



**The introduction of new aquaculture legislation and the lifting of a moratorium that had been placed on new aquaculture development has created significant new opportunities for Māori.** This information sheet looks at how new aquaculture developments are now planned for.

#### ■ AQUACULTURE LEGISLATION

The Aquaculture Law Reform Act 2004 was passed in late 2004. The reform legislation amended five existing statutes and introduced two new ones. The five Acts that were amended were the:

- *Resource Management Amendment Act (No 2) 2004*
- *Fisheries Amendment Act (No 3) 2004*
- *Conservation Amendment Act 2004*
- *Biosecurity Amendment Act 2004*
- *Te Ture Whenua Māori Amendment (No. 3) Act 2004*

The two new Acts were:

- *Māori Commercial Aquaculture Claims Settlement Act 2004*
- *Aquaculture Reform (Repeals and Transitional Provisions) Act 2004*

The legislation provides a new regime for managing aquaculture, completing work that started in the late 1990s. The main features of the new aquaculture regime are:

- A single process for aquaculture planning and consents through the Resource Management Act 1991 ("the RMA")
- There are transitional provisions to move existing marine farms granted under the old regime into the new regime. These marine farms granted under other Acts have been deemed to have coastal permits under the RMA – so every authorised marine farmer now holds RMA resource consents for their farm

- Regional and unitary councils have clearer roles and responsibilities for managing all the environmental effects of marine farming, including any effects on fisheries and other marine resources
- New marine farms can only occur in areas specifically zoned for that use, known as Aquaculture Management Areas (AMAs)
- A new AMA needs to be included in the relevant regional coastal plan, by a plan change, which can be initiated either by councils or privately
- Councils have more powers to allocate new space to the most efficient users
- The potential effects of new marine farms on fishing activity will be taken into account through a test under the Fisheries Act 1996 early in the planning process, before a plan change is notified
- When resource consents expire and the farmer needs new consents, the RMA provides greater protection for existing consent holders
- More certainty is provided for iwi, with Treaty claims to commercial aquaculture after 21 September 1992 being settled

To find out more about the Aquaculture legislation, see <http://www.mfe.govt.nz/issues/aquaculture/reform.html>

To find out more about the *Māori Commercial Aquaculture Claims Settlement Act 2004*, see our information sheet "The Aquaculture Settlement".



## ■ ESTABLISHING AQUACULTURE UNDER THE RMA

Establishing a new aquaculture activity involves a three-step process:

- i. Establishing an AMA
- ii. Gaining an authorisation to apply for a resource consent
- iii. Obtaining resource consent

Aquaculture can only occur in AMAs, which are identified in regional coastal plans. An application for a resource consent for a marine farm or any other type of aquaculture activity can only be made once a change to a coastal plan to establish the AMA has been approved and authorisations granted. Authorisations are a right to apply for a coastal permit (resource consent) to occupy space in the coastal marine area. An authorisation must be obtained before applying for resource consents to occupy space and undertake an aquaculture activity.

### 2.1 The AMA process

AMAs can be established in five different ways:

1. Deemed AMAs from existing marine farms being transitioned into the new RMA regime (and those still being processed under the old legislation)
2. Interim AMAs from aquaculture planning provisions that are already underway
3. Council-initiated plan changes
4. Private plan changes
5. Council-invited private plan changes

#### 2.1.1 Deemed AMAs

The authorisation of existing marine farms, which are either marine farm leases and licences (granted under the now repealed Marine Farming Act) or marine farming and spat catching permits (granted under the Fisheries Act and RMA dual permitting system) have been deemed to be coastal permits under the RMA. They are also deemed to be AMAs provided they are sited in an area where marine farming is not prohibited under an existing or proposed regional coastal plan.



### 2.1.2 Interim AMAs

Some regional and unitary councils had already made good progress toward creating AMA-like zones in their regional coastal plans. These councils applied to the Minister of Conservation to have these zones in their plan declared an "Interim AMA".

The Ministry of Fisheries will assess interim AMAs using the pre-existing "Undue Adverse Effects" test in s67J (or Q for spat catching) of the Fisheries Act 1983, to consider any effects on fishing and the sustainability of fisheries resources.

If the interim AMA does not have an Undue Adverse Effect it becomes a full AMA. If the AMA or any part of it has an Undue Adverse Effect on fishing or fisheries resources, the relevant area must be removed from the AMA, before the remaining area can be declared a full AMA. Applications for new marine farms can be considered once the interim AMA becomes a full AMA.

### 2.1.3 Council initiated plan change

A council may initiate a plan change to introduce an AMA into its regional coastal plan. The process is the same public planning process under the RMA as any other plan change, except the Ministry of Fisheries will have undertaken an assessment of whether the AMA would have an Undue Adverse Effect on commercial, customary or recreational fishing before the plan change is notified. A plan change to introduce an AMA must be approved by the Minister of Conservation before it is made operative. The council pays for the entire plan change process.

A council may also initiate an AMA plan change specifically to provide an AMA exclusively for allocation to iwi, to meet the 20 percent of new space requirement of the Māori Commercial Aquaculture Claims Settlement Act 2004 ("the Settlement Act").

### 2.1.4 Private plan changes

#### Private plan change

Any person may, at any time, apply for a private plan change to establish an AMA within a regional coastal plan. The process for a private plan change is generally the same as that followed for a council plan change, including the Ministry of Fisheries assessment of Undue Adverse Effects, with the exception that the applicant meets the costs of processing the plan change.

There is no guarantee that if the plan change is successful, that the person who requested it will subsequently be allocated authorisation to apply for resource consent.

#### Council-invited private plan changes

The RMA provides for a council to invite private plan changes to establish AMAs. This involves the council issuing an invitation by

public notice, and any person may then submit a request for a private plan change. Some key aspects of Invited Private Plan Changes are:

- Councils may exclude areas in which no applications will be accepted. This is carried out through a public consultation process prior to the invitation to request plan changes is made, and is subject to the consultation requirements of Schedule 1 of the RMA (clause 3).
- If successful, the applicant is automatically allocated 80 percent of the newly created space, and the other 20 percent is allocated to the Trustee under the Settlement Act.

### 2.1.5 Undue Adverse Effects ("UAE") Assessment

The notification of a plan change to establish an AMA can not occur until the Ministry of Fisheries' Chief Executive (or delegated official) has determined whether the proposed AMA will have an UAE on fishing. This assessment is not required for existing marine farms already deemed AMAs as part of the transition to the new regime.

The UAE test assesses the likely effect of the proposed AMA on commercial, recreational and customary fishing. The test primarily looks at the extent and type of fishing at the site, and what alternative sites are available if the proposed AMA goes ahead. The Ministry also takes into account the cumulative effects of past marine farming developments in the area.

As part of the assessment, the Ministry must consult with commercial, recreational and customary fishers and will also use other available information such as fishing records and reports, research documents, regulations, management plans and institutional knowledge.

When undertaking the assessment, any areas within the proposed AMA that would have an Undue Adverse Effect on customary or recreational fishing will be removed from the AMA proposal.

Any areas within the proposed AMA that would have Undue Adverse Effects on commercial fishing will be identified in the coastal plan as being subject to a 'reservation'. Such areas will be identified in the regional coastal plan. Anyone wanting to establish a marine farm in these areas must first reach an agreement with the affected quota holders before they can apply for a resource consent.

The decision of the Ministry of Fisheries' Chief Executive (or delegate) will be publicly notified. This provides the opportunity for anyone who does not agree on how the determination has been made to appeal the decision to the High Court. Any appeal must be lodged within three months of the UAE decision.

To find out more about the processes to establish AMAs, see <http://www.mfe.govt.nz/publications/rma/aquaculture-info-game-rules-jan05/>.





## 2.2 Authorisations and resource consents

Once an AMA is established, the council may offer authorisations for space in the new AMA. For council-led AMAs and private plan change AMAs, the default method of allocation of authorisations is by tender, unless a council has identified a different method of allocation in its regional coastal plan. Where tendering is used, the revenue earned is split equally between the council and the Crown. For council-invited private plan changes, the applicant receives authorisations for 80 percent of the space, with the remaining 20 percent being allocated to the Trustee.

Once someone has been allocated an authorisation, they may apply for a resource consent to occupy space, and to establish and undertake an aquaculture activity. Gaining an authorisation does not guarantee a resource consent will be granted. However, it is likely that most relevant issues will have been addressed during the plan change process to develop the AMA. The resource consent will deal with matters specified in the regional coastal plan, such as appropriate resource consent conditions.

As part of the Settlement Act, councils must provide 20 percent of any new space created to the Trustee before any other space is allocated. The Government may also instruct councils to provide an additional 20 percent of newly created space to iwi, but only in council-led AMAs and private plan change AMAs.

For more information, see the information sheet "The Aquaculture Settlement".

The Minister of Conservation has the power to direct regional and unitary councils regarding the allocation of coastal space. This could be to give effect to government policy in the coastal marine area, or to give effect to the Crown's obligation to provide an allocation of 20 percent of space granted between 21 September 1992 and 31 December 2004 (known as "pre-commencement space").

There are limited circumstances in which this power can be exercised. They include:

- before plan notification or approval, directions can be given that the space not be allocated, or that affect the plan's allocation method
- just before individual allocation rounds, the Ministerial direction can be used to allocate to the Crown or limit the term of consents

The Department of Conservation will investigate, in consultation with councils, the need for guidance to further explain the Minister's power of direction and provisions for coastal tendering.

For more information on the RMA plan change and resource consent processes, see [www.rma.govt.nz](http://www.rma.govt.nz). This website includes tailored information on the RMA for business and the general public.



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