

Departmental Disclosure Statement

Resource Management (Extending Duration of Marine Farm Coastal Permits) Amendment Bill
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The purpose of a disclosure statement is to better inform parliamentary and public scrutiny of government-initiated legislation, in order to promote good practice for the development of that legislation.

The disclosure statement is the departmental document that complements the general policy statement provided by the Minister in the explanatory note accompanying the Bill. It reflects the knowledge, understanding and work done by the departments responsible for preparing the legislation by including, or providing links to, factual information about the Bill in three broad subject areas:

- available background policy material (such as published reviews or evaluations, a relevant international treaty, or regulatory impact statement);
- the quality assurance work undertaken by the department during the development of the legislation (such as consultation undertaken, advice received from external reviewers, and any other testing or assessment undertaken); and
- any provisions of the proposed legislation considered to be significant, unusual, or deserving of special comment.

This disclosure statement was prepared by the Ministry for Primary Industries and the Ministry for the Environment.

The Ministry for Primary Industries and the Ministry for the Environment certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

15 May 2024

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Part One: General Policy Statement

There are approximately 1,200 existing marine farms in New Zealand that require one or more resource consents under the Resource Management Act (RMA) to operate. Around 300 of these marine farms have consents due to expire by the end of 2024, and a further 150 have consents due to expire by 2030.

Industry has expressed concerns that obtaining a replacement resource consent is costly and time-consuming. Industry has indicated that the process of renewing consents creates uncertainty, acts as a barrier to growth, and impacts their ability to invest in farms, improvements, and assets.

To give marine farm consent holders certainty and greater confidence to invest, and to give effect to the National/New Zealand First Party Coalition Agreement to “deliver longer durations for marine farming permits”, the Resource Management (Extending Duration of Marine Farm Coastal Permits) Amendment Bill (the Bill) amends the RMA to extend the duration of existing marine farm consents.

The Bill will extend the current duration of all coastal permits currently issued under the RMA authorising aquaculture activities by 20 years, but not beyond 2050. The extension will:

- cover all of the RMA consents (coastal permits) needed for a marine farm to operate;
- apply to all marine farms that hold a current resource consent at the time the Bill commences;
- not extend the duration of any marine farm past 31 December 2050 (though it will not change current expiry dates if they are already beyond 2050); and
- not require an application from the consent holder.

The Bill also provides a bespoke mechanism for consent authorities (councils) to review consent conditions of extended consents, to better promote the sustainable management of natural and physical resources in relation to the marine farm without preventing the consent holder from continuing to carry out the consented aquaculture activity. The conditions review is a one-off review that:

- is optional for councils and must be initiated within 24 months of the extension;
- can only proceed with the concurrence of the Director-General of the Ministry for Primary Industries, which is an agreement at the start of the review that the review can proceed with an agreed scope;
- is not cost-recoverable;
- allows for notification to iwi organisations (with ability to make a submission). This includes iwi authorities as defined in the RMA, post-settlement governance entities, Ngā Hapū o Ngāti Porou, and hapū and iwi that are party to Mana Whakahono ā Rohe under the RMA), and rights and title holders under the Marine and Coastal Area (Takutai Moana) Act 2011 where the marine farm consent is within their rohe; and
- limits appeal rights on the review outcomes to the consent holder and any party who was notified of the review and made a submission.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement: Extending the duration of existing marine farm consents, Ministry for Primary Industries, 4 April 2024.</p> <p>A Regulatory Impact Statement was presented to Cabinet with the Cabinet paper on this policy (April 2024).</p> <p>The Regulatory Impact Statement will be proactively released and available via the following links, subsequent to introduction to the House, given their Budget-sensitive classification.</p> <p>https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/</p> <p>http://www.treasury.govt.nz/publications/informationreleases/ris</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statement (RIS) identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury.</p> <p>The RIS was assessed by a joint Ministry for the Environment and Ministry for Primary Industries RIA panel.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
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The Regulatory Impact Statement was completed prior to:

- the inclusion of an optional review of consent conditions in the Bill; and
- the change from a 25-year extension of consent duration to a 20-year extension, but not beyond 2050.

Officials consider that a consent conditions review will improve all options included in the Regulatory Impact Statement. A consent conditions review provides some mitigation to concerns raised by councils, environmental-non-governmental organisations, Te Ohu Kaimoana and iwi that an extension of consent duration may perpetuate outdated consent conditions to the detriment of the environment.

The optional review of consent conditions allows for consent authorities to investigate, review, add or change consent conditions on any resource consent that is extended by the Bill. It is a one-off bespoke conditions review that is optional for councils and has these features:

- must be initiated within 24 months of the extension;
- applies only to consents extended in duration under this legislation;
- must not amend the duration, species or area covered by the consent;
- is not cost-recoverable by the council;
- can only proceed with the concurrence of the Ministry for Primary Industries' Director-General, which is an agreement at the start of the review that the review can proceed with an agreed scope;
- does not remove the existing default mechanisms under the RMA for reviewing conditions of consents;
- follows a streamlined process with no ability to hold hearings;
- allows for notification (with ability to make a submission) to iwi organisations (this includes iwi authorities as defined in the RMA, post-settlement governance entities, Ngā Hapū o Ngāti Porou, and hapū and iwi that are party to Mana Whakahono ā Rohe under the RMA), and rights and title holders under the Marine and Coastal Area (Takutai Moana) Act 2011 where the marine farm consent is within their rohe; and
- limits appeal rights on the review outcomes to the consent holder and any party who was notified of the review and made a submission.

Officials consider that the inclusion of a cap on the extension to 31 December 2050 will partially mitigate concerns raised that an extension will result in substantial delays in re consenting processes without the ability to consider environmental changes over this time.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>(a) The Regulatory Impact Statement was limited in its analysis of costs and benefits based on the information and data available. In terms of direct benefits to the aquaculture industry, the Bill will reduce the time and expense of replacement consenting processes and limit subsequent court appeals for consent holders over a 20-year period. Officials estimate that re-consenting costs range from \$20,000 to over \$100,000 depending on the scale, location, and number of consented activities (additional costs apply if a hearing is required or when appeals are lodged). Officials estimate the sector could be facing consenting costs of over \$6 million for marine farm consents due to expire by the end of 2024. Industry have indicated that the average time for re-consenting nationally is six months. The Bill is expected to reduce these costs and provide flow-on benefits including increased industry confidence and investment in assets, innovation and improved productivity.</p> <p>There will be a one-off cost to consent authorities to update their records to implement the extension as councils must update the expiry date on consents extended under the Bill. If consent authorities opt to review consent conditions, they will bear the costs of the review. The costs and benefits of reviews has not been estimated.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry for Primary Industries did not identify any inconsistencies between the Bill and New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Officials undertook targeted engagement over a week with Treaty partners including Post-Settlement Governance Entities and Iwi Aquaculture Organisations on the proposed policy to extend the duration of marine farm consents. Iwi concerns regarding implications for the rights and interests of Māori were summarised in the advice provided to Cabinet and reflected in the Treaty Impact Analysis (as part of the Regulatory Impact Statement). Te Arawhiti has been consulted in the development of the policy and the Bill.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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An assessment against the Bill of Rights Act 1990 is in progress. Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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(b) The Bill creates rights of appeal for the review of extended consent conditions. This includes rights of appeal for the consent holder and all notified groups that submit on the review of consent conditions on extended consents.
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The Bill does not remove the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal). However, groups may claim that by delaying reconsementing by 20 years, the Crown is bypassing default reconsementing processes, including rights of appeal.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted in the preparation of the Cabinet Legislation paper. The Ministry of Justice noted the importance to natural justice of affected people being given the opportunity to appeal decisions. The Ministry noted that when appeal rights are narrowed, affected people may seek to use other legal avenues to enable the courts to consider their concerns. This can be as time-consuming and resource intensive as an appeal without achieving the benefits of an appeal such as confirmation, modification or reversal of the original decision and/or clarification of the law. This feedback was included in the Cabinet Legislation paper.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry for Primary Industries spent one week in February 2024 consulting with aquaculture industry representatives, consenting authorities, Treaty partners including Iwi Aquaculture Organisations and Post-Settlement Governance Entities, Te Ohu Kaimoana, and environmental non-governmental organisations. The proposal consulted on was a 25-year extension to marine farm consents in the coastal marine area. Later, the proposal was amended to a 20-year extension (not beyond 2050), with an optional conditions review.</p> <p>A summary of feedback received during this engagement is in the Regulatory Impact Statement.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill provides new decision-making powers to the Director-General of the Ministry for Primary Industries through the concurrence role on the review of conditions. The Director-General of the Ministry for Primary Industries will have the power to decide whether a review of conditions for extended consents is undertaken and agree to its scope, for a 24-month window from the Bill's commencement date within which reviews are enabled.</p> <p>The concurrence of the Director General of the Ministry for Primary Industries provides a check that reviews of consent conditions are consistent with the purpose specified in the Bill.</p> <p>The purpose specified in the Bill is to allow councils to review, add or amend consent conditions to better promote the sustainable management of natural and physical resources in relation to the marine farm without preventing the consent holder from continuing to carry out the consented aquaculture activity.</p>	