Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

Oral submission to the Primary Production Committee

My job under the Environment Act 1986 is to keep under review the system of agencies and processes established by the Government to manage the allocation, use and preservation of natural and physical resources. The Bill in front of you will, if enacted, seriously undermine the system we have established to manage the allocation and use of marine space for aquaculture.

The key points to grasp are these:

- Aquaculture takes place in public spaces that are managed on behalf of all New Zealanders. For that reason, the public has a right to be consulted on how that space is allocated and used.
- Aquaculture raises issues that are site specific. For that reason, aquaculture is not managed by a central agency in Wellington but by regional councils who are closer to the realities on and in the water. Central government provides high-level oversight and there are broad environmental requirements issued under something called the New Zealand Coastal Policy Statement. But it is left to communities to do the implementation.
- Permission to occupy public space and use public resources is a privilege that comes with a responsibility to use those resources subject to the conditions that the community considers appropriate for a defined period of time. Public resources cannot be locked up for private use in perpetuity. Resource consents have a life and when they expire they can be reapplied for and the community has a right to review the conditions that apply. Conditions are there to minimise the impact of farming on marine biodiversity, secure safe navigation and deal with some of the minor nuisances that arise between any businesses and their neighbours.

The changes proposed by this Bill demolish the integrity of that system. The Government is asking the House to enact a bespoke change for one industry that will ride roughshod over extensive community consultation that has been conducted in many places, give new life to conditions that are in some cases decades old, restrict the ability to review those conditions and insert the Director General of the Ministry for Primary Industries into the business of judging environmental matters. It is just the latest example of a long Kiwi tradition of centralisation at the expense of local community control. While it is not my area of expertise, I would be very surprised if the proposal will be acceptable to iwi Māori for whom the allocation and use of coastal space is a critical matter.

Since I made my written submission to you, I have been trying to get the facts clearer. As you know, the alleged reason for this legislative lightning strike is the claim that (and I read from the explanatory note) “obtaining a replacement resource consent is costly and time-consuming … creates uncertainty, acts as a barrier to growth, and impacts their ability to invest in farms, improvements, and assets.”

The committee needs to be sceptical about sweeping claims like these. If you are not, every industry in New Zealand will be here telling you that they need a special amendment bill. As far as cost goes, the regulatory impact statement claims that the costs of reconsenting are between $20,000–$100,000. As I remarked in my written submission, that seems modest spread across the life of a consent to use public resources for 20 or 30 years. (Note, Marlborough District Council estimates that its charges for processing a mussel farm consent average around $2,000.)

A great deal of time and effort has gone into consultation at the regional level and I would encourage you to dig into the submissions from the councils that actually know something about this stuff. I have talked to the Marlborough council who tell me that there are roughly 600 marine farms in their patch. For 306 farms, reconsenting will mean moving the farms out from the shoreline so they're no longer above what they call "cobble and reef habitat". I am told that that shift means farms will remain in the same locality but go from being 50–200 metres from the shore to between 100–300 metres out. For another 300 odd farms, they can stay exactly where they are with few changes.

The hard stuff involves 17 farms that have been judged to be in wholly inappropriate locations and for which new sites will need to be found. Now I can understand that that would be disruptive and costly. So, it comes down to there being good grounds.

You might want to inform yourselves about these difficult cases and how they are handled. But the idea that granting a blanket rollover of all consents in New Zealand is the solution beggars belief. Here are some of the perverse consequences:

- Time, money and public consultation have been expended to reach satisfactory conclusions in many cases but notwithstanding that, lucky consent holders who haven't yet let their old consents expire can elect to carry on for another twenty years notwithstanding the fact that new and improved arrangements have been agreed.
- In some cases, the conditions – or lack of them – that will be carried forward are completely out of date. Take a look at the Bay of Plenty Regional Council submission which references the Ōhiwa Oyster Farm, operating under pre-Resource Management Act permits that were granted in 1968. If extended by this bill, the farm would have operated for more than 75 years under conditions which do not require any monitoring or reporting.
- Now there is a provision for a review. That's true. But it doesn't allow a review of the most significant issue with many farms – their location. And any reviews have to happen within 24 months of the Bill passing, be approved by a bureaucrat in Wellington and be paid for by ratepayers. Why should ratepayers pay to avoid a continuation of out-of-date consents granted to someone who is using space in their – publicly owned – backyard? The narrow window for conducting any reviews will potentially create a short-term bottle neck and certainly a real headache in 2050. I sought the attached figure from Marlborough District Council. It shows the spread of expiry dates over the coming years. All of these will be bunched up setting us up for a future log jam.
- A roll-over will in some places be a barrier to growth. Northland Regional Council tells me that of the consented area for marine farms, only about 50% is being used. Rolling over large consented, but unused areas, allows the marine equivalent of land banking to go on. Competitors who might make better use of that space are locked out.

It is these sorts of highly site-specific realities to which you are being asked to apply a crude, broad-brush solution.

My advice to the committee is that you should require officials to seek answers to the following questions from each regional council before proceeding any further. Without the answers, you have no accurate idea of the dimensions of the alleged problem, or the costs this claimed solution may impose.

1. How many consents for marine farms are there by vintage (i.e. what are the remaining consented periods)? This will give you an idea of how many unnecessary reviews you could be being asked to bring forward into the next two years.
2. How many of the extant consents are expected to be able to be renewed (subject to any updated conditions) in exactly the same site?
3. How many of the extant consents may involve the need for a small move but remain basically in the same location?
4. How many farms are in areas where continued farming is deemed inappropriate?
5. What is the range and average cost of reconsenting representative marine farms in each council?
6. What would be the estimated cost to ratepayers of reviewing rolled over consents, assuming reviews extended to a third, two thirds or all consents?

Finally, I'd ask the Ministry for Primary Industries what the expected commercial return would be for a representative marine farming operation over its life and how that compares with their estimate of reconsenting costs of $20,000–$100,000.

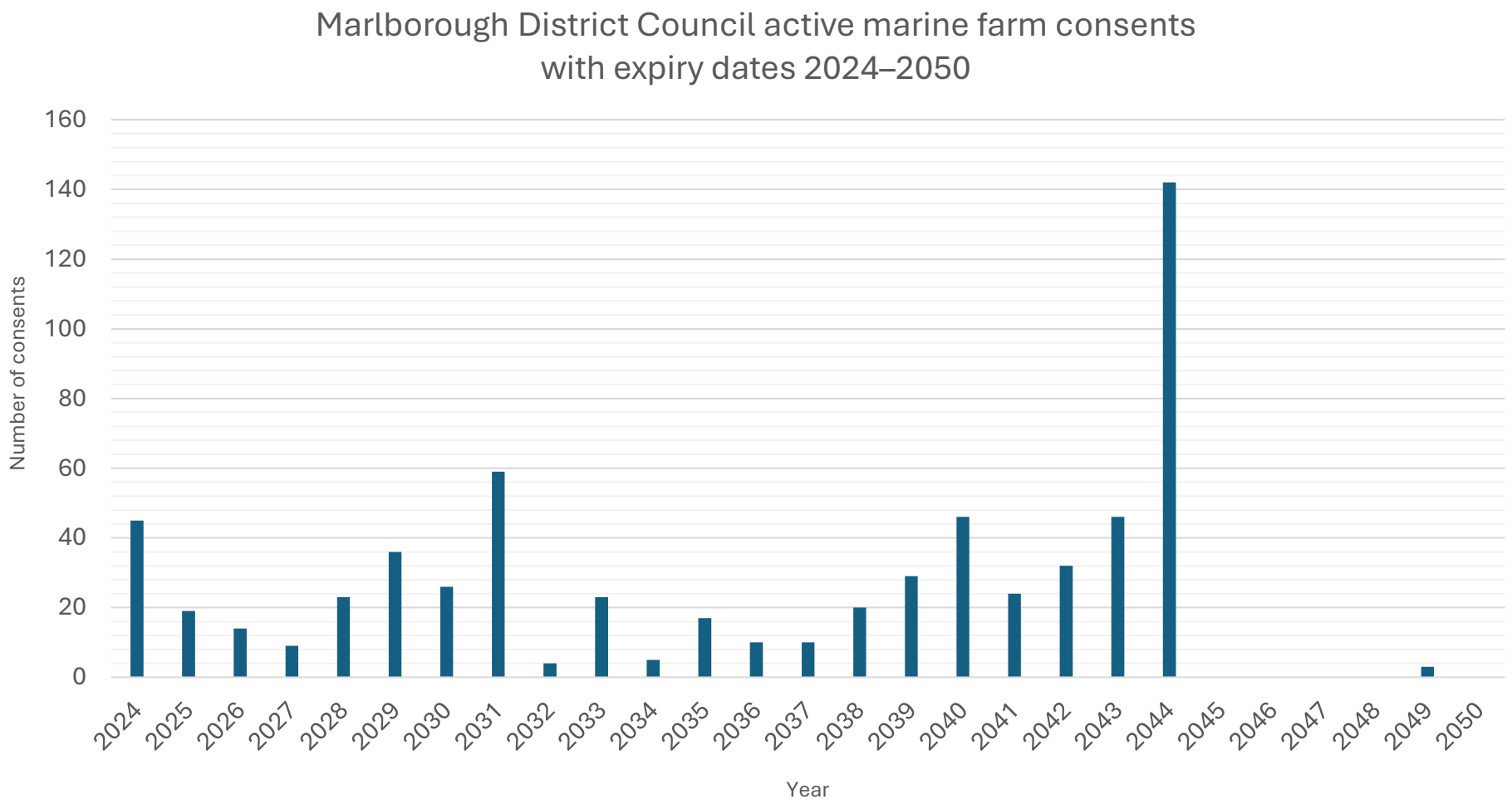
I think this Bill is a case of a sledgehammer being used to crack a nut. You should not consider passing it before you have much better information to support it. If you consider that it should proceed, I would suggest, at a minimum, that:

- The timeframe for and review of conditions should be aligned with the expiry date of the pre-existing consent rather than trying to stuff everything into a two-year window following the passage of the Bill.
- Reviews should extend to location where they are minor.
- The decision to review a consent should be in the hands of the consenting authority, not the Director-General of the Ministry for Primary Industries.
- Any review process should enable a level of public input proportionate to the scale of what's at issue because this is public space.
- A consent authority should be able to cancel consents where consented space remains unused after a defined period.

Rt Hon Simon Upton

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

24 June 2024



* Active marine farm consents only. These figures include multiple consents which have been issued for a single marine farm site (for example a marine farming permit and a resource consent for a single farm). Except for the year 2024, these figures have not been adjusted to account for applications which have been lodged with MDC for replacement consents; those replacement consents will (without the 2050 Bill) result in the surrendering of existing consents included in this table.