

Regulatory Impact Statement

Aquaculture Legislation Reform: Proposed New 300-ha Marine Farm Zone off Coromandel Final Recommendations

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Fisheries. It provides analysis of options to amend the Waikato Regional Coastal Plan to establish a new 300-ha marine farm zone off Coromandel suitable for the commercialisation of hāpuku and/or kingfish; both high-value species.
2. The analysis in this paper has been informed by the Aquaculture Ministerial Advisory Panel's report and consultation on the proposed zone with iwi, aquaculture industry, local government, relevant groups and organisations, and the public.
3. This analysis applies the same objectives and assessment criteria used in the Regulatory Impact Statement that supported Cabinet's previous decisions on the Aquaculture Legislation Amendment Bill (No 3) (Regulatory Impact Statement – Aquaculture Legislation Reform Paper 2; further proposals and report back, 22 June 2010).
4. The proposed 300-ha zone represents a strategic opportunity to commercialise two new high-value finfish species and grow New Zealand's aquaculture industry. Ernst & Young research shows the commercialisation of higher-value species is essential for the aquaculture industry to achieve its \$1 billion goal by 2025.

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Introduction

1. The Aquaculture Legislation Amendment Bill ('the Bill') does not remove the blanket prohibition on new aquaculture space in the Waikato Regional Coastal Plan ('the Plan'). This means a new farm in Waikato still requires both a plan change and resource consent. Experience from the current aquaculture law shows industry and councils are unlikely to progress both an RMA plan change and consents, due to the time, high cost and uncertainty involved.
2. The aquaculture industry, Environment Waikato, Ministry of Fisheries and NIWA, however, consider Waikato is a key region for future aquaculture growth and the best region in the country for commercialisation of new high-value fish species.
3. On 6 September 2010, Cabinet agreed the Aquaculture Unit should work with Environment Waikato to develop proposals for further changes to the Waikato Regional Coastal Plan (the Plan) for inclusion into the Bill by way of a Supplementary Order Paper (CAB Min (10) 33/12 refers).
4. Subsequently, on 6 December 2010, Cabinet agreed to appoint an Aquaculture Ministerial Advisory Panel ('the Panel'), chaired by Sir Doug Kidd, with Mark Farnsworth and Justine Inns, to advise on amending the Plan to facilitate aquaculture development within the region (CAB Min (10) 44/1A refers).
5. Between 17 December and 9 February 2011 the Panel, supported by the Aquaculture Unit, consulted on a proposal to create a new 300-ha marine farming zone off Coromandel. Research shows this zone is suitable for the commercialisation of both hapuka and kingfish farming, potentially worth over \$100 million *p.a.* in export revenue.



Figure 1; Map of proposed 300-ha zone

6. The Panel considered the proposed 300-ha zone in a manner consistent with the new regulatory-making power in the Bill. The Panel's report recommends that the zone appears appropriate for fish farming and should be made available for consent applications, as soon as possible. The Panel's report is available at www.fish.govt.nz.

7. This Regulatory Impact Statement will support Cabinet's decision whether to amend the Waikato Regional Coastal Plan to establish a new 300-ha marine farm zone off Coromandel using an SOP to the Bill.

Consultation

8. The analysis in this paper has been informed by:

- The Ministerial Advisory Panel's report and public consultation on the proposed 300-ha zone with iwi, Environment Waikato, District Councils, ENGOs, Coromandel Community Board, the aquaculture industry, commercial fishers, recreational and boating groups, and the general public. 77 submissions were received and 28 people heard at public hearings.
- Targeted engagement with Environment Waikato, Haurkai District Council, Thames-Coromandel District Council on options to amend the Waikato Regional Coastal Plan to provide for the proposed 300-ha zone.
- Engagement with other central government departments. The Ministry for the Environment, the Ministry of Economic Development, the Department of Conservation, Te Puni Kokiri, Treasury, Ministry of Justice, Department of Internal Affairs, Department of Prime Minister and Cabinet, and State Services Commission.

Summary of options and analysis

(One, two, or three ticks/crosses indicate the level of response to objectives and assessment criteria)

Option	Contribution objectives				to Assessment criteria			Risks
	Support economic growth potential	Reduces costs, delays	Promotes investment	Integrated decision-making	Implement and admin simplicity?	Minimises economic	Equitable?	
Create proposed zone								
Create a new 300 ha zone for marine farming in Coromandel	√√√	√√√	√√√	√	√	√	X	Some community opposition due to concerns about central govt intervention into local govt process, environmental effects of finfish farming, and impacts on other users.
Retain prohibition (<i>status quo</i>)	XX X	XX X	XX X	√√	√	XX	√	Likely prevents industry from commercialising hāpuku and/or kingfish in the short to medium-term. Limits industry's ability to develop higher-value species.
Options to amend the Waikato Plan								
Use normal RMA process (option 1)	XX	XX X	X	√√	X	XX X	√	Lengthy process (potentially >5 years with consent process). Costly (min. \$1m) and outcome is uncertain. Will impede commercialisation of new species in the short to medium-term.
EPA (option 2)	X	X	X	√√	X	XX X	√	Costly (\$2m) and no applicant is willing to progress this option due to costs and uncertainty.
Change in Bill (option 3)	√√√	√√√	√√√	√	√√	√√√	X	Requires government intervention in local govt process, reduces public input, removes appeal rights, and limited time for drafting may lead to unintended errors.
Regulatory intervention power (option 4)	√√√	√√	√√√	√	√√	√√√	X	Powers not yet enacted, would delay implementation of proposed zone, and may require additional consultation.

Key problem summary

9. To achieve the Government's and industry's goals for aquaculture, of substantial growth in the medium term, there needs to be a shift into higher-value species. Two species of particular interest and promise are hapuku and kingfish. Government has invested a significant amount of money into researching the viability of these species. Industry now needs an opportunity to commercialise those species (although NIWA has successfully grown both species in a controlled environment, the step to farm-scale husbandry is a significant one). The proposed zone provides this opportunity.

10. Although the Bill removes nationally the prohibition on aquaculture outside of AMAs, the Waikato Plan currently still prohibits new aquaculture space. Before fish farming can begin in the proposed 300-ha zone, the Plan prohibition on new aquaculture needs to be removed. A resource consent is also required before farming can begin.

11. Experience from the current aquaculture law shows the ability of industry or council to progress both a plan change and consent through the normal RMA processes is limited due to the time, high costs and uncertainty involved. Industry can manage to progress a consent application through the RMA, but taking both a consent application and plan change is a serious impediment. No new aquaculture space has been created under the current law.

Objectives

Reforms to support economic growth and potential of aquaculture

12. Aquaculture currently generates approximately NZ\$370 million of sales annually, with two-thirds of these sales generated through exports. This is approximately 20% of the total value of New Zealand seafood production. Aquaculture has significant growth opportunities, particularly in higher-value fish species. The purpose of the aquaculture reforms is to unlock the economic potential of aquaculture and enable the industry to realise its goal of \$1 billion annual sales by 2025.

Overarching policy objectives

Reduce cost, delays and uncertainty with the aquaculture regulatory process

13. The current legislative framework presents serious barriers to industry development. The role of government is to provide an efficient regulatory framework that enables the development of the aquaculture industry.

Promote investment in aquaculture development

14. The government recognises that the 2004 legislation reforms, and the earlier moratorium, have created barriers to aquaculture development. There is a desire to kick-start the industry through implementation of the new aquaculture reforms and promote the national economic benefits of aquaculture.

Enable integrated decision-making

15. Aquaculture development needs to be managed within the broader context of coastal management, which includes robust assessment of environmental impacts, and balancing aquaculture development with other marine interests. Decision-making should maximise net benefits to New Zealand by taking all interests into account and balancing local and national interests.

Regulatory impact analysis – analytical framework

16. The options presented are evaluated with reference to their contribution to the Government's overarching policy objectives, and by applying the following specific assessment criteria:

- implementation quality and administratively simplicity – required legislative change is straightforward; the process is easily understood, involves few steps, and provides timely and robust decision-making
- cost – minimises adverse impacts on economic costs and incentives
- equity – does not disadvantage particular participants or groups eg, existing vs new consent holders

Part A – Options to amend the Plan to create the 300-ha zone

Overview

17. NIWA research indicates the proposed zone is environmentally suitable and provides sufficient capacity to commercialise hāpuku and/or kingfish. To successfully commercialise these two species, industry needs access to sufficient water space to produce between 4000 and 8000 tonnes of fish *p.a.* This zone provides that opportunity.

18. The New Zealand Institute of Economic Research estimates that 8000 tonnes of kingfish would generate export revenues of \$110 million *p.a.* by 2025. 8000 tonnes of hāpuku would create export revenues of \$200 million *p.a.* by 2025. NIWA estimates that this level of fish production would generate more than 900 new full-time jobs.

19. Commercialising a new fish species is expensive - estimated at \$80 to \$100 million - and is likely to take 7 to 10 years to realise a return on capital. It is also risky because of the need to develop new markets, technologies, and infrastructure such as hatcheries. Aquaculture New Zealand advises no single New Zealand company is able to bear the costs and risks of commercialising hapuku. And, that a consortium of aquaculture/seafood companies is ready to invest and apply for the necessary resource consents if government creates this zone. The consortium would likely apply to the Primary Growth Partnership fund for government assistance.

20. While this proposal will provide significant economic opportunities, external factors over which government has little control – primarily market returns and foreign exchange rates – will influence these opportunities in the short and long-term.

Analysis of options to amend the Plan

21. The following table presents the four options to amend the Plan and progress the resource consents. The four options are discussed in more detail in the sections below. The decision on which option to use is a balance between the need for economic development and preserving the existing RMA processes devolved to local government.

22. The analysis includes consideration of the resource consent stage. This is because, before farming can begin within the zone, both a Plan change and consent is required. An understanding of the interactions between the Plan amendment and consent is important in deciding the best option to proceed to create the proposed zone.

Option	Plan Change	Consent	Time for implementation	Estimated cost to applicant	Estimated certainty
1	Normal RMA	Normal RMA	>5 years	min. \$1 million	60%
2	EPA 'call in'	EPA 'call in'	1 to 2 years	\$2 million	70%
3	Change in Bill	Normal RMA or EPA	1 to 2 years (RMA) 1 year (EPA)	\$500k + if appeals	80%
4	Regulation-making power	Normal RMA or EPA	2 years (RMA) 1 year (EPA)	500k + if appeals	80%

23. The Ministry's preferred approach is option 3, as it provides the most certainty of action within a reasonable timeframe and supports Government's aquaculture objectives.

Option 1 - Normal RMA process

24. Option 1 involves taking both the Plan change and consent application through the normal RMA processes. The main benefits of this option are (i) that it avoids central government intervening directly in local government planning processes, (ii) provides better community input, and (iii) retains the rights of community to appeal Plan change decisions. The main concerns with option 1 are that implementing the proposed zone will take considerable time and expense, and the outcome of the Plan change (and the consent) is uncertain.

25. Given the likely costs and timeframe of taking both a plan change and consent through the normal RMA, on top of the high costs to commercialise a new species, industry is unlikely to participate in this process. Experience of the current aquaculture law has shown this to be the case.

Option 2 – Environmental Protection Authority 'calling in' the Plan change

26. Option 2 involves the Plan change (and the consent application) being 'called in' by the Environmental Protection Authority (EPA). The main benefits for this option are (i) that it provides for more public input than amending the Plan through the Bill, (ii) uses an existing law and a process, (iii) provides more certainty of outcome than the normal RMA plan change process, and (iv) is likely to take significantly less time (ie, 1 to 2 years).

27. The main concerns of this option are (i) the cost estimated at \$2 million, (ii) the outcome is less certain than amending the Plan using the Bill (ie, option 3), and (iii) most importantly, there is no applicant willing to progress option 2 primarily due to cost and risk. Aquaculture New Zealand advises that industry is unlikely to progress the zone via the EPA unless government first shows leadership and reduces risks.

Option 3 - Change Plan through the Bill

28. Option 3 involves the Government amending the Plan through an SOP to the Bill. The main benefits are (i) it presents most certainty of fish farming occurring within a reasonable timeframe, (ii) proposed changes are effective on enactment, (iii) low cost, and (iv) best supports Government's objectives for aquaculture.

29. The main concerns are (i) this approach requires central government to intervene in a local government process (ii) reduces public input, which may result in some community opposition, (iii) removes appeal rights on the Plan change, and (iv) given the complexity of coastal plans and the tight timeframe in which to amend the Plan through an SOP to the Bill, there may be unintended drafting errors.

30. Some of the risks of intervening through the Bill are mitigated because Environment Waikato and the local district councils support government intervention. The risk of drafting mistakes to the Plan can also be mitigated by working closely with Environment Waikato on drafting and by establishing an expert panel to review the plan amendments.

31. Even if the Plan is amended through the Bill, a resource consent is still required. The consent could go through the normal RMA process, but the EPA 'calling in' process may provide the most certain outcome within the shortest timeframe. The Aquaculture Unit will work with the successful applicants on this option.

Option 4 – Regulation-making power

32. Option 4 involves the Minister of Aquaculture amending the Plan after enactment of the new aquaculture law using the proposed regulation-making power in the Bill. The cost and benefits of this option are the same as amending the Plan through an SOP to the Bill (ie, option 3) except using this power would delay implementation of the proposed zone to late 2011.

Conclusion

33. Cabinet's desire to facilitate the development of aquaculture in New Zealand is reflected in the Aquaculture Reform Bill.

34. Government's intervention is warranted to establish the proposed 300-ha zone and is best achieved through an SOP to the Bill. Amending the Plan through the Bill presents the most certainty of action occurring within a reasonable timeframe, and supports government's aquaculture objectives.