



# Submission on: Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

To: Primary Production Committee

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## Submitter details

This submission is from the Parliamentary Commissioner for the Environment,  
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## The Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner's role is to review the environmental management system. He has broad powers to investigate environmental concerns and make recommendations to improve environmental outcomes. The Commissioner is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

## Marine farms and effective environmental management

The explanatory note to the Bill specifies that re-consenting for marine farm coastal permits is a significant regulatory barrier to investment in and the growth of the aquaculture industry. No evidence is provided for this other than the fact that re-consenting costs between \$20-\$100k which, spread across the long life of a consent, seems a modest cost to ensure that the business meets good environmental standards.

However, the regulatory impact statement (RIS) suggests that the claimed problems don't stand up to analysis. The RIS states that the National Environmental Standards for Marine Aquaculture (NES-MA) have been effective at streamlining re-consenting, and that it is "working efficiently and effectively and provid[ing] for better environmental outcomes".<sup>1</sup> Significantly, the following paragraphs suggest that the alleged problems have already been dealt with:

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<sup>1</sup> Regulatory Impact Statement: Extending the duration of existing marine farm consents, 4 April 2024, paragraph 77.



12. Without consent extensions, councils are likely to face an influx of consent applications which are time consuming and can take at least six months to process. However, there are provisions in the RMA to enable councils to extend the consent duration while an application is being considered.
13. The advantage of the status quo is that consents that have been carried forward in the past are able to be reassessed and brought into the existing resource management system, meet the latest environmental standards, and involve iwi/Māori in the consenting process. However, this comes at a financial cost to the sector.
14. While the regulatory environment is complex and hard to navigate, recent changes to the NES-MA has made the consenting process simpler and more streamlined for marine farmers to navigate. The review of the New Zealand Coastal Policy Statement is likely to further provide certainty for the sector when applying for consents.

While a legislated extension provides absolute certainty as to the duration of coastal permits, it locks in the existing operating conditions for the marine farms, some of which are already decades out-of-date and may permit environmentally suboptimal outcomes. As framed, the legislation will effectively provide for the certain continuation of conditions that may need review. A wholesale extension for consents without any examination of whether environmental practices are out of date or missing will undermine public confidence in this industry's licence to operate.

The amendment overturns the results of a consultative process with the community that has been undertaken over a period of more than a decade by extending all permits including those that local communities have decided, through consultative democratic processes, are located in areas that are unsuited to marine farming. Most regions with marine farms have tailored aquaculture planning provisions, based on the spatial identification of sensitive areas, and are designed to encourage aquaculture outside of those areas. As an example, spatial planning in Marlborough has identified Outstanding Natural Landscapes, Outstanding Natural Features, and Ecologically Significant Marine Sites. 306 marine farms need to move outside of those inappropriate areas. I understand that for all but 18, alternative space has been identified at sites where marine farming is generally treated as a controlled activity. Under the Bill, all farms currently occupying inappropriate locations may remain even when the work has been done to identify preferable sites.

The extension granted by the Bill will apply to all the coastal permits for the operation of a marine farm, including structures, occupation, and discharges. Some marine farms are currently operating under shorter duration consents, for RMA section s 123A reasons, specifically in order to adequately manage adverse environmental effects.

In my view, the Bill does not appear to be necessary and is worse than the *status quo*. If the Committee decides to recommend that it proceed, the Bill should be amended in the interests of good environmental management so that:

- Consents that have been granted shorter duration are excluded from the Bill.<sup>2</sup>

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<sup>2</sup> Officials advised the was one of the two options for excluding consents from the application of the



- Extensions are limited to only those farms that are outside identified sensitive areas (Outstanding Natural Landscapes, Outstanding Natural Features and Ecologically Sensitive Marine Sites) in applicable regional plans. Farms that come within these two categories would still have access to the streamlined consenting process under the NES-MA which the Government has been advised is working well.

## Review of consent conditions

Conditions are placed on consents to help avoid, remedy, or mitigate an activity's negative environmental effects. They are used to find an appropriate balance between development activity and environmental protection.

The Bill contains provisions that allow a one-off review of the extended consents' conditions. While it makes sense to allow for consent conditions to be updated in line with current best practices to minimise environmental impacts and allow for innovation in the operation of existing marine farms, the clause seems to be designed to make it extremely difficult for councils to actually use the provision. The hurdles drafted into the process are likely to cause the utility of any review to be extremely limited.

The key hurdles are:

- Reviews must be initiated within 24 months of the Act coming into force and completed within a further 24 months.
- The costs of the review are not cost-recoverable from the applicant.
- Any review can only proceed with the concurrence of the Director-General of the Ministry for Primary Industries.
- The right to be notified of the review, and the ability to make a submission on the review, is limited to iwi organisations.

Because the Bill would automatically extend all permits upon coming into force, regardless of when they were due to expire, councils may need to simultaneously review the conditions for many hundreds of consents, rather than review them progressively as they come up for renewal. Councils are being given a constrained timeframe at the very moment their workload is being hugely increased by central government. In addition, Councils are denied the right to recover their costs. One is left with the impression that by giving them limited time and making ratepayers fund any reviews, Councils are being actively discouraged from conducting any reviews.

The proposal turns the principle of user-payers on its head. In essence, the public is being asked to subsidise the costs of a private businesses. It seems perverse that the businesses in question are using a public resource (the coastal marine area) and are asking the public to pick up part of the tab for ensuring that the businesses' activities minimise damage to the publicly owned environment. Rather than using public space on conditions that the

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bill, see paragraphs 65-74 of the Regulatory Impact Statement.



community considers appropriate, the amendment puts marine farms in the position of occupying public space as of right and requires the community to meet the costs of ensuring compliance with standards.

The Director-General of MPI's involvement in the process can be justified on the basis that they are responsible for a range of biosecurity issues that relate to marine farms. However, it is unclear what they will be able to add in respect of environmental impacts which are, after all, at the heart of most conditions under the Resource Management Act.

Given that the purpose of consent conditions is to manage environment impacts, it would make sense to receive input from people and organisations holding relevant knowledge about those impacts. The current drafting of the Bill essentially precludes that. While the iwi organisations nominated will undoubtedly bring some expertise to the table, it is unreasonable to expect them to be the sole source of environmental expertise and evidence.

In short, it is difficult to see how a meaningful review of consent conditions could be undertaken by a consent authority constrained in the way new sections 165ZFHI-165ZFHM, are conceived.

For any review of consent conditions to have a modicum of environmental credibility, the following changes should be made to the Bill:

- Notification provisions should be broadened to individuals and organisations with expertise in the environmental impacts of aquaculture and persons that have an interest greater than that of the general public, with an associated right of appeal if a submission is made.
- The requirement that the Director-General of MPI must *concur* with the commencement of a review should be amended to provide that the Director-General of MPI must be *consulted* as part of any review.
- Allow councils to recover costs of any review consent conditions from the applicant, and
- Amend clause 165ZFHI(3)(a) so any review must commence no later than 24 months from the date that the original consent was due to expire. (This will ensure that reviews are staggered while still giving certainty to the applicant.)

Rt Hon Simon Upton

**Parliamentary Commissioner for the Environment**  
**Te Kaitiaki Taiao a Te Whare Pāremata**