which the aquaculture management area belongs, an agreement (subject to their subsequent approval) with the other persons specified in **section 18B(2)** on the 20% of new space in respect of which authorisations are to be issued to the trustee.

(3) If the notice received by the trustee relates to a regional coastline or harbour in respect of which the trustee has made its determination as to settlement assets allocation entitlements, then, in the notice given under **subsection (1)**, the trustee must seek instructions from all the iwi aquaculture organisations with an interest in the authorisations in accordance with the determination of settlement assets allocation entitlements as to whether—

- (a) the iwi aquaculture organisations themselves intend to negotiate an agreement; or
- (b) the iwi aquaculture organisations authorise the trustee to negotiate on their behalf.

18D Position at conclusion of negotiations

(1) If, at the conclusion of the period for negotiations, there is no agreement, the regional council must proceed to comply with section 9.

(2) If, at the conclusion of the period for negotiations, there is an agreement that is in writing, signed by the parties to it, and delivered to the regional council, then the regional council—

- (a) is not required to comply with section 9; and

- (b) must allocate to the trustee authorisations for the new space, in accordance with the agreement, as soon as practicable after the date on which the new space becomes available for applications for coastal permits or allocation of authorisations.
- (3) In **subsection (2)**, **parties** means,— 5
- (a) where the trustee has not made its determination as to settlement assets allocation entitlements,—
- (i) the trustee in order to confirm that the agreement has been entered by the iwi aquaculture organisations for all the iwi in relation to the regional coastline or harbour to which the aquaculture management area belongs; and 10
- (ii) the iwi aquaculture organisations referred to in **subparagraph (i)**; and
- (iii) in the case of a private plan change, the person who requested the plan change; and 15
- (iv) any applicant for a coastal permit:
- (b) where the trustee has made its determination as to settlement assets allocation entitlements,—
- (i) the trustee in order to confirm that the agreement has been entered into by all the iwi aquaculture organisations with an interest in the authorisations, in accordance with the determination of settlement assets allocation entitlements; and 20
- (ii) the iwi aquaculture organisations referred to in **subparagraph (i)**; and
- (iii) in the case of a private plan change, the person who requested the plan change; and 25
- (iv) any applicant for a coastal permit.

30 Interpretation

- (1) Section 20(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph: 30
- (ii) was, at the close of 31 December 2004, still the subject of a lease or licence under the Marine Farming Act 1971, unless it was subject to forfeiture and the forfeiture (pursuant to section 16 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004) was subsequently completed under the Marine Farming Act 1971; and 35
- (2) Section 20(b)(ii) is amended by omitting “67P” and substituting “67Q(2)(a)”.
- (3) Section 20 is amended by inserting the following paragraph after paragraph (b):

- (ba) space—
- (i) that was not subject to a lease or licence issued under the Marine Farming Act 1971 before 21 September 1992; and
 - (ii) that is the subject of an application under section 26 or 50 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 that was granted; and
 - (iii) in relation to which a permit under section 67J or 67Q(2)(a) of the Fisheries Act 1983 is subsequently issued.
- (4) Section 20 is amended by repealing paragraph (c) and substituting the following paragraph: 10
- (c) space that—
- (i) was not subject to a lease or licence issued under the Marine Farming Act 1971 before 21 September 1992; and
 - (ii) was, at the close of 31 December 2004, subject to an application for a permit under section 67J or 67Q(2)(a) of the Fisheries Act 1983 which was subsequently granted; and
- (5) Section 20(d) is amended by inserting the following subparagraph before subparagraph (i):
- (iaa) was not subject to a lease or licence issued under the Marine Farming Act 1971 before 21 September 1992; and 20
- (6) Section 20 is amended by inserting the following paragraph after paragraph (d):
- (da) space—
- (i) that was not the subject of a lease or licence to occupy for aquaculture activities under the Marine Farming Act 1971 issued before 21 September 1992; and
 - (ii) that was the subject of a lease or licence to occupy for aquaculture activities under the Marine Farming Act 1971 that—
 - (A) was issued on or after 21 September 1992; and
 - (B) expired before 1 January 2005; and
 - (iii) that, on 1 January 2005, was the subject of an application to extend the term of the lease or licence to which section 16(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applied; and
 - (iv) in relation to which the application to extend the term is granted; and

30A Allocation of assets to iwi of region

(1) Section 45(4) is amended by omitting “12 months after the trustee has recognised iwi aquaculture organisations for all the iwi of a region” and substituting “period specified in **subsection (4A)**”.

(2) Section 45 is amended by inserting the following subsection after subsection (4): 5

(4A) The period is 12 months after—

(a) the trustee has recognised iwi aquaculture organisations for all the iwi of the region; and

(b) the first of the settlement assets for the region has been allocated to the trustee. 10

30B Basis of allocation of settlement assets

Section 47 is amended by repealing subsection (1) and substituting the following subsection:

(1) The trustee must determine settlement assets allocation entitlements in accordance with this section and Schedule 1 if,— 15

(a) by the end of the 12-month period specified in **section 45(4A)**, the iwi aquaculture organisations have not made a written agreement; and

(b) at any time after the end of the 12-month period specified in **section 45(4A)**, an iwi aquaculture organisation notifies the trustee in writing that it does not intend to enter into a written agreement. 20

Part 4**Amendments to Resource Management Act 1991****31 Principal Act amended**

This **Part** amends the Resource Management Act 1991. 25

32 Interpretation

(1) The definition of **aquaculture activities** in section 2(1) is amended by adding “; and” and also by adding the following paragraph:

(d) does not include any activity specified in paragraph (a) or (b) if the activity is carried out solely for the purpose of monitoring the state of the coastal marine area environment 30

(2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

experimental aquaculture activities means aquaculture activities undertaken as scientific experiments to research or investigate 1 or more of the following: 35

(a) the suitability of an area for aquaculture activities:

- (b) ~~new~~-species of fish, aquatic life, or seaweed:
- (c) ~~new~~-structures:
- (d) ~~new~~-techniques
- 33 Certain existing uses in relation to land protected** 5
Section 10(4)(b) is amended by inserting “, ~~12A~~, or **12C** or **12A**” after “12”.
- 34 Restrictions on use of coastal marine area**
Section 12 is amended by inserting the following subsection after subsection (5):
- (5A) Subsection (2)(a) does not apply to anything to which **section 12A(1)(a)** or **12C** applies. 10
- 35 ~~Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas~~**
- (1) Section 12A is amended by adding the following subsection:
- (4) ~~This section applies subject to **section 12C**.~~
- (2) ~~To avoid doubt, a coastal permit granted before the commencement of this **Part** to authorise the occupation of a coastal marine area for the purpose of an aquaculture activity is to be treated as a coastal permit that expressly authorises occupation of the coastal marine area for the purposes of an aquaculture activity under section 12A(1)(b) of the principal Act.~~ 15
- 35 New section 12A substituted** 20
- (1) Section 12A is repealed and the following section substituted:
- 12A Restrictions on occupation of coastal marine area for aquaculture activities and restrictions on occupation of aquaculture management areas for other activities**
- (1) No person may occupy— 25
- (a) a coastal marine area for the purpose of an aquaculture activity except as provided in **subsection (2)**;
- (b) an aquaculture management area for a purpose that is not an aquaculture activity except as provided in **subsection (4)**.
- (2) A person may occupy a coastal marine area for the purpose of an aquaculture activity— 30
- (a) if—
- (i) the area is an aquaculture management area in a regional coastal plan; and
- (ii) the activity is authorised by a coastal permit, if the area is vested in the Crown or a regional council; 35

- (b) if—
- (i) the area is not an aquaculture management area in a regional coastal plan; and
- (ii) the activity is authorised by a coastal permit granted in accordance with **subpart 4** of Part 7A. 5
- (3) No person may apply for a coastal permit to occupy a coastal marine area for the purpose of an aquaculture activity except—
- (a) in an aquaculture management area in a regional coastal plan; or
- (b) in accordance with **subpart 4** of Part 7A.
- (4) In an aquaculture management area, any other activity requiring occupation may be undertaken only as— 10
- (a) a restricted discretionary activity; or
- (b) a discretionary activity; or
- (c) a non-complying activity.
- (5) To avoid doubt, a coastal permit granted before the commencement of **Part 4 of the Aquaculture Legislation Amendment Act (No 2) 2008** to authorise the occupation of a coastal marine area for the purpose of an aquaculture activity is to be treated as a coastal permit that expressly authorises occupation of the coastal marine area for the purposes of an aquaculture activity under subsection (2)(a). 15 20
- (2) Section 5 of the Resource Management Amendment Act 2008 is consequentially repealed.
- 36 New section 12C inserted**
- The following section is inserted after section 12B:
- 12C ~~Restriction on experimental aquaculture activities in coastal marine area outside aquaculture management area in regional coastal plan~~** 25
- (1) ~~No person may, for the purpose of an experimental aquaculture activity, occupy a coastal marine area unless expressly authorised by a coastal permit granted in accordance with **subpart 4** of Part 7A.~~
- (2) ~~However, **subsection (1)** does not apply to occupation of a coastal marine area for the purpose of an experimental aquaculture activity if the occupation is authorised by or under section 12A.~~ 30
- 37 Duty to avoid unreasonable noise**
- Section 16(2) is amended by inserting “**12A, 12C,**” after “12,”.
- 38 Possible defence in case of unforeseen emergencies** 35
- Section 18(1) is amended by inserting “**12A, 12C,**” after “12,”.

39 Administrative charges

Section 36(1) is amended by inserting the following paragraph after paragraph (ca):

(cab) charges payable by persons submitting expression of interest in response to an invitation in a public notice given by a regional council under **section 165ZFA**, for the carrying out by the local authority of its functions in relation to such expressions of interest, including inviting expressions of interest, tendering under **section 165ZFF(2)** or carrying out any other process adopted by a council under **section 165ZFF(3) 165ZFA(2)(c)**:

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40 Regulations prescribing national environmental standards

Section 43(1)(a) is amended by inserting “**section 12A, section 12C**,” after “section 12,”.

41 Types of resource consents

Section 87(c) is amended by inserting “**12A, 12C**,” after “12,”.

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42 Duration of consent

Section 123 is amended by adding the following subsection as subsection (2):

(2) The period for which a coastal permit for experimental aquaculture activities that would otherwise contravene **section 12C** is granted may be granted under **subpart 4** of Part 7A is—

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- (a) the period, not exceeding 5 years, specified in the consent; and
- (b) if no period is specified, 5 years from the date of commencement of the consent under section 116.

43 Exercise of resource consent while applying for new consent

Section 124 is amended by adding the following subsection:

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(4) This section does not apply to a coastal permit granted under **section 165ZK subpart 4** of Part 7A.

44 Lapsing of consents

Section 125 is amended by adding the following subsection:

(4) A coastal permit for experimental aquaculture activities that would otherwise contravene **section 12C** granted under **subpart 4** of Part 7A lapses 5 years after the date of commencement of the consent or after the expiry of any shorter period specified in the permit, and no application may be made under this section to extend the period of the permit after which it lapses.

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45 Transferability of coastal permits

Section 135 is amended by adding the following subsection:

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- (3) The holder of a coastal permit granted under **subpart 4** of Part 7A may not transfer the whole or any part of the holder’s interest in the permit to another site except to the extent authorised by the coastal permit.

46 Interpretation

- (1) The definition of **available space** in section 165A(a)(i) is amended by inserting “(other than a coastal permit granted under ~~section 165ZK~~ **subpart 4** of Part 7A)” after “coastal permit”. 5
- (2) The definition of **available space** in section 165A(a)(iv) is amended by inserting “(other than an application for the grant of a coastal permit under ~~section 165ZK~~ **subpart 4** of Part 7A)” after “permit”. 10

47 Provisions about aquaculture management areas

Section 165C(1)(c)(v)(B) is amended by ~~inserting “, 12A, and 12C”~~ after ~~“12(2)”~~ omitting “granted for the purposes of section 12(2)” and substituting “authorising occupation”.

48 Allocation of space in aquaculture management area for aquaculture activities subject to reservation relating to commercial fishing 15

Section 165J is amended by inserting the following subsection after subsection (3):

- (3A) Subsection (3) does not apply in relation to applications for coastal permits, and coastal permits granted, under **subpart 4** of Part 7A. 20

49 Subpart heading amended

The heading to subpart 2 of Part 7A is amended by omitting “Privately initiated” and substituting “Invited private”.

50 New section 165VA inserted

The following section is inserted after the heading to subpart 2 of Part 7A: 25

165VA Outline of subpart

- (1) This section provides a general outline of this subpart and is not to limit or affect the meaning of the other sections of this subpart.
- (2) This subpart provides for regional councils to invite requests for a change to a regional coastal plan or proposed regional coastal plan to establish an aquaculture management area. 30
- (3) A regional council may invite requests by public notice—
- (a) inviting requests under section 165Z; or
 - (b) inviting expressions of interest in making a request under **section 165ZFA**. 35

- (4) Before a regional council invites requests or expressions of interest for a change to a regional coastal plan or proposed regional coastal plan, the regional council must consider whether it should identify areas in the coastal marine area as excluded areas.
- (5) If the regional council decides that it should identify excluded areas, then before doing so it must comply with the consultation requirements in clauses 3 and 3B of Schedule 1. 5
- (6) A regional council must not invite requests or expressions of interest in relation to excluded areas.
- (7) A regional council cannot invite requests under section 165Z ~~or~~ and expressions of interest under **section 165ZFA** in relation to the same coastal marine area at the same time. 10
- (8) The purpose of inviting expressions of interest (as opposed to inviting requests for plan changes at the outset) is to ~~enable a regional council provide a process to identify and resolve competition for the same space in the coastal marine area due to overlapping proposals for the establishment of aquaculture management areas.~~ 15
- (9) If a regional council invites expressions of interest,—
- (a) no person can request a plan change under this subpart unless the person is the holder of an accepted expression of interest: 20
- (b) ~~persons who submit overlapping expressions of interest must be provided with an opportunity to negotiate among themselves and amend their expressions of interest so that they are not overlapping:~~
- (b) persons who submit overlapping expressions of interest must be provided with an opportunity to negotiate among themselves and— 25
- (i) amend their expressions of interest so that they do not overlap; or
- (ii) to agree to reduce the extent to which the expressions of interest overlap:
- (c) to the extent that that process does not resolve overlapping expressions of interest, then the regional council must invite the persons concerned to submit tenders for the overlapping areas and accept the highest tender. However, the regional council must use an alternative process for that purpose if the alternative process is ~~fair and reasonable and it has been adopted using the special consultative procedure in~~ before inviting expressions of interest but after undertaking consultation in accordance 30
- with section 82 of the Local Government Act 2002. 35
- (10) A person whose expression of interest has been accepted may request a plan change within the time specified in the notice under **section 165ZFI**.
- (11) A regional council must process a request in accordance with section 165Z(2) or (3), whether the request is made— 40

(a)	in response to an invitation under section 165Z(1); or	
(b)	as a result of an acceptance of an expression of interest under section 165ZFD(2), 165ZFE(2)(7), 165ZFF(3), or 165ZFG(2)(3) or (4) .	
51	New heading inserted	
	The following heading is inserted above section 165W: “ <i>Excluded areas</i> ”.	5
52	Aquaculture management areas may not be established in excluded areas as a result of requests for changes	
(1)	Section 165X is amended by omitting the heading and substituting the following heading: “ Requests and expressions of interest not to be invited in relation to excluded areas ”.	10
(2)	Section 165X is amended by—	
(a)	omitting “seek nor accept” and substituting “invite”; and	
(b)	omitting “from a person wishing to undertake aquaculture activities” and substituting “to establish an aquaculture management area”.	
(3)	Section 165X is amended by adding the following subsection as subsection (2):	15
(2)	A regional council must not invite, under this subpart, an expression of interest in making a request for a change to a regional coastal plan or proposed regional coastal plan to establish an aquaculture management area in any part of the coastal marine area that is an excluded area.	
53	New heading inserted	20
	The following heading is inserted above section 165Y: “ <i>Limitation on requests and expressions of interest</i> ”.	
54	New section 165Y substituted	
	Section 165Y is repealed and the following section substituted:	
165Y	When request can be made or expression of interest can be submitted	25
(1)	A person may not make a request for change under this subpart except—	
(a)	in response to a regional council inviting requests under section 165Z; or	
(b)	unless the person has submitted an expression of interest which has been accepted under section 165ZFD(2), 165ZFE(7), or 165ZFG(3) .	
(2)	A person may not submit an expression of interest under this subpart except in response to a regional council seeking expressions of interest under section 165ZFA .	30
55	New heading inserted	
	The following heading is inserted above section 165Z: “ <i>Invitations to request change</i> ”.	35

56 Invitation to request change to regional coastal plan or proposed regional coastal plan

Section 165Z(1A) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:

- ~~(a) the council has not sought expressions of interest under **section 165ZFA** in relation to any area that is to be subject to a notice under subsection (1); and~~ 5
- ~~(a) any area to which a notice under subsection (1) relates—~~
 - ~~(i) has not been subject to an invitation seeking expressions of interest under **section 165ZFA**; or~~ 10
 - ~~(ii) has been subject to an invitation seeking expressions of interest under **section 165ZFA**, but is no longer subject to the process set out in **sections 165ZFA to 165ZFI**; and~~
- ~~(ab) the council has considered whether it should identify areas as excluded areas under section 165W and, if it decides that it should, has complied with that section; and.~~ 15

57 Acceptance of request or part of request for change

Section 165ZB is amended by repealing subsections (2) and (3).

58 New section 165ZBA inserted

The following section is inserted after section 165ZB: 20

165ZBA Application of Schedule 1A, and Part 9A of Fisheries Act 1996, to requests adopted or accepted under this subpart

- (1) Schedule 1A applies to a request made under this subpart and—
 - (a) adopted under clause 25(2)(a) of Schedule 1; or
 - (b) adopted and combined with another request under section 165ZA and clause 25(2)(a) of Schedule 1; or 25
 - (c) accepted under clause 25(2)(e)(b) of Schedule 1.
- (2) Sections 186D and 186E of the Fisheries Act 1996 apply to a request to which **subsection (1)(b) or (c)** applies as if the references to a regional council, where were references to the person who requested the change. 30

59 Rejection of request for change

- (1) Section 165ZE is amended by inserting “, in whole or in part,” after “reject”.
- (2) Section 165ZE(c) is amended by inserting “or accepted” after “adopted”.

60 Allocation of authorisations from privately initiated changes

- (1) The heading to section 165ZF is amended by omitting “**privately initiated**” and substituting “**invited private plan**”. 35

- (2) Section 165ZF(1), (3)(a), and (4) are amended by inserting “~~or 165ZFA(1)~~ or an invitation to submit an expression of interest under **section 165ZFA(1)**” after “section 165Z(1)” in each place where it appears.
- (3) Section 165ZF(3)(a) is amended by inserting “available” after “remaining”.

61 New heading and sections 165ZFAA to 165ZFI inserted

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The following heading and sections are inserted after section 165ZF:

Expressions of interest

165ZFAA Purpose of sections 165ZFA to 165ZFI

The purpose of **sections 165ZFA to 165ZFI** is to provide a process to identify and resolve competition for the same space in the coastal marine area due to proposals that overlap (in whole or in part) for the establishment of aquaculture management areas.

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165ZFA Invitation to submit expression of interest

- (1) A regional council may, by public notice, invite any person to submit to the council an expression of interest (**expression of interest**) in making a request for a change to a regional coastal plan or a proposed regional coastal plan to establish an aquaculture management area.
- (2) A regional council may give an invitation under **subsection (1)** only if all the following apply:
- (a) ~~the council has not invited requests under **section 165Z** in relation to any area that is to be subject to a notice under **subsection (1)**; and~~
- (a) any area to which a notice under subsection (1) relates—
- (i) has not been subject to an invitation seeking requests under section 165Z; or
- (ii) has been the subject of an invitation seeking requests under section 165Z, but is no longer subject to the process set out in sections 165Z to 165ZF; and
- (b) the council has considered whether it should identify areas as excluded areas under section 165W and, if it decides that it should, has complied with that section; and
- (c) if the council proposes to use an alternative process to the process set out in **sections 165ZFF(2) and 165ZFG**, it must have adopted the alternative process after undertaking consultation in accordance with section 82 of the Local Government Act 2002.
- (3) For the purposes of **subsection (2)(c)**, to the extent that the alternative process involves the payment of money by persons submitting expressions of interest, the money is to be applied in the same manner as tender money is to be applied under **section 165ZFH**.

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165ZFB Requirements for notice under section 165ZFA

- (1) A public notice given under **section 165ZFA** must—
- (aa) specify the part of the coastal marine area in respect of which expressions of interest are sought:
 - (a) specify that an expression of interest must contain a description of the space in the coastal marine area that it relates to: 5
 - (b) specify any other information that the expression of interest must contain:
 - (c) state the terms or effect of **sections 165ZFC to 165ZFI**:
 - (d) specify whether the process set out in **sections 165ZFF(2) to and 165ZFHG** or an alternative process ~~decided~~ adopted by the regional council will be used to select an expression of interest where negotiations under section 165ZFE do not resolve or fully resolve the position with 2 or more expressions of interest that ~~relate to the same space~~ overlap, wholly or in part: 10 15
 - (e) specify the closing date for the receipt of expressions of interest:
 - (f) specify any charges fixed under section 36(1)(**cab**)
- (2) A regional council may amend, replace, or revoke a notice given under **section 165ZFA**, and may do so—
- (a) whether before or after the date specified as the closing date for the receipt of expressions of interest; but 20
 - (b) in the case of an amendment or replacement, only if the amended or replaced notice specifies another closing date for the receipt of expressions of interest.

165ZFC Rejection of expression of interest 25

- (1) Before complying with **section 165ZFD**, a regional council must consider whether it should reject any expressions of interest submitted to it.
- (2) A regional council may reject an expression of interest, but only on the grounds that the expression of interest—
- (a) does not contain the information required by the public notice given under **section 165ZFA**; or 30
 - (b) has been received after the closing date; or
 - (c) is not accompanied by the appropriate charge (if fixed by the regional council under section 36(1)(**cab**); or
 - (d) is frivolous or vexatious. 35
- (3) A regional council must reject an expression of interest that relates to—
- (a) an excluded area; or

- (b) an area that is, wholly or in part, outside the space specified in the notice given under **section 165ZFA** for the purposes of **section 165ZFB(1)(aa)**.

165ZFD Process after closing date for expressions of interest

- (1) After the closing date for receipt of expressions of interest, the regional council must, if it receives 2 or more expressions of interest, determine whether any of them ~~relate~~overlap, wholly or in part ~~to the same space~~. 5
- (2) If an expression of interest ~~relates to space that is not~~ does not overlap, wholly or in part, ~~the subject of 1 or more other expressions of interest~~, the regional council must accept the expression of interest and **section 165ZFI** applies accordingly. 10
- (3) If an expression of interest ~~relates~~ overlaps wholly or in part ~~to space that is also the subject of 1 or more other expressions of interest~~ **sections 165ZFE to 165ZFH** apply. 15

165ZFE Expressions of interest ~~relating to the same space that overlap, wholly or in part~~ 15

- (1) ~~If 2 or more expressions of interest relate, wholly or in part, to the same space, the regional council must notify all the persons concerned, specifying the space concerned and providing contact details of the persons concerned.~~
- (1) If 2 or more expressions of interest overlap, the regional council must notify the persons who submitted those expressions of interest and any person who submitted a linked expression of interest, and provide each of those persons with,— 20
- (a) copies of the others' expressions of interest; and
- (b) the contact details of the other persons. 25
- (2) The notice must also state—
- (a) the terms or effect of **subsections (3) to (6)** and **sections 165ZFF to 165ZFH**; and
- (b) the date by which negotiations are to be completed for the purposes of **subsection (3)**. 30
- (3) The persons notified under **subsection (1)** may negotiate with each other in the period expiring on the close of the date specified for the purposes of this subsection in the notice given under **subsection (2)**.
- (4) ~~The purpose of the negotiations is to reach an agreement so that the expressions of interest do not relate to the same space.~~ 35
- (4) The purpose of the negotiations is to reach an agreement so that—
- (a) the expressions of interest do not overlap; or
- (b) the extent to which they overlap is reduced.

- (5) For the purpose of **subsection (4)**, a person who has submitted an expression of interest may—
- (a) withdraw the expression of interest; or
 - (b) substitute an amended expression of interest.
- (6) ~~However, the regional council must refuse substituted expressions of interest if they relate to the same space.~~ 5
- (6) However, the regional council must, unless consistent with an agreement reached under **subsection (4)**, refuse a substituted expression of interest if—
- (a) it overlaps, wholly or in part, with another substituted expression of interest: 10
 - (b) it overlaps, wholly or in part, with another expression of interest that has not been substituted.
- (6A) The regional council must refuse a substituted expression of interest, if the substituted expression of interest relates to space that extends beyond the boundaries of any overlapping or linked expression of interest as originally submitted in response to a public notice given under **section 165ZFA**. 15
- (7) If, as a result, of expressions of interest being substituted or withdrawn, an expression of interest no longer relates to the same space as overlaps any other expression of interest, then the regional council must accept the expression of interest and **section 165ZFI** applies accordingly. 20
- (7A) For the purposes of this section, if an expression of interest (A) overlaps, wholly or in part, with the space in another expression of interest (B), and B overlaps, wholly or in part, with the space in another expression of interest (C), but A and C do not overlap, then A and C are to be treated as **linked expressions of interest**. 25
- (8) The following examples are for the purposes of this section. The examples are only illustrative and do not limit or affect the meaning of **subsections (1) to (7A)**:
- Example 1**
- Persons A, B, and C** each submit an expression of interest for space in the coastal marine area. The space that person B's expression of interest relates to overlaps with the space that person A's and C's expressions of interest relate to. But the space that person A's and C's expressions of interest relate to do not overlap. Person A's and C's expression of interest are linked and persons A and C are included for the purposes of negotiating and reaching an agreement. 30
- Some of the possible scenarios in this example are as follows.
- First, after the period of negotiations has expired, the expressions of interest have been substituted or withdrawn with the result that the space each expression of interest relates to does not overlap with the other. 35
- Second, after the period of negotiations has expired, no agreement has been reached and the expressions of interest remain as originally submitted. In this sce- 40

nario, section 165ZFF applies in relation to the space where the expressions of interest overlap.

Third, after the period of negotiations has expired, persons A, B, and C have reached an agreement which reduces, but does not remove entirely, the areas of overlap. In this scenario, **section 165ZFF** applies in relation to the overlapping space as specified in the agreement and not as specified in the expression of interest as originally submitted.

Example 2

This example is the same as example 1 except that another person (**person D**) has submitted an expression of interest that does not overlap with the expressions of interest submitted by persons A and B but does overlap with the expression of interest submitted by person C.

By reapplying **subsection (7A)** person D's expression of interest is, for the purposes of negotiating and reaching an agreement, linked with person A's and B's expression of interest.

The scenarios described for example 1 apply also to this example.

165ZFF Expressions of interest that continue to overlap after expiry of period for negotiations

- (1) This section applies in relation to expressions of interest that, after the period for negotiations provided by **section 165ZFE**, continue to relate overlap, wholly or in part, to the same space.
- (2) The regional council must notify in writing the persons concerned and invite them to submit tenders for acceptance of an expression of interest to the extent that they relate to the same space in respect of the overlapping space, specifying the manner in which and the date by which tenders for the same overlapping space must be submitted to the council.
- (3) However, instead of complying with **subsection (2)**, the regional council must use an alternative process if—
 - (a) the alternate process is fair and reasonable; and
 - (b) the alternative process has been adopted using the special consultative procedure in the Local Government Act 2002.
- (3) However, if the regional council has specified in the notice given under **section 165ZFA** that it is proposed to use an alternative process to the process set out in **subsection (2) and section 165ZFG**, the regional council must use the alternative process and accept or reject expressions of interest, as the case may require, in accordance with the alternative process.
- (4) If a regional council is required to use an alternative process, the alternative process must be used only in respect of the overlapping space to which the expressions of interest relate.

165ZFG Tenders

- (1) The regional council must reject a tender for acceptance of an expression of interest if it is submitted after the closing date for receipt of tenders, but rejection of the tender does not affect the expression of interest to the extent that it does not overlap any other expression of interest. 5
- (2) ~~The regional council must notify the person who submitted the highest tender that, subject to the payment of the tender money, the person's tender will be accepted.~~
- (2) The regional council must—
- (a) notify the person who submitted the highest tender that, subject to the payment of the tender money, the person's tender will be accepted; and 10
- (b) send a copy of the notice under **paragraph (a)** to the other persons who submitted tenders for the overlapping space that the tender referred to in **paragraph (a)** relates to.
- (2A) If the tender money is not paid within 30 days after notification under **subsection (2)(a)**, the regional council must notify the person who submitted the next highest tender that that person's tender is accepted subject to payment of the tender money. 15
- (2B) If the tender money is not paid within 30 days after notification under **subsection (2)(a)**, then **subsection (2A)** continues to apply to each next highest tender until the tender money is paid. 20
- (3) As soon as the regional council has received the tender money, the council must notify—
- (a) the person who paid the tender money that the person's expression of interest has been accepted; and 25
- (b) ~~all the other persons who submitted tenders that their tenders have been unsuccessful and their expressions of interest have therefore been rejected.~~
- (b) all other persons who submitted tenders that—
- (i) their tenders have been unsuccessful; and 30
- (ii) their expressions of interest, to the extent that they overlap, have therefore been rejected; but
- (iii) their expressions of interest to the extent that they do not overlap, have been accepted.
- (4) If the regional council does not receive any tenders in response to a notice under **section 165ZFF(2)** or does receive tenders but does not receive any tender money, then the regional council must— 35
- (a) reject the expressions of interest to the extent that they overlap; and
- (b) accept the expressions of interest to the extent that they do not overlap; and 40
- and

(c) notify the persons who submitted the expressions of interest accordingly.

165ZFH Tender money

(1) The regional council must apply the money received under **section 165ZFG** as follows:

(a) the regional council must apply 50% of the money to achieving the purpose of this Act in the coastal marine area in its region; and 5

(b) the regional council must forward 50% of the money to the Minister.

(2) The Minister must cause the money received under **subsection (1)(b)** to be paid into a Crown Bank Account in accordance with the Public Finance Act 1989. 10

(3) Money paid under **section 165ZFG** is not refundable.

165ZFI Acceptance of expression of interest

(1) The regional council must notify a person whose expression of interest is accepted under **section 165ZFD(2), 165ZFE(7), 165ZFF(3), or 165ZFG(3) or (4)**— 15

(a) that the expression of interest has been accepted; and

(b) of the last day by which the person may lodge a request to change a regional coastal plan or proposed regional coastal plan.

(2) A person whose expression of interest is accepted by a regional council may lodge with the regional council a request to change a regional coastal plan or proposed regional coastal plan to establish an aquaculture management area for the space the person's expression of interest relates to. 20

(2A) If a person who has been notified under **section 165ZFF(2)** does not lodge under **subsection (2)** a request to change a regional coastal plan or proposed regional coastal plan by the close of the day notified under **subsection (1)**, then the regional council must notify the person who submitted the second highest tender— 25

(a) that that person's tender is accepted and, subject to the payment of tender money, the person may lodge a request to change a regional coastal plan or proposed regional coastal plan; and 30

(b) of the date by which the person must lodge the request.

(3) The regional council must reject a request if—

(a) it is given to the council after the date specified in the notice given under **subsection (1) or (2A)** for the lodgement of requests; or

(b) it does not relate to the same space as the accepted expression of interest relates to; or 35

(c) it is inconsistent with the expression of interest to which it relates.

- (4) A request accepted by a regional council must be dealt with in accordance with section 165Z(2) and (3), and those provisions apply with all necessary modification.

62 Processing applications for existing permit holders

Section 165ZH(1)(a)(ii) is amended by inserting “(other than a coastal permit issued under **subpart 4** of Part 7A)” after “permit”. 5

63 New subpart 4 of Part 7A inserted

The following subpart is inserted after subpart 3 of Part 7A:

Subpart 4—Experimental aquaculture activities

165ZK Grant of coastal permits authorising experimental aquaculture activities 10

- (1) A consent authority may, in accordance with and subject to this subpart, grant a coastal permit authorising occupation of a coastal marine area for the purpose of an experimental aquaculture activity in a coastal marine area that is not in an aquaculture management area in a regional coastal plan.

- (2) To avoid doubt, **subsection (1)** applies to space occupied by an anchoring or mooring system used for the purpose of an experimental aquaculture activity. 15

165ZL Applications for coastal permits for experimental aquaculture activities

An application for the grant of a coastal permit under **section 165ZK** must include a research proposal that explains why occupation of the coastal marine area, to the extent and the period applied for, is reasonably necessary to undertake the experimental aquaculture activities. 20

165ZM When application must be refused

A consent authority must not grant a coastal permit under **section 165ZK**,—

- (a) if the coastal marine area concerned—
- (i) has been occupied for the purpose of experimental aquaculture activities during the 6 months immediately preceding the date of the application; or 25
 - (ii) is subject to application to which section 150B(2) applies (unless the person who has made that application has agreed in writing to the grant of the coastal permit); or 30
 - (ia) is subject to a request for a change to a regional coastal plan or a proposed regional coastal plan made in response to an invitation under section 165Z or **165ZFA** and the request has been adopted by the regional council under clause 25(2)(a) of Schedule 1 (unless the person who has made the request has agreed in writing to the grant of the coastal permit); or 35

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(iii) is subject to a request for a change to a regional coastal plan or a proposed regional coastal plan made in response to an invitation under section 165Z or 165ZFA and the request has been accepted by the regional council under clause 25(2)(b) of Schedule 1 (unless the person whose request has been accepted has agreed in writing to the grant of a coastal permit); and <li style="margin-left: 20px;">(b) unless the consent authority— <ul style="list-style-type: none"> <li style="margin-left: 20px;">(i) has received a notice from the chief executive of the Ministry of Fisheries— <ul style="list-style-type: none"> <li style="margin-left: 20px;">(A) under section 186ZN of the Fisheries Act 1996 that an assessment under section 186ZO of that Act is not required; or <li style="margin-left: 20px;">(B) under section 186ZP of the Fisheries Act 1996 that the chief executive is satisfied that the proposal to which the application relates will not have an undue adverse effect on fishing; and <li style="margin-left: 20px;">(ii) is satisfied that the application does not differ from the notice from the chief executive of the Ministry of Fisheries; or, if it does differ, it does not do so to the extent that it changes the character or increases the scale or intensity of the activities in or occupation of the coastal marine area. 	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
165ZN Limitation relating to area	
<ul style="list-style-type: none"> (1) A coastal permit granted under section 165ZK must not authorise the occupation of more than 2 hectares of the coastal marine area. (2) Space occupied by warps, lines, and anchors <u>an anchoring or mooring system used for the purpose of an experimental aquaculture activity</u> is to be excluded for the purposes of subsection (1). 	<p>25</p>
165ZO Application not to proceed if area becomes aquaculture management area in regional coastal plan	
<p>If an application for the grant of a coastal permit under section 165ZK is made in relation to an aquaculture management area in a proposed regional coastal plan and, before the application is determined, the plan becomes operative, then the regional council—</p> <ul style="list-style-type: none"> (a) must not process the application; and (b) must not determine the application; and (c) must return the application, and any fee accompanying the application, to the applicant as soon as practicable. 	<p>30</p> <p>35</p>

165ZP Permit not to lapse if area becomes aquaculture management area

- (1) **Subsection (2)** applies if the area to which a coastal permit granted under **section 165ZK** becomes an aquaculture management area or part of an aquaculture management area in a regional coastal plan.
- (2) The coastal permit—
- (a) does not lapse; and
 - (b) is to be treated as having been granted for the purposes of **section 12C 12A(2)(b)**.

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165ZQ Application of Part 6

To avoid doubt, Part 6 applies (subject to this subpart) in relation to applications for coastal permits under this subpart and to coastal permits granted under this subpart.

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64 Allocation of authorisations from privately initiated changes

Section 165ZF(1), (3), and (4) is amended by inserting “or an expression of interest under **section 165ZFA**” after “section 165Z(1)” in each place where it appears.

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65 Emergency works and power to take preventive and remedial action

- (1) Section 330(1) is amended by inserting “**12A, 12C**,” after “12,”.
- (2) Section 330(2A) is amended by inserting “**12A, 12C**,” after “12,”.

66 Resource consents for emergency works

Section 330A(2) is amended by inserting “**12A, 12C**,” after “12,”.

20

67 Offences against this Act

Section 338(1)(a) is amended by inserting “**12A, 12C**,” after “12,”.

68 Strict liability offences

Section 341(1) is amended by inserting “**12A, 12C**,” after “12,”.

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69 Transitional coastal occupation charges

- (1) Sections 401A(3) is amended by omitting “1 July 2007” and substituting “the expiry date”.
- (2) Section 401A(4) is amended by—
- (a) omitting “1 July 2007” and substituting “the expiry date”; and
 - (b) omitting “after 30 June 2007” and substituting “on or after the expiry date”.
- (3) Section 401A is amended by adding the following subsection:

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- (5) In this section, **expiry date** means the date that is ~~12 months~~ 3 years after the date on which a New Zealand coastal policy statement is issued under section 52(3)(a) after the commencement of **Part 4 of the Aquaculture Legislation Amendment Act (No 2) 2008**.

Schedule
New Schedule added

s-20 18

Schedule		
Aquaculture agreements		5
ss 25A, 26A, 50A		
(1)	Subpart 4 of Part 9A of the Fisheries Act 1996 applies in relation to aquaculture agreements entered into for the purposes of sections 25A, 26A, and 50A of this Act subject to the exclusion and modifications in clauses (2) to (5) of this Schedule.	10
(2)	Section 186ZF(5)(a) applies as if “section 165G(2)(a) of the Resource Management Act 1991” were omitted and “ section 25A(5), 26A(5), or 50A(5) , as the case may be” were substituted.	
(3)	Section 186ZI(1)(b)(i) applies as if “186ZF(5)” were omitted and “ the date on which notice is given under section 25A(5), 26A(5), or 50A(5) ” were substituted.	15
(4)	Section 186ZK does not apply.	
(5)	Section 186ZL applies as if —	
(a)	subsection (1) were repealed and the following subsection substituted: “ (1) If the chief executive gives a notice under section 25A(5), 26A(5), or 50A(5) , the chief executive must ensure that a memorial is recorded in the appropriate register against all quota for the stocks specified in the notice.”; and	20
(b)	subsection (2) (3) (a) were repealed and the following paragraph substituted:	25
(a)	the chief executive has determined that section 25A(3), 26A(3), or 50A(3) applies; and”.	

Aquaculture Legislation Amendment Bill (No 2)

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