Regulatory Impact Statement

Aquaculture Legislation Reform Paper 2: Further proposals and report back

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Fisheries. It provides analysis of options on: i) transition to the new law; ii) funding of changes to regional coastal plans and related activities; iii) managing demand for new consent applications, and streamlining the re-consenting processes.

2. The analysis in this paper has been informed by the Aquaculture Technical Advisory Group's report and consultation on that report between 5 November and 16 December 2009. Some targeted engagement has also taken place with Regional Council Chief Executives, regional coastal planners, the Regional Affairs Committee of Local Government New Zealand, and the Chief Executives' Aquaculture Forum. Discussions and briefings have also taken place with fishing industry and other sector interests.

3. Further detailed engagement on options for transition to the new regime has been limited because of the timeframe for policy development, but is scheduled to take place prior to introduction of the Bill. That engagement will further reduce uncertainty about which plan change initiatives provide the most opportunity for aquaculture growth and the appropriate sequencing and implementation of initiatives.

4. Options to fund changes to regional coastal plans have been discussed with industry and were included in the Aquaculture Technical Advisory Group's report. However, detailed analysis of the impact that these options may have on marine farmers is constrained by the lack of information on industry profitability.

5. Analysis of the provisions of the Aquaculture Legislation Amendment Bill (No.2) to be carried forward into the new regime is not included in this RIS. These provisions were assessed by the Ministry for the Environment Regulatory Impact Analysis Reference Panel in 2007.

6. The policy options relating to levies will impose additional costs on businesses. However, the interventions and activities funded by charging are important to help overcome the barriers to development. Excessive charging could create disincentives to invest. Interventions by central and local government, however, could overcome hurdles the industry cannot readily address and therefore support development.

Wayne McNee, Chief Executive, Ministry of Fisheries

[Date] 22/6/10

Regulatory Impact Statement

Aquaculture Legislation Reform Paper 2: Further proposals and report back

Introduction

1. In March and April 2010 Cabinet agreed on a package of proposals to reform the regulatory regime for aquaculture and agreed that drafting instructions be issued to Parliamentary Counsel Office for the drafting of an aquaculture amendment bill.

2. The new regime will better meet the Government's objectives for aquaculture which are: to reduce cost, delays and uncertainty with the aquaculture regulatory process; to promote investment in aquaculture development; and to provide integrated decision-making.

3. The Cabinet papers supporting the March and April decisions and the accompanying Regulatory Impact Statement are available at www.fish.govt.nz.

4. This paper supports a second set of Cabinet decisions. It deals with:

   - Transition of the existing marine farms, outstanding marine farming applications, and coastal planning provisions, to the new law
   - Funding of changes to regional coastal plans and related research
   - Managing high and competing demand for new marine farming applications, and streamlining the process for re-consenting marine farms.

Consultation

5. The analysis in this paper has been informed by the Aquaculture Technical Advisory Group's report and consultation on that report between 5 November and 16 December 2009. That consultation is described in more detail in the March 2010 Regulatory Impact Statement. The Aquaculture Technical Advisory Group's report, the summary of consultation feedback and the March 2010 Regulatory Impact Statement are available at www.fish.govt.nz.

6. Subsequent to the March and April 2010 Cabinet decisions some targeted engagement has taken place with Regional Council Chief Executives, regional coastal planners, the Regional Affairs Committee of Local Government New Zealand, and the Chief Executives' Aquaculture Forum. Discussions and briefings have also taken place with fishing industry and other sector interests.

Summary of Options and Analysis

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

Option	Contribution to Objectives			Assessment			Risks
	Reduce costs, delays and uncertainty	Promote investment	Integrated decision-making	Implement & admin simplicity?	Minimises economic cost?	Equitable?	
Transition of existing marine farms – PAGE 9							
1: Remove deemed AMA status	?	?	?	✔	✔	✔	Industry may incorrectly perceive a loss of certainty over consent renewal
2: Retain deemed AMA status	?	?	?	×	?	×	Will add ongoing complexity to the rules governing aquaculture, with potential for inconsistencies in the management of new and existing farms
Waikato and Tasman interim AMAs – PAGE 10							
1: Allow to be completed under the current law	✔	✔	✔✔✔	✔	?	✔	Further delay resulting from need to complete remaining approval steps including identification of 20% Settlement authorisations and UAE agreements
2: Extinguish interim AMA applications	✔	✔	××	✔	✔	×	Lack of community support due to significant investment in existing Environment Court and planning process. Loss of planning provisions and return to unplanned growth
Pre-moratorium applications – PAGE 11							
1: RMA intervention to expedite decisions	✔	?	×	✔	✔	×	Determination via legislative intervention would over-ride any active review by the Courts
2: Remove consideration of fisheries resources from the UAE test	✔	?	✔	✔	✔	×	Possible inadequate consideration by consent authorities of effects of marine farming on sustainability of fisheries resources
Section 150B(2) 'frozen' applications and the 'Tasman applications' – PAGE 12							
1: Allow to proceed as if lodged on Day One of new regime	✔✔✔	✔✔✔	✔	✔	?	✔	Inability to obtain additional resources required to process applications within statutory timeframes
2: Extinguish by legislation	✔	××	×	✔	×	×	Litigation by applicants in response to early extinguishment. Loss of potential value generated by successful applications
Regional coastal plans: Spatial prohibitions in Waikato and Tasman – PAGE 14							
1: Retain all spatial prohibitions	×××	×××	×	✔	××	✔	Failure to provide development expected from the reforms as limited or no growth opportunities will be provided for development. Councils may opt to not work with government to develop new space via lengthy and expensive plan change process
2: Remove spatial prohibitions through law reforms	✔✔✔	✔✔✔	✔	✔	✔	✔	Risk of unintended consequences. Lack of community support, due to significant investment in existing plans and concerns re. unplanned growth. Possible higher cost to councils due to Environment Court actions
3: Remove spatial prohibitions only on small extensions in Waikato	✔✔	✔✔	✔	✔	✔	×	Risk of unintended consequences; likely community opposition; uncertain outcomes
4: Provide partial removal of prohibitions in Tasman	✔✔	✔✔	✔	✔	✔	×	Likely community opposition due to significant investment in existing plans and concerns re. unplanned growth. Possible higher cost to councils due to Environment Court actions
Regional coastal plans: Spatial prohibitions in Marlborough – PAGE 17							
1: Widen the 'coastal ribbon' zone in Marlborough	✔✔✔	✔✔✔	✔	✔	✔	✔	Possible community opposition due to lack of consideration of all relevant information and community input
Regional coastal plans: Species prohibitions in Waikato and Tasman – PAGE 18							
1: Remove species prohibitions through law reforms	✔✔✔	✔✔✔	✔	✔	✔	✔	Likely community opposition due to lack of consideration of all relevant information and community input
2: Retain the species prohibitions	×××	×××	×	✔	×	×	Councils may opt to not work with government which may result in limited opportunities for new species
Regional coastal plans: Species prohibitions in Marlborough – PAGE 19							

Option	Contribution to Objectives			Assessment			Risks
	Reduce costs, delays and uncertainty	Promote investment	Integrated decision-making	Implement & admin simplicity?	Minimises economic cost?	Equitable?	
1: Remove prohibitions on fin-fish farming in Marlborough	✔✔✔	✔✔✔	✔	✔	✔	✔	Possible community opposition due to lack of consideration of all relevant information and community input
Regional coastal plans: Prohibition on marine farming applications in Auckland – PAGE 20							
1: Allow spatial prohibition in Mahurangi Harbour and Hauraki Gulf to remain	××	××	×	✔	✔	✔	Councils may opt to not work with govt to develop new space via lengthy and expensive plan change process
2: Remove the Mahurangi Harbour and Hauraki Gulf prohibitions	✔✔	✔✔	✔	✔	✔	✔	Risk of unintended consequences; likely community opposition; uncertain outcomes
Funding for regional coastal plan changes and associated research – PAGE 21							
1: Cost recovery (RMA)	✔	✔✔	✔	✔	×	✔	Depending on rate may have material impact on profitability and perverse impacts on development; uncertainty about future rate of charges and other potential charges (eg. occupation charges; settlement)
2: Aquaculture levy (Fisheries Act)	✔✔	✔✔	✔	×	×	✔	As above
3: Appropriation or reprioritisation	✔✔	✔✔	✔	✔	×	✔	Fiscal restraints may lead to no additional allocation being made available. Further reprioritisation likely to compromise delivery of other departmental functions
Managing high and competing demands for space – PAGE 27							
1: Ministerial power to specify allocation tools by regulation	✔✔	?	✔	✔	?	✔	Preparation of detailed regulations will need to be carefully coordinated if they are required upon commencement of the new regime
2: Direct access to allocation tools specified in RMA – or via schedule	✔✔✔	?	✔	×	?	✔	Would require complex procedural provisions for aquaculture to be built into the RMA, although use of Schedule could provide more flexibility if provisions need revision to meet unforeseen circumstances
Streamlining re-consenting of coastal permits – PAGE 28							
1: Cabinet agreed proposal – Constraining information requirements	✔✔	✔✔	×	✔	✔	×	Councils may be more cautious in granting initial consents. More difficult to respond to any changes in environmental factors and/or the regulatory environment
2: Non-notification	✔✔✔	✔✔✔	×	✔	✔	×	As above
3: Presumption in favour of granting consent	✔✔✔	✔✔✔	×	✔	✔	×	As above
4: Restricted discretionary activity status	✔	✔	×	✔	✔	×	As above
5: Additional matters	✔	✔	✔	✔	✔	✔	

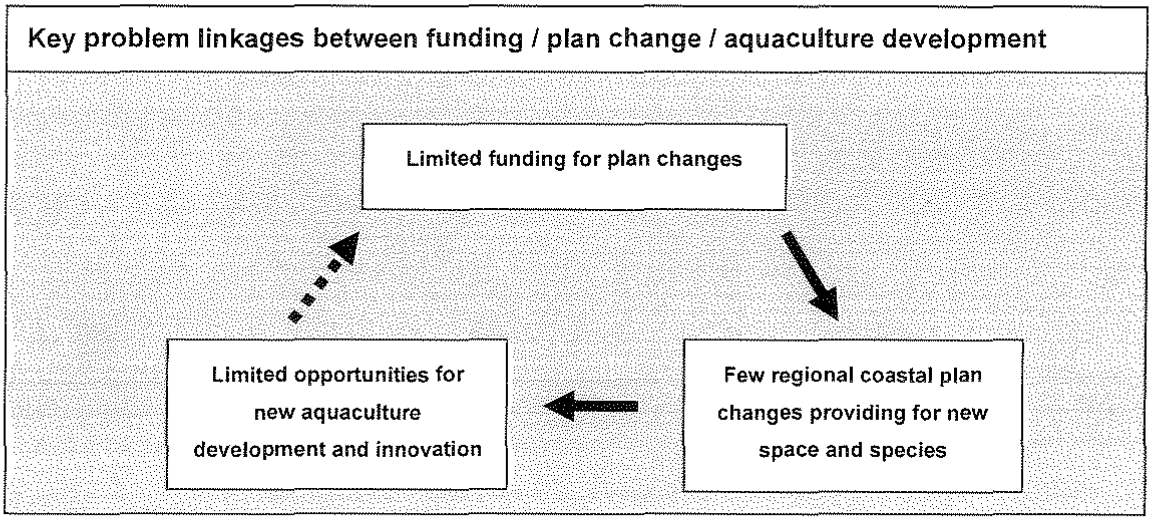
Key problem summary

Overly restrictive, costly and complex planning provisions are preventing development of new areas and higher value species

7. The development expected from the reforms will not occur unless regional coastal plans allow applications to be made for new marine farming space and higher value species. Some of the provisions in regional coastal plans may no longer be required under the new regime and may unnecessarily constrain aquaculture development. The plan change process required to remove unnecessary provisions is costly and takes a long time.

The ability to change regional coastal plans to support aquaculture development is constrained by insufficient funding

8. The plan change process cannot be sped up to support development under current levels of funding. The marine farming industry's contribution to regional government activities that support its sector, including the process to change regional coastal plans, is modest.



Delayed decisions on outstanding consent applications are preventing successful applicants' ability to contribute value

9. There are over 60 outstanding applications made under the old law that need to be concluded so that those applicants who are successful can contribute value under the new regime.

Some regional councils may be unable to access allocation tools quickly enough to manage high and competing demands for new space

10. There is provision in the RMA for regional coastal plans to include allocation tools as an alternative to 'First in First Served'. However, it takes time to incorporate these into regional coastal plans by way of plan changes which means tools may not be available from commencement of the new legislation or immediately available to councils to manage high and/or competing demand for space.

Objectives

Reforms to support economic growth potential of aquaculture

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

Overarching policy objectives

Reduce cost, delays and uncertainty with the aquaculture regulatory process

12. 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

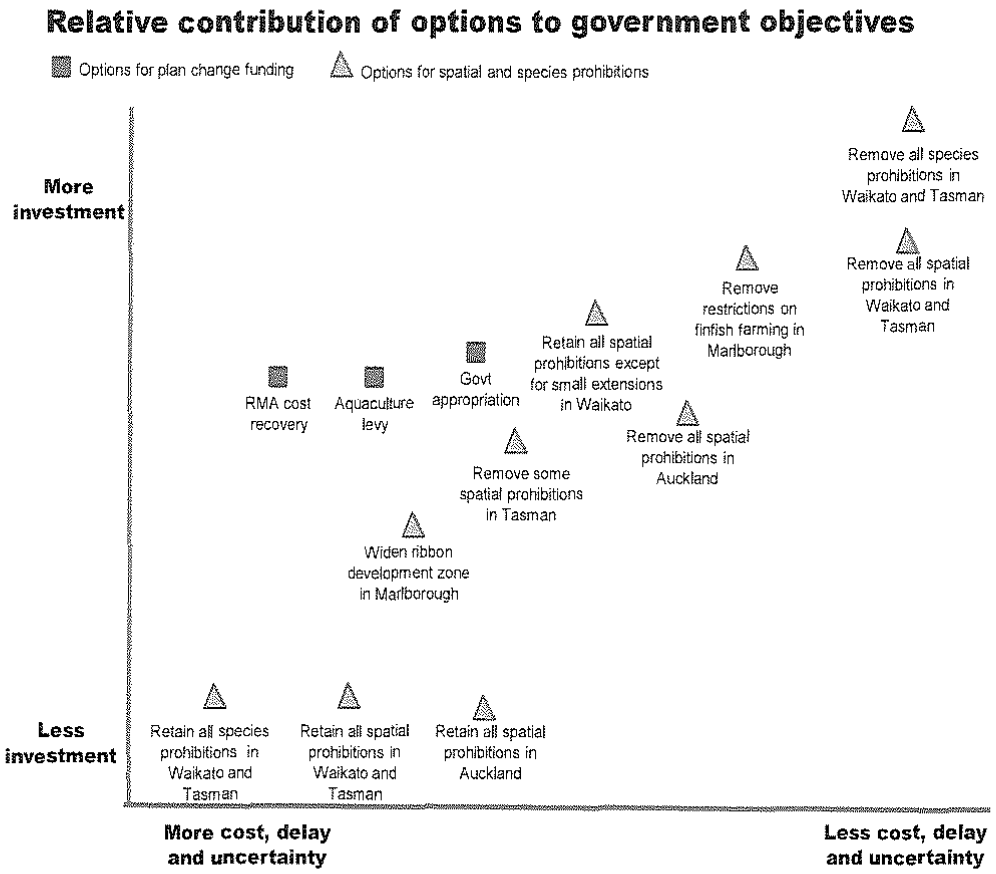
13. The government recognises that the 2004 legislation reforms, and the earlier moratorium, have created active barriers to aquaculture development. There is a desire to kick-start implementation of the new regime and promote the national economic benefits of aquaculture.

Enable integrated decision-making

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

Trade-offs and risks

15. The proposed changes involve important trade-offs and risks. These trade-offs are shown in the diagram below.



16. Those options likely to go furthest in achieving the policy objectives of reducing process delays and uncertainty, and encouraging investment in aquaculture (eg. using legislation to remove all spatial prohibitions) are also the options that involve the greatest change, the most central government intervention in regional council processes, and have the greatest risk of unintended consequences. There are opportunities to mitigate these risks.

17. Conversely, options involving the least change, the least central government intervention, and the least risk of unintended consequences are less likely to result in significant growth in aquaculture.

18. Even if the options most likely to promote growth in aquaculture are chosen, external factors over which the government has little control – primarily market returns and foreign exchange rates – will have a major influence on the rate at which aquaculture develops.

Roadmap of decisions to be taken

Section A - (page 9) Options for transition of existing marine farms and outstanding applications

- Should the 'deemed Aquaculture Management Areas' status of existing marine farms be retained or removed?
- Should the Tasman and Waikato interim Aquaculture Management Area applications be completed under the current regime?
- Should decisions on the pre-moratorium applications be sped up? - By intervening in the RMA? - By removing the requirement for an Undue Adverse Effects test on fisheries?
- Should the 'frozen' applications be left under the current law to extinguish in 2014? - Should they be 'unfrozen' and decided on now under the new regime? - Should they be extinguished now as part of the move to the new law?
- Should the 'Tasman' applications be left under the current law to extinguish in 2019? - Should they be decided on now under the new regime?

Section B - (page 14) Options for transition of regional coastal plans

- Should prohibitions on new applications remain in place in Waikato and Tasman, or be removed?
- Should restrictions remain in place for Waikato but small area extensions be allowed?
- Should existing regional coastal plan prohibitions on growing different species remain in Waikato and Tasman, or be removed by the new law?
- Should some restrictions remain in place for Auckland?
- Should restrictions on fin-fish farming in Marlborough be removed?
- Should the 'coastal ribbon' zone be widened in Marlborough?

Section C - (page 21) Funding for regional coastal plan changes and associated research

- Should a charge be introduced on marine farmers, or should central funds be used?
- How much to charge and who to charge?

Section D – (page 27) Planning and re-consenting

- Is 'First in First Served' sufficient, or do councils need access to a wider range of allocation tools?
- How can regional councils 'pick up' additional allocation tools if they are needed quickly?
- Should there be a presumption in favour of re-consenting for aquaculture activities?
- Should the re-consenting of aquaculture activities be processed on a non-notified basis?
- Should the matters that councils can consider when re-consenting be limited?
- Should the current re-consenting provisions in the RMA apply more generally to re-consenting for aquaculture?

Regulatory impact analysis – analytical framework

19. The options presented below 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 administrative 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.

A: Options for transition of existing marine farms and outstanding applications

Overview

20. A decisive transition to the new law is critical to meeting the Government's overarching policy objectives. In order to unlock economic potential the transitional provisions would need to maintain certainty and speed up decisions on outstanding marine farm applications.

i) Transition of existing marine farms

Deemed AMA status

21. The current law deemed all existing farms (21,636 hectares of existing aquaculture space) to be Aquaculture Management Areas in regional coastal plans to avoid the statutory prohibition on aquaculture outside of Aquaculture Management Areas. These farms began as consent applications and the deeming of the Aquaculture Management Area was only necessary to ensure their continuation under the Aquaculture Management Area model introduced under the 2004 reforms. Under the proposed new law Aquaculture Management Areas will no longer be a prerequisite for the establishment of marine farms.

22. The 2009 Aquaculture Technical Advisory Group report and industry submissions on that report recommended, however, that existing farms retain their Aquaculture Management Area status, because they perceived farms within zones identified for aquaculture in coastal plans to have more certainty of consent renewal and continued occupation than farms not in such zones.

Option 1: Remove deemed Aquaculture Management Areas (AMA) status (Preferred option)

23. Removing the deemed AMA status for existing farms would mean that these farms would revert to being aquaculture consents.

24. The perception that retaining the AMA status for existing farms will provide more certainty of consent renewal and continued occupation is not supported by the law. The disestablishment of deemed AMAs would not affect adversely the legal rights of existing marine farmers.

25. Investment certainty could be increased by strengthening the consent renewal rights for both existing and new marine farms in the new law, beyond that provided for in sections 165ZH and 124B of the RMA. If Cabinet agrees to a strengthened renewal right, it is equitable that this would apply to both new and existing marine farms and would replace the current provisions for existing farms and new farms in sections165ZH and 124B of the RMA.

Option 2: Retain deemed AMA status

26. Since farms established under the new regime will not have AMA status, retaining that status for existing farms would add ongoing complexity to the rules governing aquaculture, with potential for inconsistencies in the management of new and existing farms.

27. The current 2004 law provides existing marine farmers with a priority for any further applications for resource consents in respect of the area of their existing farm (ie, their application will be processed before a competing application by anyone else). This is provided for under sections 165ZH and 124B of the RMA and not the deemed AMA provisions.

ii) Transition of outstanding applications

Tasman and Waikato interim AMA applications

28. There are two interim Aquaculture Management Area applications in Tasman and Waikato lodged under the RMA and section 37 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. Both interim Aquaculture Management Areas lie within the areas zoned for aquaculture in these two regions. Both interim Aquaculture Management Area applications are now at a late stage in the council RMA process and the UAE test has been completed.

29. There are a number of steps to complete before these new areas become operative including the identification of 20% representative space in accordance with the Māori Commercial Aquaculture Claims Settlement Act 2004 (the Settlement Act), the need for aquaculture agreements with commercial fishers in respect to parts of the Tasman interim Aquaculture Management Area, and allocation of resource consents.

Option 1: Allow interim AMAs to be completed under the current law

30. Because they are at a late stage in the process the interim Aquaculture Management Area applications in Tasman and Waikato could be completed under the current law.

31. The main advantages of this option are that it would provide for integrated decision-making, and would build on the extensive planning work already undertaken. The main risk is of potential delays in completing the remaining process steps, which include identifying 20% of AMA space for Settlement authorisations, and negotiating UAE agreements. This could take between 2 to 3 years to complete following enactment of the reforms, and there is limited opportunity to mitigate this risk.

32. The decision on this issue is linked to the decision on spatial prohibitions in Tasman and Waikato (discussed below). If spatial prohibitions are removed it would be inconsistent to allow the interim AMA applications to proceed.

Option 2: Extinguish AMA applications

33. This option would stop the process of creating planning provisions to establish AMAs in coastal plans. The effect of this would be similar to the removal of the spatial prohibitions which is discussed in the next section of this paper below.

34. The main advantages of this option are that it would minimise economic costs by avoiding any delays in completing the interim AMA process. However, it would not promote integrated decision-making and would not recognise the extensive work already undertaken in the interim AMA process.

Pre-moratorium applications

35. There are about 20 outstanding pre-moratorium applications that were notified by councils before the Aquaculture Moratorium on 28 November 2001. Pre-moratorium applications were allowed to proceed under the old regime (ie, the law before the 2004 reforms).

36. The old law provided a dual permit process which required applicants to obtain both a resource consent under the RMA and a marine farming or spat catching permit under the Fisheries Act 1983. This meant the Ministry of Fisheries was required to consider the effects of the proposed activity on both fishing and the sustainability of fisheries resources when carrying out the UAE test.

37. The outstanding applications have progressed slowly because they are particularly contentious and most have involved the Environment Court. Allowing this process to run its course would be at odds with the government's desire to streamline aquaculture planning and consenting.

Option 1: Intervening in the RMA to expedite decisions on these applications

38. This option is not preferred because the majority of these applications are now at a late stage in the RMA process with complex and unique situations. Some of these applications are also before the courts and intervention during the court process would be problematic.

Option 2: Streamlining the UAE test by removing the consideration of fisheries resources for these last applications (Preferred Option)

39. This is the preferred this option because: (i) under the 2004 law and the proposed new law the UAE test only considers effects on fishing; (ii) the Ministry of Fisheries considers that councils will adequately address effects on the sustainability of fisheries resources for these applications through the RMA consideration of environmental effects; and (iii) the Ministry of Fisheries estimates that this option would save each applicant between $5,000 and $10,000 and would speed up completion of the UAE test following RMA decisions.

Section 150B(2) 'frozen' applications and the 'Tasman applications'

40. There are 49 s.150B(2) applications, covering approximately 17,000 hectares of space. These are applications that were received by councils but not notified before the 2001 aquaculture moratorium. The law provides that they were not to be processed or determined until the moratorium had expired. The 2004 aquaculture legislative reform ended the moratorium but at the same time introduced the requirement that aquaculture activities could only take place in AMAs. Therefore, consent authorities must resume processing such applications only if an AMA has been established over them. The law also provides that these applications will be deemed to be cancelled on and from 31 December 2014 if no AMAs are established over them.

41. Since no AMAs have been established over these applications, and none will be established under the new regulatory regime, if no action is taken these applications will remain frozen until 2014 and then be cancelled.

42. Eight applications were lodged in Tasman in 2005 and 2006 due to a loophole in the law which was subsequently fixed in 2009. Rather than deleting these applications, the legislative fix 'froze' these applications and they can only proceed if an AMA is established over them before 2019. All eight applications overlap existing section 150B(2) applications and are within the zones identified for aquaculture in the Tasman coastal plan. The 'Tasman applications' are, in effect, the same as the frozen 150B(2) applications discussed above and should be addressed in the same manner.

Option 1: Deem the 'frozen' applications and 'Tasman applications' to have been lodged on Day One of the new regime (Preferred Option)

43. This would provide opportunity for these applications to be considered. By deeming them as received on the first day of the new law, a more robust statutory process will be available for their assessment than existed pre-moratorium, which will give greater certainty for applicants. For example, councils will (under s.88(3) of the RMA) have stronger powers to reject applications with insufficient information. Councils also will be able to apply their current (rather than pre-moratorium) coastal plans, and may have access to a larger suite of allocation tools to manage overlapping applications. The dates the applications were originally lodged would be preserved under the new law to maintain the order of processing.

44. Waikato and Auckland councils have raised concerns about their capacity to process the frozen applications within RMA timeframes. A number of submissions on the Aquaculture Technical Advisory Group's report from councils and industry noted that transition arrangements would need to be in place so councils have the ability to deal with these applications.

45. Councils can, however, recover application processing costs and contract additional capacity if needed. It would be important that a full analysis is undertaken on any implementation risks, and that central government provide necessary support to regional councils to ensure that they are able to process these applications within statutory timeframes. It will also be important to have early discussions between applicants and councils prior to the applications being progressed.

46. This option also has implementation risks for the Ministry of Fisheries in that a large number of UAE determinations may be required simultaneously. Again, the best way of managing this risk is through preparatory work including discussions to work out which applications will proceed, and what resources will be required. Like councils, the Ministry can recover costs and contract additional capacity if needed.

47. On balance, this is the preferred option. We note also that some frozen applications were subject to additional information requests by councils under section 92 of the RMA before they were frozen. Recent RMA amendments, however, extinguish applications subject to section 92 requests that do not respond within defined timeframes. These amendments unintentionally mean that the frozen applications subject to section 92 requests will be extinguished in August 2010 before the new aquaculture law is enacted. Departments recommend that the new aquaculture law retrospectively reinstates these inadvertently extinguished frozen applications.

Option 2: Legislate to extinguish the 'frozen' applications and 'Tasman applications'

48. An alternative option would be to extinguish the near decade-old frozen applications on the basis that there may now be better aquaculture uses of this space. This option would preclude the implementation difficulties discussed above but has significant drawbacks:

    - Extinguishing the applications would not ensure better aquaculture use of the space
    - Under the current law, applicants expect their applications will be preserved until 2014 and allowed to progress if aquaculture is found to be a suitable use of the space
    - Some applicants spent considerable time and money to lodge their applications and extinguishing them would raise questions of natural justice
    - Although some applications are likely to have been speculative, applications with poor information will be quickly returned by councils, freeing up this space for others to apply. (We do not know how many of these applications have insufficient information because not all have yet been assessed by councils.) Where considerable time and money was spent on developing robust applications, it is likely that those applications would be ready to be processed on Day One of the new regime.

49. There is strong opposition from council and industry submitters on the Aquaculture Technical Advisory Group's report to the idea of extinguishing these applications.

B: Options for transition of regional coastal plans

Overview

50. Bold steps are required to establish a planning environment that is more directly supportive of sustainable aquaculture growth. In order to unlock economic potential the transitional provisions would need to address the very restrictive, costly and complex planning provisions are preventing development of new areas and higher value species.

51. The readiness of each regional coastal plan to receive new marine farm applications upon commencement of the new regime, and possible plan changes to create an environment that is more supportive of development is set out in **Appendix I.**

52. Waikato and Tasman are the two regions with the highest historical demand for aquaculture space, and both councils have undertaken coastal planning specifically to manage aquaculture growth. This has resulted in prohibitions in both regional coastal plans as to where aquaculture can occur and the species that can be grown. A prohibition on new applications is also in place for some parts of the Auckland region.

53. Decisions are yet to be made on whether these changes are best achieved using the law reforms, the normal plan change process, or the proposed regulatory making power.

54. The law reforms will provide an opportunity for aquaculture development, but there will remain a need for an ongoing programme of work with councils to improve coastal plans as industry needs evolve and as new opportunities for aquaculture growth are identified. The aquaculture business unit in the Ministry of Fisheries will lead this ongoing work with councils and changes to plans could be made in future using the proposed regulation-making power or through the normal plan change process. The need for funding for RMA plan changes is discussed in the next section of this paper.

i) Prohibitions on consent applications for new space

Waikato and Tasman

55. The spatial prohibitions in Waikato and Tasman are a compromise between aquaculture growth and the other competing uses of the coast, reached through the development of their coastal plans. The decisions followed extensive public consultation and Environment Court judgments, and were approved by the Minister of Conservation. Councils, communities and stakeholders have invested a significant amount of time and money in developing these plans. The Tasman plan change, for example, took 10 years in the Environment Court process and cost over $10 million.

56. The Auckland, Waikato and Tasman regional coastal plans, however, contain broad spatial and/or species prohibitions and decisions are required on whether to remove all or some of these prohibitions through the law reforms. Most coastal plans would benefit from additional plan provisions to guide aquaculture growth. It is proposed that the aquaculture business unit work with councils to improve their planning for aquaculture.

Option 1: Retain all spatial prohibitions in Waikato and Tasman

57. Under this option, significant long-term growth of aquaculture in Waikato and Tasman (above what is already provided for) would rely on the councils using standard processes to amend plans to allow aquaculture outside current aquaculture zones.

58. Both plans currently provide opportunities for aquaculture growth. In Tasman there are 2,345 hectares of approved space and a further 3,842 hectares potentially available for future development. Although some of this space may be subject to a UAE decision on commercial fishing, the proposed improvements to help aquaculture and commercial fishing interests reach agreement should allow more of this space to be developed. In Waikato there are 903 hectares of approved space and 620 hectares potentially available for future development. Together the provisions contained in these plans have the potential to provide for some growth in both regions. This potential would be further increased if unnecessary prohibitions on the farming of new species were removed.

59. However, long-term growth beyond what is already provided for is unlikely in these two regions as plan changes are expensive and take at least two to five years to complete. Councils may decide not to work with government to develop new space in future and the outcome of a plan change process is uncertain. The main opportunity to mitigate these risks would be for the aquaculture business unit to support councils to make the necessary plan changes and by provision of necessary funding to councils.

60. The aquaculture business unit could work with these councils in future through the plan change process if the space available is fully developed and new space is needed.

    Government, however, would likely need to pay for the costs of a plan change in Tasman due to the high cost involved - estimated at $500k or more if the 'call-in' provisions are used.

61. The main benefits of this option are that it avoids central government intervening directly in local government planning processes; and good spatial planning processes can result in a higher level of community support, reducing instances of subsequent Environment Court challenges on applications. The main costs are that growth is limited to what is already provided for in coastal plans, and the process to provide space for additional long-term growth is likely to take considerable time and be expensive.

Option 2: Remove all spatial prohibitions in Waikato and Tasman

62. This option would provide the potential for significant growth (above what is already provided for inside the current aquaculture zones – discussed above) in both Waikato and Tasman. It would also allow the 150B(2) applications frozen by the moratorium within the currently prohibited areas of Tasman (17 applications covering 6,780 hectares) and Waikato (two applications covering 577 hectares) to proceed.

63. The main benefits of this option are: (i) changes are effective on enactment; (ii) removing prohibitions through the law reforms is less costly than a plan change, and (iii) the outcome is more certain.

64. However, communities and stakeholders have invested in the current plans and will likely oppose unplanned change, and central government intervening in local government planning will be controversial. If, as expected under this option, the number of applications received increases councils will likely face more Environment Court challenges. This will result in higher costs to councils, applicants and others, and slower growth. The unplanned aquaculture growth in these high demand regions would potentially affect other marine users. There is also concern that the complexity of coastal plans and the fact that objectives and policies of the plans are based on an Aquaculture Management Area framework increases the risk of unintended consequences resulting from legislated change. The key opportunity to mitigate the risk of unintended consequences is for the aquaculture business unit and relevant departments to work closely with councils when developing legislation to make these changes.

Option 3: Remove prohibitions only on small extensions in Waikato

65. This option avoids opening both regions to unplanned applications for new space, but does enable constrained aquaculture growth opportunities in Waikato by allowing small extensions to existing farms.

66. Unlike Tasman, where aquaculture occurs in large blocks and there are no small farms, in Waikato there about 60 small farms (2 ha to 22 ha in size), which were deemed to be Aquaculture Management Areas and, as such, are prohibited by the coastal plan from applying for extensions. The Council originally wanted extensions to be a discretionary activity, but extensions were prohibited due to strong opposition from interest groups and communities. It is likely that many of these small farms could expand by a few hectares without impacting environmental limits or existing users.

67. The main benefits of this option are: (i) less community and stakeholder opposition than removing all spatial prohibitions through the law reforms; (ii) communities and stakeholders have some certainty about growth potential because extensions will be constrained to a certain size limit; and (iii) it allows some development opportunities in Waikato while plan changes are being worked through.

68. Concerns include: (i) likely opposition from some groups; (ii) this option still requires central government to intervene in local government planning which will be controversial; (iii) it still requires an expensive, lengthy and uncertain plan change to review the remaining spatial prohibitions in both regions; and (iv) coastal plans are complex and there is a risk of unintended consequences. The main opportunity to mitigate the risk of unintended consequences is for the aquaculture business unit and relevant departments to work closely with councils when developing legislation.

Option 4: Provide for a partial removal of prohibitions in Tasman

69. This option would allow for a limited amount of new marine farming space to be applied for outside of the Tasman interim AMAs. This option would require relaxing the current coastal plan requirement that all aquaculture must be located within a deemed or interim AMA. The Aquaculture Exclusion Zone which prohibits development inshore of the interim AMAs in Golden Bay would also need to be amended to allow applications to be made in that area.

70. The Tasman District Council has taken an adaptive management approach to marine farm development due to uncertainty over the effects of large-scale development, particularly on marine ecosystems. This approach has resulted in a limited amount of development being provided for within the interim AMAs with expansion able to proceed if monitoring from the initial stage of development indicates that the risk of adverse effects is manageable.

71. Providing for development outside of interim AMAs is likely to result in a repetition of the community and fishing industry opposition that has been negotiated over the last ten years through the council and court processes associated with the establishment of the interim AMAs. In order to mitigate this opposition the new development proposed under this option could be limited to between 250 and 500 hectares.

72. A variation on this option would be to continue the requirement to locate marine farming within interim AMAs but allow the areas to be more intensively developed. This could be achieved by relaxing the current constraint on the density of marine farming activity able to be undertaken within the interim AMA, and/or allowing a move to year-round occupation of sites that are currently available only on a seasonal basis. This type of change is likely to require a reassessment of the Ministry of Fisheries UAE test.

Marlborough

Option 1: Widen the 'coastal ribbon' zone in Marlborough

73. The majority of marine farming in Marlborough is located close to shore within Pelorus Sound. Removal of AMAs is likely to see demand for marine farm development being focused within this 'coastal ribbon' with industry generally seeking better value from existing space.

74. The Marlborough Sounds Resource Management Plan treats applications for new marine farms located within the 'coastal ribbon' as 'discretionary' whereas applications made outside of this zone are treated as 'non-complying'. This option would provide for the boundary of the 'coastal ribbon' zone to be widened and more appropriately located at between 100 – 400 metres offshore, as opposed to the current 50 – 200 metres. This would provide an increase in the size of the discretionary zone within which consent applications could be applied for.

75. This option would amend the relevant provisions of the coastal plan via the reform legislation. The risk of possible council and community concerns could be mitigated by working closely with council when identifying the particular provisions to be amended by legislation.

ii) Prohibitions on consent applications for new species

Waikato and Tasman

76. The species prohibitions in Waikato and Tasman are currently preventing opportunities for aquaculture growth within environmental limits. Industry is keen to trial and commercialise new species but cannot. Both Waikato and Tasman are likely to be the key regions for the development of new species because there is a large existing industry and the environmental conditions are suitable for a range of potentially new species. The ability to develop new and higher value species to increase the average production value of all aquaculture space will be important to the future growth of the aquaculture industry.

77. The current species prohibitions in Waikato and Tasman were created due to community opposition to marine farming. They may not be adequately justified or based on information about the effects of different species. For example, in Tasman, farmers can grow mussels, but not oysters, which have similar environmental effects, or seaweeds with lesser environmental effects. The aquaculture industry players involved were mussel farmers who advise they did not want to pay the costs (including Environment Court costs) of seeking permission to apply for authorisation to farm other species. To facilitate the Environment Court process, they agreed to species prohibitions.

78. Both councils and industry support a review of the species prohibitions. Waikato is currently preparing a plan change to remove the prohibitions and enable new species to be farmed in the region subject to environmental limits to be set in the plan. Central government has provided financial support (about $100,000). The plan change, however, has not yet been publicly notified and at best would not be effective until the end of 2011, and longer if decisions are challenged to the Environment Court.

79.

Option 1: Remove species prohibitions in Waikato and Tasman through the law reforms

80. This option recognises industry is keen to trial and commercialise new species in Waikato and Tasman. The importance of developing new species to the future growth of the aquaculture industry may warrant central government intervening in the Waikato and Tasman coastal plans to remove the species prohibitions.

81. Under this option the farming of new species will still be a discretionary activity and applicants will need to apply for a resource consent (normally publicly notified) and show that the environmental effects are acceptable.

82. The main benefits of this option are: (i) changes are effective on enactment; (ii) removing prohibitions through the law reforms is less costly than through a plan change; and (iii) the outcome is more certain.

83. Concerns include: (i) likely opposition from some groups, but less than the opposition to removing the spatial prohibitions. Opposition would most likely focus on fin-fish farming, even though in New Zealand this farming method has a good environmental track record relative to farming practices used overseas; (ii) this option still requires central government to intervene in local government planning; and (iii) coastal plans are complex. The main opportunity to mitigate the risk of unintended consequences is for the aquaculture business unit and relevant departments to work closely with councils when developing legislation.

Option 2: Retain the species prohibitions

84. Under this option the aquaculture business unit would work with the Waikato and Tasman councils to review the species prohibitions through the plan change process. This would avoid central government intervening in local government process, but would mean new species could not be developed in these key regions for a number of years.

85. The main benefits of this option are: (i) less stakeholder opposition than intervening through the law reforms; (ii) planning for new species may result in better management of cumulative environmental effects through setting of environmental limits; and (iii) it avoids central government intervening in local government planning processes.

86. The main concerns are: (i) Waikato has a plan change underway but a plan change in Tasman could cost $500,000 or more and there is currently no funding allocated for operational aquaculture projects, including government-led plan changes; (ii) a plan change would take two to five years, during which period new species could not be developed in these regions; (iii) councils may decide not to work with government to allow new species in future; and (iv) because the outcome of a plan change is uncertain, only limited opportunities for new species may be provided. The main opportunity to mitigate these risks would be for the aquaculture business unit to support councils to make the necessary plan changes and by provision of necessary funding to councils.

Marlborough

Option 1: Remove prohibitions on fin-fish farming in Marlborough

87. This option would increase the amount of surface area available for fin-fish farming in the Marlborough Sounds from the current 5 hectares to between 15 – 20 hectares and allow for a shift towards the production of higher value species such as salmon. Salmon farming currently produces over 7,000 tonnes per annum and is worth around $100 million per year. Industry has estimated that this value could be doubled within three years and increased to $500 million if the additional surface water space proposed above was provided through the reforms.

88. This option would amend the relevant provisions of the coastal plan via the reform legislation. The risk of possible council and community concerns over the compatibility of fin-fish farming with other uses and values of the area could be mitigated by working closely with council when identifying the particular provisions to be amended by legislation.

iii) Prohibition on marine farming applications in Auckland

90. Under the proposed Auckland Regional Coastal Plan aquaculture activities outside Aquaculture Management Areas are identified as prohibited activities. However, applications for aquaculture activities are able to be made while this rule is not operative. This means that under the new law applications will be able to be made for aquaculture activities in most of the Auckland coastal marine area. Interest is likely to be particularly high in the Firth of Thames, Kaipara Harbour and also potentially at Great Barrier Island.

91. Applications for marine farming will not, however, be able to be made in some parts of the Mahurangi Harbour and Hauraki Gulf. This is because in these areas marine farming is a prohibited activity in the Auckland Transitional Regional Coastal Plan. That is an operative plan so the prohibited activity status has effect. These rules are transitional and will cease to have effect when a new regional coastal plan covering aquaculture becomes operative.

Option 1: Allow the Mahurangi Harbour and Hauraki Gulf prohibitions to remain

92. This option maintains the status quo and recognises that there is significant competition in the Auckland region for the use of coastal space and the council may prefer to undertake a plan change to guide future aquaculture growth. However, a plan change could take at least two to five years over which period aquaculture cannot grow. Given recent changes to the governance of Auckland, a plan change process for aquaculture may not be priority for the new council.

93. The main benefits of this option are: (i) less stakeholder opposition than intervening through the law reforms; (ii) it allows the council time to establish a plan to guide future growth and council decisions; and (iii) without a plan to guide aquaculture growth, any applications lodged are likely to be challenged and subject to lengthy Environment Court cases.

Option 2: Remove the Mahurangi Harbour and Hauraki Gulf prohibitions

94. This option recognises that opportunities for aquaculture growth in Auckland exist and should not be delayed while the council undertakes additional planning. It is likely, however, that there will be opposition from some groups to unplanned aquaculture growth in the region.

95. The main benefits of this option are that it allows applications for new aquaculture space in all areas of the Auckland region to be lodged on Day One of the new law. However, there is strong opposition from some groups and there are risks of unplanned aquaculture development in this high competition region. Given the high degree of competition between coastal users, without a plan to guide aquaculture growth and council decisions, applications are likely to be challenged and subject to lengthy Environment Court cases. Coastal plans are complex and there is a risk of unintended consequences if the prohibitions are removed by legislation. The risk of possible council and community concerns over removing all spatial prohibitions could be mitigated by working closely with council when identifying the particular provisions to be amended by legislation.

C: Funding for regional coastal plan changes and associated research

Overview

96. The development expected from the aquaculture reforms will not occur unless regional coastal plan provisions that unnecessarily constrain development are addressed and applications can be made for new marine farming space and higher value species. An outline of plan readiness to support sustainable aquaculture growth and areas where significant change is required to meet reform objectives is provided as **Appendix I**.

97. Further engagement with regional councils is required to reduce uncertainty about which plan change initiatives provide most opportunity for aquaculture growth, the appropriate sequencing of initiatives, and how to minimise the risk of unintended consequences.

98. Previous work resourced by the Aquaculture Planning Fund has delivered benefits to aquaculture development through supporting a variety of projects, policy development and assessments. The outcomes have been supported by stakeholders, but their benefits to date have been compromised by the disincentives and constraints created by the current law. In combination with an improved regulatory regime, targeted support and intervention by central and local government should build momentum, addressing Ministers' direction that reforms go beyond merely addressing problems to actively promoting aquaculture development.

99. Based on assumptions about what can be achieved legislatively in the transition, a preliminary estimate is that an additional annually will be needed over the next five years for work with local government to address issues with regional coastal plans and related activities. These estimates are based on a preferred approach of targeted plan changes of modest scale, achieved through a cooperative process with regional councils. However, some plan changes may generate controversy, and therefore the potential for appeal and litigation. To achieve the change in these circumstances would involve substantially greater cost and longer timeframes. The estimated additional funding would include some provision for government-initiated plan changes.

100. The proposed fund would not be used for aquaculture business unit activities which include some core central government policy and advice functions. There is baseline funding for the cost of operating the Unit made up of reprioritisation from the Ministry of Fisheries and transfer from funds previously administered by the Ministry for the Environment - $6.3 million total in first four years and $1.8 million annually in out years.

101. Submitters on the Aquaculture Technical Advisory Group's proposals supported continuing current cost recovery, and some qualified support for introducing a modest occupation charge. But industry and iwi submitters wanted more work to address concerns regarding the purpose, quantum, and use of such a charge. Commercial submitters cautioned that rents should not be confused with funding mechanisms. It was suggested use of rates should be explored, and that Treaty issues were likely to arise with new charging options.

102. There was support for ongoing government resourcing of the Aquaculture Planning Fund which supports planning by councils. Industry expressed concern that levying existing marine farmers may mean they fund new marine farm developments that are potentially their competitors. Councils supported the implementation of occupation charging and wanted to ensure that sufficient funds are generated to fund planning and management. In recent discussion, industry seemed supportive of a two tier levy comprising occupation charging, and recovery to support improved planning to provide for aquaculture in a region.

103. There remains a risk that significant growth in aquaculture will not occur despite establishment of a fund to support councils to remove barriers to growth. This is because of factors such as unfavourable market returns and exchange rates, restricted access to investment capital, and an unwillingness or lack of capacity and expertise on the part of regional councils. There is little opportunity to mitigate risks from external factors but the aquaculture business unit can work closely with councils to identify and address council-related barriers to aquaculture development through provision of expertise and funding. There is also a risk that investment in aquaculture will be discouraged if the levies on marine farmers impact significantly on profitability.

Options to obtain required funding

Option 1: Additional recovery under section 36 of the RMA

104. The costs of Council-initiated plan changes and research to support planning could be recovered from coastal permits holders to the extent that benefits are obtained by those persons, rather than for example, the community as a whole. It would be problematic to apportion (and recover) costs across all the beneficiaries of such planning. Cost recovery provisions require a direct relationship between charges and the activities they fund. These factors make a cost recovery option contentious and administratively burdensome. Councils could also recover costs of some planning (eg. for new space) by tender – but the revenue generated may not cover costs.

105. The key issue with relying on the revenue that councils could obtain through cost recovery is that this approach would not allow for the same involvement and direction from central government that could be achieved by the administration of funds by the aquaculture business unit.

Option 2: Aquaculture levy

106. This option would amend the Fisheries Act 1996 to create a new regulation-making power to enable the levying of marine farm coastal permit holders on the basis of the area of their costal permit. The provisions would outline the purposes for which the funds would be utilised. There would need to be consultation on the levy prior to the Order-in-Council process to set or amend the levy.

107. Experience with cost recovery would suggest that the operation of such a regime will be contentious. Industry will seek to minimise cost, influence the use of funds, and demand transparency and documentation of activities. These are not unjustified concerns, and would create incentives for efficiency and cost control, but will result in increased complexity in operating the regime.

108. The aquaculture levy could be set nationally and administered by the aquaculture business unit. Resources could be applied to regions and initiatives with the greatest economic potential, with the key work areas relating to planning, research and related services to enable aquaculture development. Based on initial planning, around 80% of the revenue would be used to assist regional councils to initiate specific regional coastal plan changes. This would help address the remaining issue of the poor incentives local government to be proactive due to lack of resources and local opposition to using available funds to benefit a particular sector.

109. Marine farmers could be charged in different ways including a levy per marine farm coastal permit, or by value or volume of farm production, or by area of marine farms. Apportioning costs on the basis of marine farm permits would disproportionately impact on small marine farms. Obtaining good information on the value of production from farms would be difficult, and such an approach would disadvantage profitable operators. Since the costs of plan changes that would be funded by the levy relate primarily to the amount of space used for aquaculture it is appropriate that the levies are charged on an area basis to coastal permit holders. It will be necessary to consider the transaction costs of recovering levies at the time of implementation.

110. If all costs were apportioned equally across usable space nationally – a single tier levy – the levy could be about $75 per hectare annually. However, in this scenario permit holders in some regions would be paying for plan changes for which they received no benefit.

111. Instead, it is proposed that the levy is applied in two tiers:

- Tier 1: levy paid by all coastal permits nationally to support generic work to improve regional coastal plans. Based on the projected generic work, the Tier 1 levy could be around $10-15 per hectare for all marine farms, and

- Tier 2: levy paid by permit holders in a region who will benefit from the plan changes and research. The amount will depend on the nature of the work undertaken in particular regions - initial work on the changes necessary suggests this could be of up to an additional $600 per hectare (assuming the levy is spread over five years).

112. The level of the tier 2 levy would vary between marine farms. Some tier 2 levy funded work is proposed in most regions, but the nature and extent of that work and therefore the levy for permit holders in different regions is not known at this time. Some plan changes that benefit all permit holders in a region (eg. removal of species prohibitions) could be apportioned across all permit holders in that region. This approach would align with industry's view that levies should be spent in the areas in which it is collected.

113. Plan changes that produce new space could be charged to those who occupy the new space. Based on the estimated cost of creating new aquaculture space, that could require a levy on those permit holders of up to $600 per hectare. This approach would ensure that existing marine farmers would not be subsidising their competitors, however, it would also impose relatively high annual levy charges on particular permit holders.

114. Because of the time taken to create new space through plan changes, there will be a delay in being able to charge the eventual occupants. This could be addressed through recovering more of costs from a broad levy on other coastal permits, or through obtaining an appropriation, and then subsequently recovering the funds by levying coastal permit holders who benefit from particular plan changes.

Impacts on marine farmers

115. These proposed charges, whether recovered through a levy or cost recovery, would affect the profitability of aquaculture and potentially affect incentives for, and the extent of aquaculture development. The impacts of this proposal on marine farmers are analysed assuming marine farmers are required to fund regional coastal plan changes and related activities to support aquaculture development based on the estimated annual tier 1 and tier 2 levies.

116. Information on the profitability of marine farms to assess the effect of levies of different levels is not available. The proposed aquaculture development levy is analysed in three ways; (i) by comparison with the value of marine farms, (ii) by comparison with mussel production value, and (iii) by comparison with some of the annual government and industry costs associated with operating a marine farm.

Value of marine farms

Value of mussel production

Industry and other levies

120. Potential tier 1 and tier 2 levies per hectare can also be compared with the $11.52 per tonne annual levies paid by mussel farmers to SeaFIC and AQNZ under the Commodity Levies Act ($2.73 per tonne and $8.79 per tonne respectively). Based on estimated mussel production rates, the commodity levies are the equivalent of $434 per hectare in Marlborough and $606 per hectare in the Coromandel.

121. Potential tier 1 and tier 2 levies per hectare can also be compared with the average $500 per hectare paid by shellfish farmers to New Zealand Food Safety Authority for monitoring of approved shellfish growing areas ($250 – $1,000 per hectare).

Affordability

122. There is a risk that charges may make marine farming unprofitable. The expected net return for marine farmers is unlikely to be more than 10% of value of production annually, and could be markedly less for some operators and some areas. The mussel industry in particular has been marginally economic in recent years. Any charge of more than 1% of annual value of production is likely to have a material impact on profitability. Charges may also create incentives for marine farmers to divert to other types of marine farming in order to obtain the highest value use of space.

123. At the time of implementation of the levy, specific consideration could be given to the effects on profitability and consequential impacts on development. This could be achieved by establishing a maximum level of levy applicable to types of farming. The consequence of such an approach could be the need to obtain revenue from other sources (eg. new appropriation), or to adjust the plan interventions and sequence of interventions to match the revenue it is sustainable to obtain from the sector. Because plan changes are expensive, this approach may limit the ability to undertake beneficial plan changes.

124. Industry will have difficulty with the uncertainty about amount of future levy, and will likely contest the level of charges (as well as raising concerns that additional costs may impede development).

Equity issues

125. If additional charges are applied just to aquaculture, and not other uses, whether through rates on coastal permits, an aquaculture levy, or occupation charging, equity issues will arise relative to those other uses, and investment incentives for aquaculture are likely to be affected. However, other sectors do face some of the costs of management from which they benefit. For instance the fishing sector faces costs of research, compliance and observers, and revenue collected from road users helps fund transport planning and research.

126. Planning and information management relating to aquaculture would provide some indirect benefit to, or provide for other interests and users of coastal space, as well as the consideration of protecting the environment. New aquaculture development would also bring wider benefits through employment and downstream economic activity. However, the plan changes under consideration are substantively to provide a more enabling environment for aquaculture. Aquaculture does benefit from other council activities, such as the provision of infrastructure.

Option 3: Government appropriation or reprioritisation

127. An alternative to recovering funds from marine farmers is that the Ministry of Fisheries could seek an appropriation from government to fund activities important to support aquaculture management and development. This option would be administratively simple.

128. The Government has signalled then need for fiscal restraint in the current economic circumstances. This means any additional appropriation will be considered carefully. The Ministry has already reprioritised between $700,000 and $1.1m per annum of its operational funding to support the functions of the aquaculture business unit in the first four years, and further reprioritisation would compromise the Ministry's ability to deliver its other functions.

129. This option would clearly minimise cost imposition on industry and avoid disincentives for investment that charging could cause. Seeking an additional appropriation, essentially taxpayer funding, would, however, not acknowledge that marine farmers should meet some of the costs of management of, and provision for, aquaculture development. Marine farmers will already benefit from the activities undertaken by the aquaculture business unit which will be entirely funded by appropriation.

130. A variation on this option would be to obtain contributions from other Government agencies with a role in the management of aquaculture. In the past, those agencies have noted that their statutory functions in respect of aquaculture are largely ongoing and a contribution would therefore impact on their ability to deliver current services.

131. A decision to fund the changes needed to amend regional coastal plans and related activities to support aquaculture development will need to compare the benefits of those activities, outlined elsewhere in this paper, with the benefits from use of these funds elsewhere by government.

Excluded options

132. Detail on the options that have been excluded from this analysis is provided in **Appendix II**.

D: Planning and re-consenting

Overview

133. Under the proposed new law Aquaculture Management Areas will no longer be a prerequisite for the establishment of marine farms and new space will allocated using a consent-based approach (as existed prior to the 2004 reforms).

134. If the prohibitions currently in place on applications for new space and species are removed (as discussed in Section A above), then some regional councils may receive numerous, and possibly competing, consent applications.

135. As part of the second round of reform decisions, Cabinet has asked for a report back on detailed proposals on allocation tools for managing high and/or competing demand in the coastal marine area.

136. Cabinet has also asked for a report back on ways in which discretion for decision-making on coastal consents could be altered to provide for a more streamlined re-consenting process, including the viability of creating a default 'restricted discretionary' status for applications for the continuation of existing consented aquaculture activities.

i) Managing high and competing demand for new space

137. Under the new regime consent applications will be considered on a 'First in First Served' basis. The First in First Served approach does not enable councils to compare the merits of applications competing for the same space. Nor does it provide for a controlled, strategic or integrated way of managing activities in the Coastal Marine Area. Councils may also lack the capacity to process applications within statutory time limits.

138. In light of the Government's objective of providing an efficient regulatory framework and reducing costs, delays and uncertainty, Cabinet has already agreed to enable councils to select from a range of allocation tools for managing high and/or competing demand in the coastal marine area without needing to write them into regional coastal plans.

139. Cabinet has also agreed to enable councils to request from the Minister a suspension of receipt of applications in exceptional circumstances of unforeseen and/or significant demand where allocation tools otherwise available are inadequate.

140. Those who submitted on the Aquaculture Technical Advisory Group's proposals generally supported providing councils with the ability to manage demand by using allocation mechanisms other than First in First Served. Submissions from regional councils indicated that councils in the main would like to be able to access allocation tools other than First in First Served, if required.

141. Two workshops were held with regional coastal planners in December 2009 and March 2010. These workshops highlighted the significant variation across regions as to how aquaculture is treated in councils' regional coastal plans, and the ability of these plans to deal with high and competing demand for space for aquaculture.

Option 1: Ministerial power to specify allocation tools by regulation

142. Under this option the RMA would be amended to create a power enabling the Minister of Conservation (in consultation with the Minister of Fisheries and Aquaculture and the Minister for the Environment) to specify the detail of tools that councils can access for the purpose of allocating the right to apply for resource consents in the Coastal Marine Area, without needing to write them into regional coastal plans. The detail on processes would be provided in regulations, a National Environment Standard, or other appropriate vehicle.

143. The advantage of this option is the greater flexibility the process presents compared to amending legislation. However, it will be challenging to specify allocation tools in time for commencement of the new law. This risk could be mitigated if Ministry of Fisheries officials – together with other agencies, as appropriate – consult with regional councils as to what allocation tools they consider would be useful to access and what processes and detail would be needed in regulations to make this option workable.

Option 2: Direct access to allocation tools specified in RMA

144. This option would detail in the RMA the process whereby councils could access allocation tools without the need to write them into their regional coastal plans. The legislation would also specify the detail of the allocation tools themselves. The detail of these processes and allocation tool provisions has not yet been worked out.

145. The benefits of this option are that the processes would be spelled out for councils and could be picked up without needing to apply the plan change process. This would save councils time and administrative costs. It would also provide greater certainty to both councils and applicants as the available processes would be known up front. Specifying the detail of allocation tools in legislation would ensure that submitters were able to provide input via the Select Committee process.

146. However, there are disadvantages to this approach. The RMA is not designed well for public resource allocation and providing for the processes to access and apply allocation tools would require complex procedural provisions to be built into the RMA. Placing such detail in the RMA would be complex and a less flexible option. Some flexibility could be achieved by placing the detail of the tools in a Schedule to the RMA. Schedules can be changed via an Order-in-Council.

ii) Streamlining re-consenting of coastal permits

147. The Aquaculture Technical Advisory Group recommended measures to encourage investment in aquaculture through enhancing coastal permits for aquaculture.: (i) renewal as a controlled activity, (ii) evergreen consents, and (iii) simplifying the renewal process.

148. Controlled activity status has been discounted as it would mean a renewal application could not be declined and would create an expectation of rights of occupation in perpetuity. Applicants can already adopt an evergreen consents approach, under which there is an opportunity to review consent conditions and renew a consent mid-term.

149. In respect of simplifying the renewal process, Cabinet has already agreed:

- to create a simplified, streamlined process for re-consenting aquaculture activities that constrains information requirements where the applicant is seeking a consent for the same activity previously consented, and
- that consent authorities would be required to apply this re-consenting process unless it is necessary that they consider information on wider resource management issues to ensure that granting the renewal would not adversely affect a part of the Coastal Marine Area already under pressure.

150. Cabinet has asked Ministers to report back on:

- ways in which the consent authority's discretion for decision-making could be altered to provide for a more streamlined re-consenting process
- the viability of creating a default "restricted discretionary" status for applications for the continuation of existing consented aquaculture activities.

151. In addition councils must give priority to processing applications to re-consent existing aquaculture activities and must consider additional matters if:

- the council receives an aquaculture application from someone other than the current consent-holder,
- the application is for the same space or resource, and
- the application to re-consent has been received within three to six months of expiry of the current permit.

152. The additional matters (RMA sections 165ZJ and 104(2A)) that councils must currently consider are:

- Compliance with the relevant regional coastal plan
- Compliance with resource consent conditions
- Use of industry good practice
- The value of the investment of the existing consent holder.

153. Existing consent holders can adopt an 'evergreen' consenting approach whereby applicants can apply to the council to have their consent conditions reviewed and to renew the consent at mid-term or earlier. Under the status quo if applicants choose to adopt this approach councils would not be required to consider the additional matters outlined above.

154. The evidence base surrounding current re-consenting practice for aquaculture is limited. Aquaculture is a young industry and the number of marine farms that have reached the end of their original consent term and sought a re-consent is small. Institutional knowledge amongst officials together with discussions with regional councils indicates that of the re-consent applications received by councils to date, very few have been declined. Perceived certainty of tenure beyond the initial consent term may, however, influence the decisions of potential new industry participants and investors.

155. The Ministry for the Environment is leading work as part of the RMA Phase II reforms that will include consideration of the need to reform the re-consenting process for resource consents more generally (not limited to aquaculture). There will be an opportunity to consider the need for further changes in respect of aquaculture re-consenting at a later date depending on the outcome of that review.

156. Submissions on the Aquaculture Technical Advisory Group proposals were mixed with respect to consent renewal proposals:

- Local government considers that requirements to provide information in support of a renewal application should be commensurate with the scale and the significance of effects
- Environmental groups and local government consider that it is important that councils retain the ability to manage unanticipated significant adverse events via conditions and the ability to decline the consent
- Industry submitters support consent renewals having controlled activity status as it is seen as increasing the bankability of consents and increasing investment certainty.

157. Re-consenting was discussed with regional coastal planners at workshops in December 2009 and March 2010 and the Aquaculture Chief Executive Officers Forum in May 2010. The position of local government was reinforced at these meetings.

Option 1: Cabinet Agreed Proposal – constraining information requirements

158. This proposal will achieve unspecified time and cost savings for both the applicant and the council. There may also be some increase in certainty that the council will renew a consent. If the council determines that only the constrained information requirements apply and there is no need to consider information or wider resource management issues then, by implication, it has determined that the effects of the existing activity are not significant.

Option 2: Non-notification

159. This option would provide for the renewal of existing aquaculture consents to be processed on a non-notified basis. The length of time to obtain a resource consent is significantly influenced by whether an application is notified. Time and costs savings are therefore achieved if an application is processed on a non-notified basis.

160. Councils currently have discretion whether or not to notify a consent application but must notify an application when it considers that the effects will be more than minor. Conversely, a council must not publicly notify a consent application if a rule in a plan or national environmental standard precludes public notification of the application.

161. The RMA does not currently provide for non-notification of particular activities. This is a matter for individual regional coastal plans. Cabinet agreed in March [refer to CAB Min (10) 9/2] to three overarching objectives for the reform, including that aquaculture management is integrated with other activities managed under the RMA. Providing in legislation for non-notification of consent renewals for aquaculture would be inconsistent with the integration objective by elevating its status above other activities in the Coastal Marine Area.

Option 3: Presumption in favour of granting consent

162. This option would provide that in specified circumstances councils would be expected to approve the renewal of existing aquaculture consents. A presumption would need to specify the circumstances in which it would apply; for example it could specify the type of aquaculture activities it would apply to.

163. The advantages of this option are that it would achieve time and cost savings and increase the certainty that existing aquaculture consents are renewed where the activity remains the same.

164. This would, in effect, be the same as giving re-consenting of aquaculture the status of a controlled activity (that is, council must grant consent) and would effectively grant a perpetual right of renewal.

Option 4: Restricted discretionary activity status

165. The RMA provides that aquaculture cannot be a permitted activity; the consent status is specified in the plan. Where a plan is not specific, then the activity defaults to a discretionary activity status. Government could provide that the renewal of aquaculture consents has a default status of 'restricted discretionary' unless the regional coastal plan presents a lower barrier to renewal; i.e., a controlled activity status.

166. Under this option the matters that a council is to address in the re-consenting process would be constrained, providing applicants greater certainty about the matters council would consider in its decision-making. For example, consent authorities could be limited to considering those matters already agreed by Cabinet regarding information requirements for re-consenting. These could be applied nationally. Further constraints on a council's discretion could be provided for in individual regional coastal plans.

167. A related option would be to amend provisions in the RMA that set out the matters consent authorities are required to have regard to when considering an application for resource consent.

168. These options would be difficult to achieve at a national level as regional coastal plan provisions vary significantly across the country in response to distinct environments, communities and the level of existing and likely aquaculture development.

169. Constraining the consent authority's discretion is unlikely to affect timeframes for decision-making but would create more certainty as to outcome by defining what the consent authority can consider in assessing applications.

Option 5: Additional matters (Preferred Option)

170. This option expands the existing re-consenting regime to require that consent authorities consider the track record of existing aquaculture consent holders and the investment made by them (in addition to relevant matters under the RMA) when assessing applications to re-consent irrespective of whether a competing application (whether for aquaculture or another activity) has been received. This will ensure greater recognition of an incumbent's demonstrated conduct in exercising their resource consent.

171. Industry has raised concerns about the consideration that councils must give to use of industry good practice. The meaning of what constitutes industry good practice is unclear and can create uncertainty. The aquaculture industry is a relatively young industry and needs to be able to respond to new innovations in carrying out its activities. It may not be appropriate to retain this requirement for aquaculture.

Conclusion

172. Cabinet's decision to constrain information requirements for aquaculture consent renewals will achieve time and cost savings by industry and councils. Any of the options outlined above would achieve further time and costs savings. Option 3 would have the greatest impact on certainty of consent being granted. All other options would achieve some increased level of certainty.

173. However there are risks in pursuing options 2, 3 and 4:

- they would set a precedent for other activities in the coastal marine area
- a further constrained re-consenting regime could result in councils being more cautious in granting first consents
- they could make it more difficult to respond to any changes in environmental factors and/or the regulatory environment
- potential for inconsistencies within regional coastal plans.

174. Option 5 is preferred as it builds on the status quo with councils remaining able to respond to any changes in environmental factors and the regulatory environment while being required to consider track record of existing consent holder.

175. In addition we recommend that the aquaculture business unit:

- Develops information material and guidance on re-consenting, including the opportunity for 'evergreen' consenting, to inform councils, the aquaculture industry and the investment sector, and

- Works with councils to streamline re-consenting processes where possible in the context of their existing regional coastal plans

Appendix I Summary of plan readiness

Council	Consents able to be received on commencement?	Plan allows for good effects assessment?	Able to deal with high and competing demand?	Scale of change required and cost	Type of change
Northland	Yes – in most of CMA	Yes	Yes	Small	Optimise: withdrawal of Plan Change 4 rules
Auckland	West Coast – yes Hauraki Gulf – unclear	Limited	No	Medium	Exemption Govt plan change Update restricted areas Rescind gazette notices Remove variations
Waikato	Limited areas and for limited types	Yes	Yes	Large	Remove/amend location prohibitions Review species restrictions
Bay of Plenty	Yes – in most of CMA	Yes, but improvement needed	N/A	Small	Specify info requirements Review prohibited areas Plan change
Gisborne	Yes	Yes	N/A	Small	Update information requirements
Hawke Bay	Yes	Yes	N/A	Small	Resolve proposed plan prohibition
Tasman	Limited areas and for limited types	Yes	Yes	Large	Review species restriction Insert interim AMAs Remove Aquaculture exclusion area
Nelson	Yes	Yes	N/A	Small	Plan change to update
Marlborough	Yes – in CMZ2	Yes	Yes	Medium	Refine CMZ2 Review CMZ1 prohibitions Relocate 'Coastal Ribbon'
Canterbury	Yes	Yes, but improvement needed	Yes	Small	Identify prohibited areas Aquaculture strategy
Southland	Yes	Yes, but improvement needed	Yes	Small	Update info requirements Plan change Big Glory Bay Zone

Appendix II Detail for exclusion of options for funding regional coastal plan changes

Occupation charges

176. Ministers have considered the need for occupation charging to obtain a return from commercial use of coastal space and create incentives for efficient use.

177. Under current statutory provisions, occupation charges under s64A of the RMA would deliver revenue to local government, in part fulfilling the objective to obtain revenue for government activities and interventions.

178.

179. For reasons, including those noted above, Ministers propose that decisions on occupation charging would be best considered at a later date, across all uses and activities, in the context of final decisions on Foreshore and Seabed policy and of RMA reform.

Rates

180. One option is to amend the Local Government (Rating) Act to enable local councils to collect rates from aquaculture.

181. Rating is not reliant on Crown ownership. The Local Government (Rating) Act 2002 provides councils with powers to set, assess and collect rates to fund local government activities. Councils, however, are currently unable to rate coastal space. Schedule 1 of the Local Government (Rating) Act defines foreshore and the bed of the territorial sea as non-rateable land.

182. Local government rating powers could be amended to collect rates from aquaculture and other holders of coastal permits. Rating is the approach used to fund local government activities on land, although rates are currently based on ownership of property on land and improvements. A new methodology to set rates, probably based on valuation would need to be developed (and is likely to be controversial).

183. Rates would enable regional revenue to be used to benefit the region – and would recognise the services and infrastructure that aquaculture benefits from. The extent of statutory amendment has not been scoped but would likely be considerable and include changes to the Local Government Rating Act, the Ratings Valuation Act and revisions to the Land Information portfolio. This work is not included in the current local government or land information portfolio work programme.

184. If rates were introduced just for aquaculture – rather than other coastal permit holders – there would be equity issues and potential impacts on investment incentives for aquaculture.

185. For these reasons rates are not considered a viable short-term option.

Amended cost recovery under the Fisheries Act

186. Cost recovery levy revenue currently goes to the consolidated fund. The Ministry's activities and services are resourced by appropriation. If the levy is only collected from marine farmers – there will likely be sympathy for revenue being spent in an area related to marine farming but this is not a certainty.

187. The intent is to be able to fund particular initiatives that support improved regional coastal plans and related services. Much of this work will need to be undertaken by providing resources to local government. The current Fisheries Act cost recovery provisions could not be used to recover for functions of local government. For this key reason, utilising the cost recovery provisions under the Fisheries Act is not an immediate option.

Commodity Levies Act

188. Industry could generate funding directly for development through the Commodity Levies Act. However, increasing the aquaculture commodity levies to include funds for planning would first require agreement by 51% of all marine farmers and the process involves significant transaction costs.

189. Increases in charging by government may incentivise industry to more seriously consider this option. However, there is also a limited proportion of the functions and activities proposed for central and local government that could be undertaken by industry, notably initiating a private plan change.

190. The Commodity Levies Act does not provide a viable alternative to the need for funding to improve regional coastal plans and related services.
