

## Coversheet

# Options to improve management of existing marine aquaculture and reduce marine aquaculture biosecurity risks

Advising agencies	<i>Fisheries New Zealand (a business unit of the Ministry for Primary Industries), Ministry for the Environment, Department of Conservation</i>
Decision sought	<i>Approval to have PCO prepare regulations</i>
Proposing Ministers	<i>Ministers of Environment and Fisheries</i>

## Summary: Problem and Proposed Approach

### Problem Definition

**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

Over the next 7 years, consents for up to 689 existing marine farms (60% of the total) will expire, with 602 (52%) expiring at the end of 2024.<sup>1</sup> Replacement consenting processes, carried out by regional councils under the Resource Management Act 1991 (**RMA**), can be complex and uncertain. This is undermining confidence in the industry. If a decision is made to amend the existing framework there is also an opportunity to improve environmental outcomes by ensuring consideration of key environmental effects and strengthening on-farm biosecurity management.

Government intervention is required to ensure consistency in consenting rules and processes across regions, and to achieve these changes ahead of the consent expiry peak in 2024.

### Proposed Approach

**How will Government intervention work to bring about the desired change? How is this the best option?**

A National Environmental Standard (**NES**), issued under the Resource Management Act 1991, would set nationally consistent rules and requirements for regional councils<sup>2</sup> to:

- a) provide a more certain and efficient replacement consent, realignment and change of species application process for existing marine farms, while ensuring farms meet best practice standards for managing environmental effects; and
- b) implement consistent biosecurity management requirements on all marine farms.

<sup>1</sup> The expiry dates for these farms is either 31 December 2024 or 1 January 2025

<sup>2</sup> Throughout this document, references to 'regional councils' include unitary authorities.

This is the best option because it:

- a) addresses key sources of uncertainty in replacement consenting while allowing councils to reflect local conditions through specification of consent conditions,
- b) ensures comprehensive coverage of on-farm biosecurity rules,
- c) can be implemented well ahead of the consent expiry peak in 2024/25 and supports councils in their need to resource and streamline the replacement consenting application process, and
- d) recognises recent and future strategic planning by councils, as required under the New Zealand Coastal Policy Statement 2010 (**NZCPS 2010**), to provide for aquaculture in appropriate places and limit aquaculture in areas where it is inappropriate.

## Section B: Summary Impacts: Benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

The following benefits are expected as a result of the intervention:

- Marine farmers
  - reduction in uncertainty associated with replacement consenting
  - certainty of timing in respect of when the new rules will come into effect
  - improved investor confidence in the industry
  - reduced application costs for replacement consents
  - simpler processes to add value through species changes on existing farms
  - confidence that consent conditions take into account best practice understanding of environmental effects
  - reduction in exposure to biosecurity risks (extent depends on whether other initiatives are also undertaken)
- Regional councils
  - simpler consent procedures in most regions -- due to non-notification, restricted discretionary activity status and confined matters of discretion — will assist councils in processing the large number of replacement consent applications expected over the next 7 years, especially in 2024/25
  - potential savings in not having to develop rules through the Schedule 1 RMA process (some councils may still incur a cost developing more stringent or lenient provisions)
  - rules (matters of discretion) that take into account best understanding of the environmental effects of marine aquaculture in New Zealand
  - consistent consent procedures – can share learning
  - flexibility to set more lenient activity status in areas considered appropriate for aquaculture or, conversely, to set more stringent activity status in areas that are considered inappropriate for existing aquaculture
  - drives councils to more deliberately consider NZCPS 2010 requirements for strategic planning and aquaculture
  - nationally consistent approach to on-farm biosecurity management
- Tangata whenua
  - positive recognition of tangata whenua when considering replacement consents under Part 6 (resource consents) of RMA
  - better protection of sites and areas of significance to tangata whenua

- guidance to applicants and councils on obligations in relation to customary rights recognised under Marine and Coastal Area (Takutai Moana) Act
- Environment
  - comprehensive biosecurity provisions for existing and new marine farms (a key component of a wider approach needed to effectively manage marine biosecurity risks)
  - consistent matters of discretion for replacement consents, based on ecological effects of aquaculture identified through a comprehensive literature review
  - simpler processes to allow small changes in farm location ('realignment') to avoid adverse effects on local natural values.

### Where do the costs fall?

The following new costs are expected as a result of the intervention:

- Marine farmers
  - pre-application consultation with tangata whenua
  - preparation and implementation of biosecurity management plans
- Regional councils
  - updating coastal plans to remove any duplication or conflict with the proposed NES
  - assessing biosecurity management plans submitted with new and replacement consent applications (charged back to applicants)
  - reviewing consents expiring after 2025 to add biosecurity management plan requirements
  - ongoing monitoring and compliance activities to ensure biosecurity management plans are implemented (mostly charged back to applicants, however councils expect a significant non-recoverable portion unless an area-based approach is taken)
  - capacity, capability and systems investments, especially in relation to biosecurity management plan requirements
- Tangata whenua
  - participation costs associated with pre-application consultation
- Public
  - lack of opportunity to participate in decision-making on individual replacement consent applications, unless a regional council determines that special circumstances apply
- Central government
  - development of NES proposals and public consultation (sunk cost)
  - development of guidance material for councils and marine farmers
  - investment in regional council plan changes through the Aquaculture Planning Fund
  - NES monitoring and review

### What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The key implementation risk is associated with regional council capability to evaluate and monitor biosecurity management plans, and capacity to undertake consent reviews to ensure all marine farms meet national criteria for on-farm biosecurity management. This risk is acknowledged and Fisheries New Zealand will work with industry, regional councils and biosecurity experts in advance of the proposed NES being gazetted to prepare an

externally referenced technical document and comprehensive guidance material to assist regional councils.

The key effectiveness risks also relate to biosecurity. An area-based approach to biosecurity management plans will substantially reduce costs. Such an approach will be enabled and encouraged in the externally referenced technical document.

In addition it is known that on-farm biosecurity management only addresses one source of biosecurity risk to the marine environment. Comprehensive management of marine biosecurity risks requires a suite of interventions to manage risks attributable to other users. Some pathways have been addressed and future work is planned to address other components. On-farm biosecurity management is a key component of an overall approach.

**Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.**

No significant incompatibility.

## Section C: Evidence certainty and quality assurance

**Agency rating of evidence certainty?**

We have a reasonable level of confidence about the evidence base for the size of the problem, effectiveness of the policy options, and costs and benefits.

A full section 32 analysis has been prepared, plus an associated cost benefit analysis, on the final proposal. The cost benefit analysis shows that benefits outweighs the costs in all scenarios, driven primarily by certainty and biosecurity benefits. The costs depend on which biosecurity approach is adopted. Sensitivity analyses were carried out to test a range of quantified costs and benefits, and in all cases the analysis returns a net benefit.

The section 32 analysis concludes that the proposed NES policy objective is the most appropriate to achieve the purpose of the RMA, and the proposed NES provisions will be effective and efficient to continue to manage marine aquaculture within environmental limits while increasing consistency and efficiency in the management of those activities under the RMA.

In addition a Regulatory Impact Statement was completed in May 2017 to accompany the release of the public consultation document which set out the draft NES proposal. The RIS identified 13 options of which 4 were considered viable and the NES was identified as the preferred option. The RIS included a preliminary cost benefit analysis of the preferred option.

This Regulatory Impact Assessment updates the May 2017 analysis based on feedback from consultation and further analysis.

**Quality Assurance Reviewing Agency:**

Treasury and Ministry for Primary Industries

**Quality Assurance Assessment:**

A Quality Assurance Panel with representatives from the Ministry for Primary Industries and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment “Options to improve management of existing marine aquaculture and reduce marine biosecurity risks” produced by the Ministry for Primary Industries and dated October 2018. The panel considers that it **meets** the Quality Assurance criteria.

Reviewer Comments and Recommendations:

The problem definition is clearly articulated, the analysis of options is comprehensive and the costs and benefits monetised and robust. The panel notes that outcomes are not fully predictable and will require careful monitoring and evaluation by the responsible agencies.

Proactively Released

# Impact Statement: Options to improve management of existing marine aquaculture and reduce marine aquaculture biosecurity risks

## Section 1: General information

Purpose					
<p>Fisheries New Zealand, a business unit of the Ministry for Primary Industries, and Ministry for the Environment are solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.</p> <p>This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.</p>					
Key Limitations or Constraints on Analysis					
<p>Limitations and constraints underpinning cost benefit analysis:</p> <ul style="list-style-type: none"><li>• The cost benefit analysis relies on credible assumptions about both the counterfactual and the expected costs and benefits. The results must be regarded as giving an order of magnitude of the net costs and benefits, rather than a definitive measure.</li><li>• Most of the quantitative data is derived from interviews and New Zealand specific literature. There is potential bias in the information provided and uncertainty in the magnitude of unquantified costs and benefits.</li><li>• A complicating factor is that the process of the proposed NES is known to be underway and sets up an anticipation by stakeholders that 'something will happen'. For the counterfactual it has been assumed that in the absence of an NES, councils would gradually introduce elements of good practice but it would happen inconsistently and in an ad hoc manner.</li><li>• An important assumption is that biosecurity costs and benefits are equal. This is assumed because even if best practice is achieved on marine farms, risks associated with incursions and spread of pests through other biosecurity pathways remain high.</li></ul>					
Responsible Managers (signature and date):					
<table border="0"><tr><td>Mat Bartholomew Director Aquaculture &amp; Branch Support Fisheries New Zealand Ministry for Primary Industries</td><td>Justin Strang Acting Director, Marine, Environmental Risk and Science Ministry for the Environment</td></tr><tr><td>Date:</td><td>Date:</td></tr></table>		Mat Bartholomew Director Aquaculture & Branch Support Fisheries New Zealand Ministry for Primary Industries	Justin Strang Acting Director, Marine, Environmental Risk and Science Ministry for the Environment	Date:	Date:
Mat Bartholomew Director Aquaculture & Branch Support Fisheries New Zealand Ministry for Primary Industries	Justin Strang Acting Director, Marine, Environmental Risk and Science Ministry for the Environment				
Date:	Date:				

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

Aquaculture contributes to the social and economic well-being of towns, communities and regions throughout New Zealand. There are 1149 marine farms in New Zealand (see Annex 1 for the distribution by region). In 2017 New Zealand's aquaculture sector generated \$612 million in revenue and provided employment for over 3000 people<sup>3</sup> in farming and processing businesses. These jobs are particularly important in regional New Zealand, including Northland, Coromandel, Bay of Plenty, Marlborough, Tasman, Canterbury and Southland. Studies of the social impacts of aquaculture jobs have shown significant benefits to individuals and communities, with each additional job being highly valued in small towns.<sup>4</sup>

Māori participation in aquaculture is significant, both in terms of iwi-owned businesses as well as individual Māori owners, operators and staff. Regional agreements under the Māori Commercial Aquaculture Claims Settlement Act have contributed to iwi-owned aquaculture assets throughout the main aquaculture regions. Iwi ownership is particularly significant in Northland, Auckland and Waikato in the mussel and oyster industries. Te Tau Ihu Iwi (the top of the South Island iwi) have interests in mussel and oyster farms in Tasman and Golden Bays and throughout the Marlborough Sounds, and Ngāi Tahu holds interests throughout the South Island.

Aquaculture is an opportunity for local, regional and national economic growth in New Zealand. Ernst & Young<sup>5</sup> estimated that if the volume, value and productivity of aquaculture increased, the sector could be worth \$1.45 billion by 2025. The industry goal is to increase annual sales to \$1 billion by 2025. The industry's ability to achieve this goal is limited by the space available for new farms. This, in turn, makes continued operation of existing farms, and investment in productivity of existing farms, a high priority.

The 2018 Situation and Outlook for Primary Industries<sup>6</sup> noted that aquaculture faces supply constraints including availability of suitable growing space, disease management and feed costs. However, production is expected to increase in the near future largely through gradual increase in the supply of hatchery-bred mussel spat supporting increased mussel production and a planned expansion of salmon farming.

#### Regulatory context

Marine farming faces unique challenges compared to other primary industries because it uses space in the coastal marine area that cannot be privately owned. To operate a marine farm, a farmer needs a consent from the regional council to occupy space and carry out marine farming activities. As marine farm consents expire, consent owners must apply for replacement consents to continue to farm. Consents for 689 marine farms (up to 60% of the total number of farms) will expire by 2025, with consents for 602 farms (52%) expiring at the end of 2024 and beginning of 2025. The consent expiry peak in 2024-25 is largely a result of a 2004 amendment to the RMA, under which all marine farm leases and licenses (issued under the Marine Farming Act) became 'deemed coastal permits' with 20

<sup>3</sup> Aquaculture New Zealand. <http://www.aquaculture.org.nz/industry/>

<sup>4</sup> Baines and Quigley (2016)

<sup>5</sup> Ernst & Young (2013)

<sup>6</sup> Ministry for Primary Industries (2018)



year terms. These deemed coastal permits expire on either 31 December 2024 or 1 January 2025.

While the aquaculture industry provides opportunities for regional development, it can also cause or exacerbate biosecurity threats through inadvertent introduction and spread of pests and diseases that are harmful to coastal environments. In addition the industry itself is vulnerable to pests and diseases that can adversely affect farm production or food safety. The 2017 outbreak of *Bonamia ostrae* in flat/Bluff oysters was a timely example of how biosecurity events can impact aquaculture production and other users and values in the coastal environment.

## **2.2 What regulatory system, or systems, are already in place?**

### **2.2.1 Regulatory system for managing marine aquaculture**

The primary regulatory system for managing aquaculture is established under the Resource Management Act 1991 (RMA), whose overall purpose is to promote the sustainable management of natural and physical resources. Other legislation is also relevant, including the Biosecurity Act 1993, Fisheries Act 1996 and Marine and Coastal Area (Takutai Moana) Act 2011. In addition, iwi interests in specific areas are recognised through Statutory Acknowledgements which are recorded through Treaty of Waitangi settlements, and customary rights of iwi, hapū and whānau in specific areas are recognised under the Marine and Coastal Area (Takutai Moana) Act.

Key elements of the RMA regulatory system for marine aquaculture are described below. Annex 2 contains further details on the other relevant statutes.

#### **Resource Management Act 1991**

New Zealand's regional councils are responsible, under the RMA, for managing the effects of aquaculture within their coastal marine area. Councils prepare regional coastal plans which state the objectives, policies and rules for managing aquaculture, and may identify where marine farms should and should not be located.

Every marine farm requires a coastal permit<sup>7</sup> to operate. In order to recognise the public nature of the coast, a right of occupation cannot be granted in perpetuity. The RMA specifies that the term of a coastal permit for aquaculture can be no less than 20 years and no more than 35 years. When a coastal permit expires a replacement consent must be obtained. There is no statutory presumption that a replacement consent will be granted.

#### ***New Zealand Coastal Policy Statement 2010***

The NZCPS 2010, prepared by the Minister of Conservation, sets out objectives and policies to achieve the purpose of the RMA in relation to the coastal environment. The following policies are particularly relevant to aquaculture:

- Policy 2 provides for the principles of the Treaty of Waitangi and kaitiakitanga
- Policy 7 provides for strategic planning
- Policy 8 recognises the importance of aquaculture
- Policy 11 provides for protection of indigenous biological diversity
- Policy 12 provides for management of biosecurity risks

<sup>7</sup> A coastal permit bundles up consent requirements for a marine farm to occupy space in the coastal marine area and other activities such as disturbance of the seabed, take and discharge of seawater, and discharges of feed.



- Policies 13 and 15 provide for protection of areas of outstanding natural character, outstanding natural features or outstanding natural landscapes ('outstanding areas')
- Policy 21 requires that where water quality has deteriorated so that it is restricting uses such as aquaculture, priority is to be given to improving water quality
- Policy 23 controls the discharge of contaminants to coastal water.

Councils are required to give effect to the NZCPS 2010 in their plans and must have regard to it when considering consent applications.

### *Regional coastal plans*

Regional coastal plans generally identify areas where applications for aquaculture can be made and rules, including the activity status, under which consent applications will be assessed. Regional coastal plans are required to go through a statutory consultation process under Schedule 1 of the RMA which gives consent holders and interested parties participation and appeal rights.

### *Consenting*

The application process depends on the activity status of existing aquaculture in the relevant region and might require notification and consultation with affected iwi authorities, neighbours or the public. The extent of notification is usually determined under criteria set out in sections 95A and 95B of the RMA. Even where public or limited notification is precluded under a regional plan or NES, notification is required under special circumstances and to affected tangata whenua.<sup>8</sup>

The activity status for existing aquaculture can be controlled, restricted discretionary, full discretionary, or non-complying (each with an increasing range of matters to be considered in determining replacement consent applications) or prohibited.<sup>9</sup> Where applications are granted, councils set conditions to manage and monitor the effects of aquaculture.

### *Biosecurity*

Management of aquaculture biosecurity risks is undertaken by Biosecurity New Zealand, regional councils and the aquaculture industry.

Under the RMA, regional councils can control the types of activities and resource use which could introduce or exacerbate biosecurity risks in the marine environment. In particular, they can impose (and monitor) consent conditions to avoid release and spread of harmful organisms. The prevalence and consistency of biosecurity conditions set by regional councils on marine farm permits is not clear but a 2016 report<sup>10</sup> noted there is a large variation in biosecurity practices within the aquaculture industry.

The industry has developed guidance on biosecurity practices for salmon, oysters and mussels through the *A+ Sustainable Aquaculture Programme (A+ Programme)*. Further guidance is given in the Ministry for Primary Industries' *Aquaculture Biosecurity Handbook*,<sup>11</sup> which includes a biosecurity management plan template for marine farms. These documents provide useful guidance but adoption of the measures remains voluntary, species-limited and currently high level.

<sup>8</sup> Affected tangata whenua includes affected protected customary rights groups, customary marine title groups, and holders of statutory acknowledgements in the relevant area.

<sup>9</sup> No regional coastal plans currently use a prohibited activity status for existing aquaculture.

<sup>10</sup> Coast & Catchment (2016)

<sup>11</sup> Ministry for Primary Industries (2016)

### *Second generation planning*

Councils are at different stages with respect to reviewing their regional coastal plans (“2<sup>nd</sup> generation planning”). Of the eight major aquaculture regions, Auckland and Bay of Plenty have operative or near-operative second generation plan provisions and Northland is at the stage of hearings for its second generation plan. None of the other major aquaculture regions has notified second generation plan provisions for aquaculture activities.

Outcomes of these review processes are mostly unknown: some councils may adopt different consenting rules for existing marine farms, and others may not.

#### **2.2.2 Fitness for purpose of regulatory system**

The Ministry for the Environment’s 2017 regulatory stewardship strategy<sup>12</sup> summarises the condition and fitness for purpose of the overall environmental management regulatory system and the subsidiary regulatory system for the coast. In relation to the coast, it notes that system objectives are clear but there are indications that the system is only achieving some of the desired outcomes. Available information suggests implementation is not effective in some areas. Details of the assessment are set out in Annex 3. Development of national direction on aquaculture under the RMA is a priority under the Ministry for the Environment Regulatory Stewardship strategy.

### **2.3 What is the policy problem or opportunity?**

The status quo gives rise to five key issues:

- 1) regulatory uncertainty associated with replacement consenting for existing marine farms
- 2) variable rules relating to management of ecological effects of aquaculture and inconsistent application of best understanding of the impacts of marine aquaculture in New Zealand
- 3) barriers to on-farm innovation for existing marine farms
- 4) incomplete and inconsistent on-farm biosecurity management practices, which reduces the effectiveness of biosecurity risk management
- 5) inconsistent rules between regions.

#### **2.3.1 Regulatory uncertainty for replacement consents**

The industry is facing a high level of uncertainty about its future due to the looming peak in consent expiry. In order to maintain its current contribution to the New Zealand economy, the aquaculture industry needs to stabilise its existing production, to provide the certainty to invest in better use of existing space, value-added production and development and adoption of new technologies. Confidence in the continuation of an activity is critical to continued investment and innovation in any industry. It is reasonable to expect that applications for replacement consents for existing marine farms will be processed without unnecessary costs and prolonged processes, provided existing marine farms are appropriately located, the farmers have been responsible operators and farms will meet best practice standards for managing environmental impacts.

NZIER noted, in 2015, that regulatory uncertainty in the aquaculture sector is expected to lead to:<sup>13</sup>

- Reduced expected return and asset value of incumbent investments

<sup>12</sup> Ministry for the Environment (2017)

<sup>13</sup> NZIER 2015, p. 11

- Increased premiums required by investors to undertake new investments
- Reduced attention from other potential investors
- Reduced investment and maintenance on existing assets, along with product development and R&D, perhaps to levels required to simply keep production ticking over.

Uncertainty in replacement consenting processes is driven mainly by:

- Activity status and/or broadly defined matters of discretion or control
- Extent of notification of consent applications, and
- NZCPS 2010 policies in relation to protection of outstanding areas.

#### *Activity status and notification*

The activity status and notification requirements for replacement consents, set out in regional plans, can contribute to regulatory uncertainty and consenting costs by increasing the information requirements on applicants and determining whether hearings and appeals will add to the time and cost.

Under section 68A of the RMA aquaculture cannot be a permitted activity. The following range of activity statuses for aquaculture activities can be included in rules in plans:

- controlled activity – Requires a resource consent, and the application must be granted unless the marine farm is wholly or partially within a protected customary rights area, or has a more than minor effect on a protected customary rights area, or has insufficient information. The consent authority can impose conditions on the resource consent, but they are restricted to the stated matters of control and cannot be made so stringent as to mean the consent cannot be exercised.
- restricted discretionary activity – Requires a resource consent, and the application may be declined but only in relation to matters which discretion is restricted to. If the consent is granted, conditions may be imposed but only in relation to the stated matters over which discretion is restricted.
- discretionary activity – Requires a resource consent, and the application may be declined, or granted with or without conditions. Matters to be considered for a discretionary activity are wide, but any conditions of consent must come within the jurisdiction of the consent authority and be relevant under the RMA.
- non-complying activity – Requires a resource consent, and the application may be declined, or granted with or without conditions. The consent may only be granted if the consent authority is satisfied that the adverse effects on the environment will be minor or that the activity will not be contrary to the objectives and policies of the relevant regional coastal plan and/or proposed regional coastal plan.
- prohibited activity – no application for a resource consent may be made for the activity, and the consent authority must not grant a consent for it.

Regional councils have set a variety of activity statuses for existing marine farms through their coastal plans. Based on analysis carried out in 2017, and noting that no further plan changes have been notified since then:

- up to 37% of existing marine farms have controlled activity status<sup>14</sup>

<sup>14</sup> These are in Northland, and some areas of Waikato and Marlborough. The number is an estimate because establishing how many existing marine farms in Marlborough are classified as controlled activities is complicated, primarily because of the construction of the rule framework that applies in the Marlborough Sounds Resource Management Plan.

- a few existing farms in Marlborough have restricted discretionary activity status with confined matters of discretion
- all other existing marine farms have a discretionary or non-complying activity status, or restricted discretionary activity status with relatively wide matters of discretion.

This means that up to 63% of existing marine farms currently have an activity status that provides less certainty of process than desirable for stabilising current levels of production and investment confidence.

While public participation through notification of resource consent applications can enhance the quality of decision-making for new farms or for significant changes to existing farms, the value of notification is more limited for most existing farms. The effects on the environment of existing marine farms that are making no or minor changes are relatively well known, and can be managed through appropriate consent conditions. Where concerns have been expressed about existing marine farms through public notification of replacement consents to date, these have often been about whether the particular location is an appropriate location for marine farming. This is a matter that is better considered at the time that regional coastal plans are developed rather than in the course of an individual replacement consent application.

#### *Outstanding areas*

The NZCPS 2010 directs that adverse effects of activities on outstanding areas are to be avoided. The Supreme Court judgment in *EDS v The New Zealand King Salmon Company Limited*<sup>15</sup> and the Court of Appeal judgment in *Davidson v Marlborough District Council*<sup>16</sup> has increased focus on identification of outstanding areas, and implications for consent applications in these areas.

Two elements contribute to uncertainty in replacement consenting processes:

1. Identification of outstanding areas, which determines whether an existing marine farm is located in or near an outstanding area. Councils are at different stages with respect to identifying outstanding areas and values in the coastal environment.
2. Determination of whether the existence of a marine farm in or near an outstanding area has an adverse effect on the outstanding values. This often involves assessment and expert reports, and even then is often a matter of judgement because of the relatively subjective nature of some assessments, particularly those for landscape.

A review of 50 recent replacement consent applications in Marlborough for farms near outstanding areas (or with minor overlaps) indicates that decision makers concluded that continued existence of the marine farms would have no more than a minor effect (or in some cases less than a minor effect) on landscape values and/or natural character. Anecdotal discussions with regional councils indicates that existing marine farms with the greatest likelihood of adverse effects on outstanding areas are those located within outstanding areas, as opposed to those just outside the boundaries of outstanding areas.

<sup>15</sup> NZSC 38 [17 April 2014]

<sup>16</sup> NZCA 316 [21 August 2018]

### 2.3.2 Ecological effects of aquaculture

A comprehensive literature review of the ecological effects of aquaculture in New Zealand was carried out by the Ministry for Primary Industries in collaboration with the Cawthron Institute and the National Institute for Water and Atmospheric Research (NIWA).<sup>17</sup> The review was part of a wider programme to provide current and science-based information and advice on ecological effects of marine aquaculture, and best practice guidance to regional councils in relation to the management of aquaculture. An overview document<sup>18</sup> summarises the key potential ecological effects of marine aquaculture in New Zealand, comments on their likely significance, and suggests management and mitigation options.

In some regions, the benefit of this literature review and advice cannot be implemented without changes to coastal plans to insert appropriate matters of discretion or control on consents. In regions where existing marine farms are discretionary or non-complying councils may take inconsistent approaches to managing ecological effects.

### 2.3.3 Barriers to on-farm innovation

In many regions, lack of specific rules can hinder changes to existing marine farms that improve environmental outcomes or increase value of production.

Regulatory processes to alter consent conditions to allow for changes in farmed species or make small-scale realignments of farms to more suitable locations<sup>19</sup> are often complex. Unless regional coastal plans make specific provisions for these activities, or marine farm consents have flexibility in relation to species farmed, such changes require either a new consent or an amendment to the conditions of the existing consent. As noted above, the activity status for new consents varies between regions, with notification determined by the council on a case-by-case basis. The RMA (s127) requires applications for changes to consent conditions to be treated as a discretionary activity. The complexity and uncertainty of outcome of these processes can deter innovation on existing marine farms.

### 2.3.4 On-farm biosecurity

Biosecurity is a key risk to both the New Zealand coastal environment and the aquaculture industry. Effective biosecurity practices are critical to safeguarding New Zealand's coastal environment, including indigenous biodiversity, as well as the aquaculture industry's production, global reputation, and market access.

Currently, around 80% of existing marine farms have some degree of biosecurity practice in place. These practices and methods are often inconsistent, and effectiveness can vary substantially between farms.

The industry has taken a voluntary and proactive approach to managing biosecurity risks through its *A+ Sustainable Aquaculture Programme* but there is currently no national requirement for consistent biosecurity management plans for marine farms.

For on-farm biosecurity measures to be effective, measures need to be consistent across the country, and be comprehensive in terms of coverage of all farms.

### 2.3.5 Inconsistent rules between regions

Underpinning the issues identified above is that regional council approaches to managing aquaculture are not consistent across New Zealand. Regions develop objectives, policies

<sup>17</sup> Ministry for Primary Industries (2013a).

<sup>18</sup> Ministry for Primary Industries (2013b)

<sup>19</sup> For instance, realignments to shift a farm away from a reef habitat or outstanding area.



and rules for aquaculture through a planning process which provides for community participation. Through this process, the activity status, notification requirements and matters to be considered in the course of a replacement consent application can vary between regions. This can impose unnecessary and unjustified extra time and costs on applicants, regional councils and interested parties, and may not always encompass best practice information.

In addition, many councils are yet to undertake strategic planning as required by the NZCPS 2010, meaning that issues of appropriateness are currently being considered and re-litigated on a farm-by-farm basis through the consenting processes.

### 2.3.6 Policy objective

The policy objective is to:

*Develop a more consistent and efficient regional planning framework for the management of existing marine aquaculture activities and on-farm biosecurity management, while supporting sustainable aquaculture within environmental limits.*

## 2.4 Are there any constraints on the scope for decision making?

The main constraints on the scope for decision-making are that the intervention:

1. is only to deal with replacement consents for existing marine farms, except in relation to biosecurity which would apply to existing and new farms; and
2. must continue to enable conditions to be set to ensure existing marine farms meet best practice standards for managing environmental effects.

Interdependencies with other ongoing work are:

1. The externally referenced technical document specifying on-farm biosecurity requirements is being developed to be available at the time of the exposure draft of the proposed NES regulations
2. Development of Guidance material
3. Future work with iwi/hapu to identify farms which have an impact on tangata whenua values and to identify opportunities to mitigate impacts.

In addition there are linkages with the following future work:

1. Options to provide greater certainty for Wainui Bay and Aotea Harbour spat catching farms
2. Initiatives under the Fisheries Act to improve recordkeeping for registered fish farmers
3. Development of pathway management plans under the Biosecurity Act
4. Development of coastal occupation charges regime
5. Review of cost recovery provisions under RMA which currently exclude consent condition reviews required by an NES.



## 2.5 What do stakeholders think?

The main stakeholders are existing marine farmers, regional councils, environmental and community groups, and interested public. Tangata whenua also have a key interest in the management of aquaculture.

### 2.5.1 Stakeholder views

In general, regional councils and existing marine farmers share the agencies' view of the problem. Community groups and the interested public share the agencies' view in relation to biosecurity.

Aquaculture New Zealand has identified addressing the uncertainty and inefficiency currently associated with replacement consent applications for existing farms as its number one priority.<sup>20</sup>

### 2.5.2 Treaty partner

Māori are affected by the problem – both as existing marine farm consent holders and as kaitiaki of the coastal environment. As consent holders, Māori face the same regulatory uncertainties as other marine farmers. As kaitiaki of the coastal environment Māori wish to see proper consideration of the effects of existing aquaculture on tangata whenua values and effective management of biosecurity risks.

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<sup>20</sup> Aquaculture New Zealand Business Plan 2018-2019.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

Thirteen options were identified and included in a discussion document released in June 2017. Seven of these, including both regulatory and non-regulatory options, are set out below and six that were ruled not viable are set out in section 3.3. All of the regulatory options are instruments available under the RMA.

#### 3.1.1 Regulatory options

##### 1. *NES for Marine Aquaculture*

An NES is a regulation under the RMA that sets national rules and requirements which, in effect, replace equivalent rules and requirements in proposed or operative regional plans. An NES for Marine Aquaculture would set rules and requirements for replacement consents and on-farm biosecurity. Regional councils must update their coastal plans to give effect the NES, but Schedule 1 processes are not required.

The proposed NES would:

- a) set restricted discretionary activity status and clearly specified matters of discretion for existing marine farms that are not in areas identified in regional coastal plans as inappropriate for aquaculture
- b) preclude notification, except to affected tangata whenua and where special circumstances exist, as required under sections 95A and 95B of the RMA
- c) clarify that consideration of effects on outstanding values is limited to marine farms that are within, or partially within, outstanding areas
- d) require consideration of all relevant environmental effects of existing farms, based on current best understanding
- e) provide simpler processes for existing farms to reduce adverse effects through realignment and add value through species changes
- f) recognise strategic planning carried out by councils to give effect to NZCPS 2010, by providing greater flexibility for activity status where this planning has occurred
- g) require all marine farms (existing and new) to develop and implement on-farm biosecurity management plans that meet specific criteria.

##### 2. *NZCPS and NES for Marine Aquaculture*

A combined approach involving an NZCPS: Marine Aquaculture and an NES: Marine Aquaculture could be taken. This would provide a consistent set of rules and requirements as set out above for Option 1, as well as more detailed and specific aquaculture objectives and policies than those currently in the NZCPS 2010.

The NES element would be implemented directly, as in option 1. The NZCPS element would be interpreted and implemented by regions through changes to coastal plans using Schedule 1 processes.

##### 3. *Minister for the Environment directed plan changes (s25A)*

The Minister for the Environment can, under s25A of the RMA, direct regional councils to prepare a plan change. The Minister could direct relevant regional councils to prepare changes to their coastal plans to include new provisions for replacement consents for existing marine farms and on-farm biosecurity management, as set out in Option 1. Once prepared, the plan change would be subject to the normal Schedule 1

process under the RMA. A separate direction would have to be made to each regional council.

4. *Aquaculture regulations (s360A)*

The Minister of Aquaculture can, under s360A of the RMA, recommend regulations to amend provisions in an operative regional coastal plan that relate to management of aquaculture. Specific rules for replacement consents and management of on-farm biosecurity risks, as set out in Option 1, could be added to regional coastal plans by regulation. Regulations need to be customised to the individual regional coastal plans and can only be used to amend operative regional coastal plans. Before recommending regulations the Minister of Aquaculture must carry out a consultation process, including consultation with the Minister of Conservation.

### 3.1.2 Non-regulatory options

5. *Guidance material*

Central government could prepare national guidance material for regional councils on the recommended approach to setting activity status, notification requirements and matters that should be considered for replacement consents, including realignment and species changes. Initial guidance has been developed in relation to biosecurity management plans through the *Aquaculture Biosecurity Handbook* and the aquaculture industry's A+ programme, and further guidance could be provided.

6. *Use Aquaculture Planning Fund to assist with upfront planning*

Strategic planning for aquaculture could be encouraged, and funding provided, through the Aquaculture Planning Fund administered by the Ministry for Primary Industries. . Work is already underway to identify projects that might be suitable to support. Strategic planning would need to be given effect through a plan change process using Schedule 1 of the RMA.

7. *Industry standards*

The A+ Sustainable Aquaculture Framework is a voluntary industry standard that promotes best practice, including biosecurity measures. It provides high level guidance for salmon, oyster and mussel farming. The standard could be used to promote further adoption of consistent biosecurity measures.

### 3.1.3 Compatibility and complementarity

All of the non-regulatory options can be used in combination with the regulatory options. The regulatory options are mutually exclusive, with option 2 being a more complex variant of option 1.

### 3.1.4 Outcome of consultation

To assist with development of proposals for national direction Fisheries New Zealand, working with the Ministry for the Environment and Department of Conservation, convened an Aquaculture Reference Group comprising members of the aquaculture industry, regional councils, Te Ohu Kaimoana (the Aquaculture Settlement trustee, representing Iwi interests), and the Environmental Defence Society. Various proposals were tested on an iterative basis with the Reference Group. In addition, 11 hui were held in 2016 prior to release of the public consultation document.

Public consultation was carried out in 2017. Consultation did not affect the range of options for replacement consenting, however it led to a number of refinements to the preferred

option identified in the consultation document. These refinements are summarised in section 5.1.

### 3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

#### 3.2.1 Assessment criteria

1. *Delivers consistency*: Does the option address unnecessary variation between councils in relation to controls on aquaculture?
2. *Increases certainty about consenting processes and requirements*: Does the option provide more certain and efficient replacement consenting provisions for existing farms, while maintaining the underlying purpose of the RMA?
3. *Improves management of on-farm biosecurity risks*: Does the option enable consistent and effective on-farm biosecurity management plans/procedures?
4. *Recognises recent and future strategic planning for aquaculture*: Does the option recognise and provide for recent and future strategic planning by councils that identifies areas that are appropriate or inappropriate for aquaculture?
5. *Ease of implementation*: Are there any significant barriers or complexities to implementation? Does the option deliver a solution that can be implemented in a timely and effective manner prior to 2024? Is it possible to monitor compliance with the option, and can it be enforced?
6. *Efficiency*: To what extent are the benefits of the option expected to exceed costs?

#### 3.2.2 Trade-offs

Improved management of on-farm biosecurity risks will increase regulatory requirements for marine farming consents. The requirements for marine farm biosecurity management plans will be transparent and consistent since they will be set out in an externally referenced technical document prepared by independent biosecurity experts for Fisheries New Zealand.

### 3.3 What other options have been ruled out of scope, or not considered, and why?

The following six options were also identified but were not considered viable.

#### 1. NZCPS for Marine Aquaculture (Standalone)

*Description*: An NZCPS with specific objectives and policies for marine aquaculture has potential to provide a more nationally consistent policy approach to how aquaculture activities are addressed by councils in regional policy statements and coastal plans. An NZCPS for aquaculture would be developed, under the RMA, by the Minister of Conservation and requires either a Ministerial consultation process or a Board of Inquiry, followed by Schedule 1 processes to amend regional policies and plans.

*Assessment*: This option is not considered viable because an NZCPS can only set policy and would depend on councils making plan changes to set activity status and rules for replacement consents and biosecurity. Implementation through changes to regional coastal plans are unlikely to be completed prior to 2024 due to extended timeframes associated with Schedule 1 processes which must be followed by each region. In addition a standalone NZCPS: Marine Aquaculture would only partially achieve more certain and efficient replacement consent processes for existing marine farms and partially improve on-farm biosecurity management, since local interpretation

and implementation could still lead to different approaches across regional councils. It could reinforce the need to undertake strategic planning for aquaculture, but this is already directed under Policies 7 and 8 of the NZCPS 2010.

## 2. Amend NZCPS 2010

*Description:* The NZCPS 2010 could be amended to more explicitly recognise existing aquaculture, and give greater direction about how existing farms in outstanding areas should be treated. Amending the NZCPS 2010 would require either a Ministerial consultation process or a Board of Inquiry process, followed by regional council processes to amend regional coastal plans.

*Assessment:* This option is not considered viable because, like the previous option, an amended NZCPS 2010 can only set policy and would depend on councils making plan changes to set activity status and rules for replacement consents and biosecurity. Implementation through changes to regional coastal plans is unlikely to be able to be completed within the timeframes required and would continue to result in some variability due to regional council interpretation of the amended NZCPS 2010

## 3. Minister of Conservation amendment of plans prior to approval

*Description:* Clause 19 of Schedule 1 of the RMA allows the Minister of Conservation to amend regional coastal plans prior to approval.

*Assessment:* This option is not considered viable because, while it could achieve a high level of certainty through prescriptive amendments, it can only be used at the end of a plan review process. Until plan reviews are initiated there would be ongoing uncertainty about replacement consenting for existing marine farms and incomplete management of biosecurity risks. To date Clause 19 has not been used to make substantive changes to plans. It is very unlikely that rules for all relevant regional plans could be in place before 2024.

## 4. National planning standards

*Description:* The Resource Legislation Amendment Act 2017 provided for national planning standards. Planning standards are designed to set nationally consistent parameters (structure, format or content) for regional policy statements and plans to support implementation of national environmental standards, national policy statements, New Zealand coastal policy statements or regulations made under the RMA. National planning standards may specify objectives, policies and rules to be included in plans. The first set of national planning standards, dealing with the structure and form of policy statements and plans, are to be gazetted in April 2019. Planning standards need to be translated into plans before they have effect.

*Assessment:* This option is not considered viable because any national planning standards for aquaculture would not be able to be prepared until the first set of standards is completed. It is very unlikely that rules for all relevant regional plans, complying with any aquaculture national planning standard, could be in place before 2024.

## 5. Legislative reform

*Description:* The government could propose amendments to the RMA and Fisheries Act, or develop new aquaculture-specific legislation to provide stability for existing aquaculture activities.

*Assessment:* While legislative reform could provide a high level of consistency and certainty through prescriptive statutory provisions, it might not allow for regional

planning (particularly the strategic planning for the coastal environment envisaged by Policy 7 of the NZCPS 2010) and would separate consideration of aquaculture from other activities and uses of the coastal environment.

6. *Enhanced central government participation in regional processes*

*Description:* Central government could increase its involvement in regional processes through submissions to regional councils on second generation regional coastal plans and on consent applications in an attempt to have greater influence over the outcome.

*Assessment:* This option is not considered viable because it relies on regional councils first developing, then notifying proposed regional coastal plans. Furthermore, any submissions from central government would still be subject to council decisions and therefore may not achieve an increase in certainty about consenting processes or requirements for biosecurity. Any changes to regional plans would be protracted and have variable outcomes in terms of reducing uncertainty in replacement consenting or increasing consistency in biosecurity management, as the RMA Schedule 1 processes must be followed.



## Section 4: Impact Analysis

**Marginal impact:** How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

Options	No action	Regulatory				Non-regulatory		
Criteria		NES	NES and NZCPS	Minister directed plan changes	Aquaculture regulations	Guidance	Planning Fund	Industry standard (A+)
<b>Consistency</b>	<b>0</b>	<b>++</b> One set of rules and requirements for replacement consents and biosecurity	<b>++</b> One set of rules and requirements for replacement consents and biosecurity, but variable interpretation of NZCPS at regional level	<b>+</b> Some variation due to differing council drafting, and outcome of Schedule 1 process	<b>+</b> One set of rules and requirements for replacement consents and biosecurity, for current plan	<b>+</b> Could achieve some greater consistency	<b>0</b> Would only increase consistency if used in a very directive manner and across all regions	<b>0</b> Does not alter regional rules
<b>Increased regulatory certainty</b>	<b>0</b>	<b>++</b> Increased certainty due to rules about activity status, notification, and matters to be considered (including outstanding areas)	<b>++</b> Increased certainty due to rules about activity status, notification, and matters to be considered (including outstanding areas)	<b>+</b> Could increase certainty, depending on final outcome of Schedule 1 process	<b>++</b> Increased certainty due to rules about activity status, notification, and matters to be considered (including outstanding areas) for current plan	<b>+</b> Depends on uptake by regions and outcome of Schedule 1 process	<b>+</b> Could be used to identify areas that are appropriate (or not) for aquaculture in key regions	<b>0</b> Does not alter regional rules
<b>Biosecurity</b>	<b>0</b>	<b>++</b> Comprehensive requirements for all marine farms	<b>++</b> Comprehensive requirements for all marine farms	<b>+</b> Comprehensive requirements for all marine farms, but consistency depends on	<b>+</b> Comprehensive requirements for all marine farms under current plans	<b>+</b> Depends on uptake by regions and outcome of	<b>0</b> Not applicable to biosecurity	<b>+</b> Increased adoption of voluntary biosecurity measures

Options	No action	Regulatory				Non-regulatory		
Criteria		NES	NES and NZCPS	Minister directed plan changes	Aquaculture regulations	Guidance	Planning Fund	Industry standard (A+)
				outcome of Schedule 1 process		Schedule 1 process		
<b>Strategic planning</b>	<b>0</b>	<b>++</b> Strategic planning by regional councils recognised	<b>++</b> Strategic planning by regional councils recognised	<b>0</b> Cannot recognise future planning because rule changes only apply to current plans	<b>0</b> Cannot recognise future planning because rule changes only apply to current plans	<b>0</b> Depends on uptake by regions	<b>++</b> Accelerates strategic planning	<b>0</b> Does not alter regional rules
<b>Ease of implementation</b>	<b>0</b>	<b>++</b> Councils must change coastal plans, but no further consultation required. Can be implemented well in advance of 2024	<b>+</b> NES can be implemented quickly but NZCPS-driven changes to regional plans require Schedule 1 processes and unlikely to be in place in advance of 2024	<b>--</b> Requires customised interventions for each plan and ongoing intervention for new plans. Lengthy plan change processes using Schedule 1	<b>-</b> Requires customised interventions for each plan and ongoing intervention for new plans	<b>0</b> Can be developed quickly, but unlikely to achieve change in consenting practice in advance of 2024	<b>0</b> Not expected to result in significant changes to rules in advance of 2024	<b>0</b> Does not alter regional rules
<b>Efficiency (Benefits over costs)</b>	<b>0</b>	<b>++</b> Based on cost benefit analysis <sup>21</sup> , benefits expected to exceed costs	<b>-</b> Additional costs of NZCPS expected to exceed benefits	<b>-</b> Implementation costs high and outcomes not future proof	<b>-</b> Implementation costs high and outcomes not future proof	<b>0</b>	<b>0</b>	<b>0</b>

<sup>21</sup> NZIER 2018b

Options	No action	Regulatory				Non-regulatory		
Criteria		NES	NES and NZCPS	Minister directed plan changes	Aquaculture regulations	Guidance	Planning Fund	Industry standard (A+)
<b>Overall assessment</b>		Best option – especially with complementary guidance and support from Aquaculture Planning Fund	NZCPS element adds cost and time without much increase in certainty	Complex implementation, and unlikely to achieve change in advance of 2024		Ineffective as standalone options, but useful complementary measures to regulatory options		

**Key:**

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

#### 5.1.1 Preferred option

An NES was identified as the preferred regulatory option, complemented by guidance material and financial assistance to regional councils through the Aquaculture Planning Fund.

The proposed NES meets all of the assessment criteria and is the preferred option for its ability to:

- a) provide prescriptive national direction in a way that can provide consistency and increased certainty of process for replacement consenting, while ensuring aquaculture is managed in accordance with current understanding of best environmental practice;
- b) be implemented in a timely manner, enabling a consistent approach to replacement consenting to be established well before 2024 when the majority of current consents expire, and providing greater investor confidence in the existing aquaculture industry;
- c) recognise recent and future strategic planning by regions for aquaculture; and
- d) ensure a consistent, comprehensive and effective management framework under the RMA for on-farm biosecurity risks for both new and existing marine farms.

A cost benefit analysis of the proposed NES shows that benefits outweighs the costs in all scenarios,<sup>22</sup> driven primarily by certainty and biosecurity benefits. The costs depend on which biosecurity approach (area-based management plans or farm-based management plans) is adopted. Sensitivity analyses were carried out to test a range of quantified costs and benefits, and in all cases the analysis returns a net benefit.

The proposed NES would increase certainty about replacement consenting processes and requirements generally, but it would not include site specific determinations about which farms will get resource consents. This decision role is retained with regional councils. In addition, regional councils would continue to specify any consent conditions needed to address the matters of discretion.

The proposed NES has a cost in terms of reduced public input on consent applications for existing farms. Public input is not precluded on applications for replacement consents for existing farms located in areas that councils have identified, through regional planning processes, as inappropriate for aquaculture.

The proposed NES would encourage strategic planning by regional councils to determine where aquaculture should and should not be located. It would enable coastal plans to set more lenient provisions to provide greater certainty where marine farming is identified as appropriate, and more stringent provisions in situations where marine farms are identified as inappropriate.

Since 2015<sup>23</sup> Government has identified the need for nationally consistent rules for the management of aquaculture, including simpler and more certain re-consenting provisions for existing farms, as a priority for national direction. The NES continues to be a priority

<sup>22</sup> NZIER (2018)

<sup>23</sup> B14-030 Unlocking Aquaculture Growth 5 March 2015. Briefing to Business Growth Agenda Ministers.

under the forward agenda recently agreed by Cabinet. Relying on standard RMA planning processes to achieve the same ends would be protracted and unlikely to result in changes that are sufficiently ahead of the consent expiry peak in 2024 to effectively counter the uncertainty and associated lack of investment confidence.

### **5.1.2 Tangata whenua and stakeholder views**

Public consultation on a draft NES for marine aquaculture was carried out in mid-2017. Seven hui were also held during this consultation period.

High level feedback from the 107 submissions received included:

- i. 55% of submitters supported the draft NES either completely or with modifications (just over half of these were from the aquaculture industry).
- ii. The majority of aquaculture industry and regional council submitters supported the draft NES with modifications (no industry or council submitters opposed the NES).
- iii. Half of the submissions from iwi organisations supported the draft NES with modifications. Two iwi organisations opposed the draft NES, with the remainder either taking a neutral position or not stating their position.
- iv. 33% of submitters opposed the draft NES, either completely (10%) or in part (22%). Opposition was primarily from environmental groups and individuals. One third of these submissions were solely focused on opposition to the way the consultation document proposed to address the Wainui Bay spat catching farms.

The consultation document noted that tangata whenua values needed to be considered during replacement consenting. In 2018, further engagement occurred with tangata whenua to discuss particular matters related to tangata whenua values and test proposed options.

Feedback from the Aquaculture Reference Group was sought on refinements made based on submissions, further engagement with tangata whenua, and additional analysis.

### **5.1.3 Further analysis on options to reduce biosecurity risks**

Following consultation the following further options<sup>24</sup> were considered to reduce biosecurity risks:

- Tools under the Biosecurity Act 1993 – including pathway management plans, pest management plans and controlled area notices
- Combined approach using the proposed NES and Biosecurity Act tools
- Updating the Fisheries Act 1996 to require recordkeeping of stock and gear movements as conditions of fish farm registration.

The analysis concluded that a combined approach, using a variety of tools, will be necessary to effectively manage marine farm biosecurity in New Zealand. It recommended that:

- a) requirements for on-farm biosecurity management plans be included in the proposed NES, provided the requirements were restricted to matters that can be controlled under the RMA; and
- b) a national pathway management plan for aquaculture be developed.

In effect, this analysis did not alter the preferred option for addressing on-farm biosecurity in the proposed NES, but it highlighted the need for additional complementary instruments

<sup>24</sup> Further details are set out in the s32 evaluation report and Stantec 2018a

to be developed to ensure comprehensive management of biosecurity risks, particularly from a pathway perspective, associated with aquaculture and other marine activities.

#### 5.1.4 Key refinements made to proposed NES

Key changes included in the proposed NES after taking into account public consultation, further engagement with the reference group, and hui in the key aquaculture regions are:

1. Not proceeding with any special provisions for sites of particular importance to aquaculture, including the Wainui Bay spat catching farms
2. Specification of requirements for pre-application consultation with tangata whenua and elaboration of the tangata whenua matter of discretion.
3. Amendments to the matters of discretion to ensure consistency with NZCPS 2010 Policy 11 (Indigenous Biodiversity).
4. Enabling councils to apply more stringent activity statuses to existing marine farms determined to be located in inappropriate areas through strategic planning undertaken in accordance with NZCPS 2010 Policy 7.
5. Addition of a matter of discretion related to adaptive management. This addresses, partially, the concern that bay-wide management and cumulative effects were not addressed in the draft NES. These effects are more appropriately dealt with at the planning stage rather than the consenting stage, and if a region has codified an adaptive management approach the proposed NES now allows conditions to be set to implement the adaptive management approach.
6. Refinements and additions to other matters of discretion to make environmental protections more rigorous or less ambiguous.
7. Biosecurity provisions – ensuring the reference document deals only with matters that can legally and effectively be managed through the RMA and enables flexibility for them to be delivered either through farm-specific biosecurity management plans or area-based biosecurity management plans.

## 5.2 Summary table of costs and benefits of the preferred approach

### Additional costs of proposed approach, compared to taking no action.

This table sets out total costs estimated over a 20 year period, using a discount rate of 6%. The range in costs reflects the difference between per-farm biosecurity management plans and area-based biosecurity management plans.

Affected parties	Comment:	Impact	Evidence certainty
Marine farmers (regulated parties)	Preparation of biosecurity management plans (one-off, spread over 3 years)	\$123k (area-based plans) to \$1.5m (farm-based plans)	High
	Annual biosecurity monitoring (spread over 20 years)	\$1.2m (area-based plans) to \$11.9m (farm-based plans)	Medium
	Biosecurity auditing costs once every 3 years (spread over 20 years)	\$697k (area-based plans) to \$6.6m (farm-based plans)	High



	Change in behaviour regarding biosecurity management	Non-monetised, medium	
	Consultation with tangata whenua prior to replacement consent application (ongoing)	Non-monetised, medium	
Regulators: Regional councils and unitary authorities	Plan changes (one-off, spread over 3 years)	\$294k	High
	Training costs (one-off, spread over 2 years)	\$35k	High
	Systems upgrades to reflect increased reporting and monitoring (one-off, spread over 2 years)	\$86k	High
	Process implementation costs (one-off, spread over 3 years)	\$53k	High
	Reviewing consents to add biosecurity plans (one-off in 2024)	\$430k	Medium
	Unrecovered annual monitoring costs (staff and consultants) for biosecurity plans (spread over 20 years)	\$0 (area-based plans) to \$6.5m (farm-based plans)	Medium
Regulators: Central Government (Fisheries NZ, MfE & DOC)	Implementation costs (guidance material and capability investment for councils (one-off, spread over 3 years) and review costs in years 3 and 8	\$317k	High
Wider government	None		
Tangata whenua	Participation costs associated with pre-application consultation (ongoing)	Non-monetised, medium	
Other parties	Loss of public participation in consent processes (ongoing)	Non-monetised, medium	
<b>Total Monetised Cost</b>	\$ (2018 dollars, using 6% discount rate)	\$2.7m for area-based plans to \$27.7m for farm-based plans	
<b>Other non-monetised costs</b>	Limiting environmental consideration to matters of discretion	Low	

### Expected benefits of proposed approach, compared to taking no action.

This table set out total benefits estimated over 20 years, using a 6% discount rate. Biosecurity benefits are assumed to be equal to biosecurity costs, and the range depends on whether biosecurity management plans are developed on a per farm basis or an area basis. Low and high scenarios are used to estimate certainty and savings benefits to marine farmers.

Affected parties	Comment:	Impact	Evidence certainty
Marine farmers (regulated parties)	Greater regulatory certainty and associated investor confidence (spread over 6 years)	\$8.6m to \$17.3m <sup>25</sup>	High
	Lower replacement consent application costs (savings) (spread over 6 years)	\$2.5m to \$4.3m	Medium
	Simpler provisions to change species on existing farms	Non-monetised, low	
	Simpler provisions to address site-specific concerns through realignment	Non-monetised, low	
	Reduction in exposure to biosecurity risks (spread over 20 years)	\$2.0m (area-based plans) to \$26.9m (farm-based plans)	Medium
Regulators (regional councils and unitary authorities)	More straightforward consent processing – especially beneficial in 2024/25 (consent expiry peak)	Non-monetised, high	
	Ability to set more lenient rules in areas where aquaculture is appropriate	Non-monetised, medium	
	Ability to set more stringent rules in areas where aquaculture is inappropriate	Non-monetised, medium	
	Opportunities to improve location of existing farms through realignment	Non-monetised, medium	
	Nationally consistent and proactive approach to on-farm biosecurity management (fills gaps in one biosecurity pathway)	Non-monetised, medium	
Wider government	Less burden on Environment Court	Non-monetised, medium	

<sup>25</sup> 0.5% to 1% of asset value (see NZIER 2018b)

Tangata whenua	Improved management of impacts on tangata whenua values	Non-monetised, high	
<b>Total Monetised Benefit<sup>24</sup></b>	\$ (2018 dollars, using 6% discount rate)	\$13.1 m to \$23.6m for area-based biosecurity plans \$38.0m to \$48.5m for farm-based biosecurity plans	
<b>Other non-monetised benefits (environment)</b>	Improved biosecurity management (reduced threat of pest incursions)	Medium to high	
	Consistent consideration of environmental effects	Medium	
	Reduced impacts through farm realignment	Low/medium	
<b>Benefit cost ratios</b>			
Ratios are presented for the two approaches to develop biosecurity management plans (per farm or area-based), and assuming low and high benefits in relation to certainty and replacement consenting savings (as noted above).			
1.37 to 1.75 using per-farm biosecurity management plans 4.85 to 8.73 using area-based biosecurity management plans			

### 5.3 What other impacts is this approach likely to have?

### ***Trade-off between regional council developing rules and national consistency***

Loss of local autonomy to develop rules and knowledge of local conditions may be a concern for some communities and councils. The proposed NES would replace local rules and requirements with a nationally consistent set of rules. The new rules would restrict a council's discretion over whether to grant a replacement consent to an existing farm to a limited set of matters.

The matters of discretion contained in the proposed NES are based on our best understanding of the environmental effects of aquaculture, however the wording of the consent conditions will reflect local conditions as determined by the regional council. In other words, while the matters of discretion are restricted and nationally consistent, their implementation through consent conditions will be farm-specific and determined by regional councils.

In addition, the proposed NES would recognise the outcome of strategic planning undertaken by regional councils. Communities and councils can, through RMA planning processes, continue to identify and give effect to areas where aquaculture is or is not appropriate. All councils are expected to have at least notified a proposed 'second generation' plan by 2022. There is scope for councils to identify existing marine farms as inappropriate through the plan-making process, which would result in different activity status and notification requirements under the proposed NES.

### ***Loss of public participation in consenting processes***

A key concern among community and environmental groups is that the proposed NES precludes notification of most replacement consents, meaning that individual consent applications are not subject to public scrutiny and submissions.

Public notification of replacement consent applications can add substantial processing costs and time, and tends to unnecessarily traverse issues better addressed at the plan-making stage. A key principle of the proposed NES is that public engagement on, and decisions about, whether existing aquaculture is appropriate or inappropriate should be made strategically during the plan-making process, in accordance with Policies 7 and 8 of the NZCPS 2010.

The concern over lack of notification is mitigated by:

- a) provisions in the RMA giving councils discretion to notify applications if they determine that special circumstances exist, even where notification is precluded by a national environmental standard (s95A(9) and s95B(10))
- b) provisions within the RMA requiring limited notification to affected customary rights groups and customary marine title groups, and holders of statutory acknowledgements (s95B)
- c) rules within the proposed NES allowing notification of applications seeking realignment (new space) or species changes that require changes in surface structures,
- d) rules within the proposed NES requiring pre-application consultation with tangata whenua, and
- e) provisions in the Marine and Coastal Area (Takutai Moana) Act requiring consultation with groups which have applied for customary marine title prior to lodging consent applications (s62).

### ***Outstanding areas***

The proposed NES seeks to provide greater certainty as to how the effects of marine farms on outstanding areas are assessed, in a manner that is consistent with the NZCPS 2010.<sup>26</sup> Where a farm has structures within or partially within an outstanding area, the effects of the farm on the values which make the area outstanding will be a matter of discretion for replacement consents. Where a marine farm is adjacent to or clearly beyond outstanding areas, there will be no matter of discretion relating to outstanding values. This would make the consenting path for the 82% of farms outside outstanding areas under current operative or proposed plans more certain.

The proposed NES would recognise outstanding areas in operative and/or proposed regional plans. Transitional provisions are included for Southland and Waikato. In these regions mapping of outstanding areas has occurred but the proposed plan change has not yet been notified.

### ***Costs and benefits for Māori***

Iwi and Māori-owned marine farms would benefit through increased regulatory and process certainty (just like any other marine farm owner). Where iwi have taken authorisations for aquaculture space (rather than cash) under the Maori Aquaculture Settlement, the proposed NES would enhance the value of their settlement through reduced uncertainty relating to replacement consents and clearer provisions for species changes. Iwi would bear costs associated with developing and implementing biosecurity management plans for their farms, however they are also the beneficiaries of a comprehensive management framework that enables effective response to pest incursions.

Many submitters from iwi organisations requested 'automatic' notification of groups with statutory acknowledgements in the relevant area, with others requesting that any iwi groups be notified. The proposed NES cannot override RMA statutory provisions by removing council discretion to determine who is an affected party, and it also cannot make exceptions to the preclusion of limited notification, e.g. it cannot state that limited notification is precluded except to iwi authorities.

The discussion document recognised that tangata whenua values may be relevant when considering replacement consent applications for existing marine farms. Based on feedback from tangata whenua, the proposed NES requires pre-application consultation with tangata whenua and contains a matter of discretion related to effects on sites and areas of significance to tangata whenua identified through that consultation. Where an applicant does not undertake consultation, the matter of discretion would be broader ('effects on tangata whenua values').

The proposed NES requirements for pre-application consultation are seen as an interim arrangement, pending a regionally specific engagement process with iwi and hapu to discuss whether specific farms have an impact on tangata whenua values and possible actions to avoid, remedy or mitigate adverse effects. Once farms that may have an impact on tangata whenua values are identified, this information can contribute to strategic planning within the region and the NES can be amended so the matter of discretion is more tightly defined.

### ***Sites of particular importance to aquaculture***

The consultation document suggested that special provision could be made for sites of particular importance to aquaculture through, for example, activity classification and/or matters of discretion. The aim of providing special provision would be to increase the certainty for these farms, through either (or a combination of) increased certainty of

process (i.e. how the consent application is processed, particularly how and whether effects on outstanding areas are considered) or increased certainty of outcome (i.e. use of a controlled activity status, which would require the decision-maker to grant the consent application). The two primary candidates for special provision as sites of particular importance to aquaculture are the mussel spat-catching farms at Wainui Bay (in the Tasman district) and Aotea Harbour (in the Waikato region).<sup>27</sup>

Further analysis on potential options, including consideration of the recent Environment Court<sup>28</sup> decision on the Wainui Bay private plan change request, concluded that making special provision for the Wainui Bay and Aotea Harbour spat catching farms in order to increase certainty is not possible in the absence of each council having undertaken a strategic planning exercise to identify outstanding areas.

In relation to the Wainui spat catching farms it is recommended that these farms be excluded from the proposed NES replacement consenting provisions. The Environment Court decision gives policy recognition of the importance of these farms and confirmed their current activity status. The Court also directed that a landscape and natural character assessment process be undertaken by the Council.

### **Biosecurity management**

The focus of the proposed NES is on on-farm biosecurity management practices that can be reasonably managed under the RMA. The development of the externally referenced technical document (which will contain criteria for assessing biosecurity management plans and details around monitoring and auditing) and comprehensive implementation guidance will be fundamental to ensuring successful uptake by the industry and regional councils of the biosecurity management plan requirements of the proposed NES. This document is not available at present, although work is underway and it will be available by March 2019.

The cost benefit analysis highlights the substantial benefits of taking an area-based approach to biosecurity management plans. An area-based approach to biosecurity management plans will be much less resource intensive than a per farm approach -- both on councils and industry. The externally referenced document and NES guidance material will encourage marine farmers to work jointly on area-based management plans.

It is acknowledged that aquaculture is only one source of biosecurity risk in the marine environment and that a comprehensive biosecurity management system for all users of the coastal environment is desirable. Detailed analysis on marine biosecurity concludes that one tool under either the RMA or Biosecurity Act 1993 is not going to be sufficient to meet all the goals for marine farm biosecurity, let alone broader biosecurity objectives.

Nevertheless, biosecurity management plan requirements under the proposed NES would result in improved biosecurity along the aquaculture pathway, ensuring that at the farm level best practice is followed consistently across New Zealand, and are consistent with RMA and NZCPS 2010 requirements.

<sup>26</sup> As noted in section 2.3.1, a review of recent consent decisions shows that continued existence of marine farms near (but not within) outstanding areas, were considered to have minor or less than minor effects on the nearby outstanding areas.

<sup>27</sup> NZIER 2018a

<sup>28</sup> *Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council* [2018] NZEnvC 046



### **Consistency with NZCPS 2010**

Consistency of the proposed NES with the NZCPS 2010 has been assessed by an independent consultant planner engaged by the Department of Conservation. The overall conclusion is that the proposed NES is consistent with the NZCPS 2010.<sup>29</sup>

### **Public space**

Providing more certain provisions for replacement consents may result in a perception that the proposed NES has the effect of increasing privatisation of public coastal space. As a matter of law, the space where marine farms are located continues to be part of the 'common marine and coastal area' under the Marine and Coastal Area (Takutai Moana) Act 2011. This area cannot be owned by the Crown on any other person.

## **5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?**

The preferred option is expected to deliver net benefits and is compatible, except as noted below, with the Government's 'Expectations for the design of regulatory systems'.

The only area of partial incompatibility relates to the fourth expectation: 'processes that produce predictable and consistent outcomes for regulated parties'. The proposed NES will make the regulatory processes predictable and consistent, but the outcomes cannot (and should not) be made fully predictable. Regional councils must continue to have discretion to decline a consent application whose adverse effects cannot be managed through consent conditions.

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<sup>29</sup> Allan Planning and Research Ltd, 2018

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

The proposed approach is to use a national environmental standard which is a regulation made under s43 of the RMA. Guidance material will also be prepared for both regional councils and industry applicants.

Policy positions and indicative drafting for a draft NES were prepared for consultation in 2017 and have been updated since then to reflect the proposed NES. Following approval by Cabinet, Parliamentary Counsel Office would prepare regulations for introduction by Order in Council.

Once the NES regulations are drafted, it is intended that an exposure draft be circulated to key stakeholders, including regional councils, before the regulations are finalised. Fisheries New Zealand is working closely with regional councils and will issue draft guidance material alongside the exposure draft of the regulations. Gazettal of the NES is expected in mid-2019, with a commencement delay of up to three months.

Regional councils would be required to give effect to, and enforce, the proposed NES under s44A(8) of the RMA. Regional coastal plans must be amended, as soon as practicable, to remove duplications or conflicts with the NES, but this does not require use of Schedule 1 processes (s44A(3)(4) and (5)). The commencement delay will give regional councils time to review their plans and identify changes needed to give effect to the NES. Plan alignment with the new rules would occur through the ongoing plan reviews, using Schedule 1 processes.

Fisheries New Zealand and Ministry for the Environment will be involved in ongoing monitoring of the effectiveness of the NES, as outlined in section 7.1.

### 6.2 What are the implementation risks?

The main implementation concern is with regard to biosecurity management plans, particularly council capacity and capability to assess, monitor and audit the plans, and the costs associated with consent reviews in 2025. There is also some implementation concern associated with councils updating their coastal plans.

Risks will be mitigated by:

- Development of guidance material and training for councils, including a user guide, workshops, shared communications portal, technical worksheets and guidance videos
- Fisheries New Zealand working alongside councils to look at how the proposed NES regulations will result in changes to their plans. This will commence with the exposure draft process.
- Specifying the criteria for assessing and auditing biosecurity plans in the externally referenced document. This document will be available at the time of the exposure draft process.
- Encouraging marine farmers to work together to develop area-based biosecurity management plans
- Funding assistance to councils through the Aquaculture Planning Fund.

Marine farmers will also benefit from the guidance material and criteria in the externally referenced document.

It is anticipated that consent reviews in 2024/2025 will encompass approximately 47% of existing consents. Currently regional councils are not able to recover costs for undertaking a consent review required by an NES. Fisheries New Zealand and Ministry for the Environment will investigate future opportunities to amend the RMA to enable cost recovery of consent condition reviews.

Proactively Released

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

Under s24(f) of the RMA the Minister for the Environment has responsibilities to monitor the effect and implementation of the RMA and regulations made under it, including any national environmental standards. As the lead agency developing the proposed NES for Marine Aquaculture, Fisheries New Zealand will be the lead agency that monitors and evaluates the effectiveness and implementation of the NES and reports to the Ministers for the Environment and Fisheries. Ministers will report to the public.

#### What indicators will be monitored?

- Effectiveness of NES implementation by councils and industry
  - Council indicators (including information related to regional coastal plan reviews and changes, and resource consent processing information) can be captured by the National Monitoring System (with a few updates)
  - Industry indicators can be captured by analysis post implementation of industry uptake of consenting provisions/biosecurity practices and industry investment confidence – this will likely involve work with Aquaculture New Zealand.
- Effectiveness of NES in meeting its objectives with respect to:
  - Environmental outcomes (including biosecurity)
  - Consistent and certain consenting processes

MfE's National Monitoring System already requires councils to report on a number of aspects of the Resource Management system. This should be used as much as possible to reduce burden and risk of doubling up.

#### Monitoring plan

A draft monitoring and review plan will ready for discussion with councils and industry during the exposure draft period.

### 7.2 When and how will the new arrangements be reviewed?

An initial review of effectiveness will be carried out no later than three years after Gazettal, with subsequent reviews every five years.

The initial review period enables consideration of the effectiveness of the proposed NES in relation to replacement consent applications received between 2019 and 2021, comprising roughly 10% of the consents expiring by 2025. The review would also assess effectiveness of biosecurity provisions for both replacement consents and new farm consents over this period. If implementation concerns are becoming apparent, there would be time to revise the NES prior to the consent expiry peak in 2024/25 and the biosecurity requirements deadline of 31 January 2025.

## References

- Allan Planning and Research Limited (2018). *Review Of The Proposed National Environmental Standard: Marine Aquaculture (Nes:Ma) for Consistency with the New Zealand Coastal Policy Statement 2010*. Prepared for the Department of Conservation
- Baines and Quigley (2016) *The Social and Community Effects of Salmon Farming and Rearing: A case study of the Top of the South Island*
- Coast and Catchment (2016) *Managing Biosecurity Risk for Business Benefit – Aquaculture Biosecurity Practices Research*. Prepared for Ministry for Primary Industries. MPI Technical Paper No: 2016/14. 217 pages. ISBN No: 978-1-77665-206-8 (online)
- Ernst & Young (2013) *New Zealand Aquaculture: Industry Growth Scenarios, 2013 update*. Report prepared for Aquaculture New Zealand.
- Ministry for the Environment. 2017. *Our Regulatory Stewardship Strategy 2017*. Wellington: Ministry for the Environment.  
[https://www.mfe.govt.nz/sites/default/files/media/About/regulatory-stewardship-strategy-2017\\_0.pdf](https://www.mfe.govt.nz/sites/default/files/media/About/regulatory-stewardship-strategy-2017_0.pdf)
- Ministry for Primary Industries (2013a). *Literature Review of Ecological Effects of Aquaculture*. A collaboration between Ministry for Primary Industries, Cawthron Institute & National Institute for Water and Atmospheric Research Ltd. Ministry for Primary Industries, Wellington, New Zealand. 260 pages. ISBN number 978-0-478-38817-6
- Ministry for Primary Industries (2013b). *Overview of Ecological Effects of Aquaculture*. Ministry for Primary Industries, Wellington, New Zealand. 81 pages. ISBN 978-0-478-40536-1 (online)
- Ministry for Primary Industries (2016) *Aquaculture Biosecurity Handbook*. Ministry for Primary Industries, Wellington, New Zealand. 29 pages. ISBN No: 978-1-77665-335-5 (online)
- Ministry for Primary Industries (2018). *Situation and Outlook for Primary Industries, June 2018*. Ministry for Primary Industries, Wellington, New Zealand. 64 pages. ISBN No. 978-1-77665-863-3 (online)
- NZIER (2015) *NZIER overview of the impacts of re-consenting uncertainty and delay on aquaculture investment in New Zealand*. Memo to Aquaculture New Zealand.
- NZIER (2017) *Proposed new national direction in aquaculture: a preliminary economic analysis*. Report prepared for Ministry for Primary Industries, March 2017.
- NZIER (2018a) NZIER (2018) *Current and future spat production: Prospects and constraints*. Report prepared for Ministry for Primary Industries, June 2018.
- NZIER (2018b) *Analysis of proposed NES on marine aquaculture: cost benefit analysis in support of the Section 32 analysis for the National Environmental Standard marine Aquaculture*. Prepared for Fisheries New Zealand. October 2018
- Stantec (2018a). *Proposed National Environmental Standards for Marine Aquaculture – Addressing Marine Farm Biosecurity*. Prepared for Ministry for Primary Industries.
- Stantec (2018b). *Non-NES scenario report*. Prepared for Ministry for Primary Industries.
- Stantec (2018c). *National Environmental Standard for Marine Aquaculture, Section 32 Evaluation Report*. Prepared for Fisheries New Zealand. October 2018.

## Annex 1. Number of marine farms and resource consents, by region

	Number of farms	Number of consents <sup>30</sup>	Farms expiring 1 Jan 2019 to 31 Dec 2025		Farms expiring 31 Dec 2024 to 1 Jan 2025	
			Number	%	Number	%
Northland	99	154	69	70	69	70
Auckland	69	86	69	100	65	94
Waikato	271	310	60	22	59	22
Bay of Plenty	6	6	5	83	3	50
Hawke's Bay	1	1	0	0	0	0
Wellington	1	1	0	0	0	0
Tasman	55	71	39	71	30	55
Marlborough	584	1082	386	66	328	56
Canterbury	12	20	10	83	1	8
West Coast	1	1	1	100	0	0
Southland	50	50	50	100	47	94
<b>TOTAL</b>	<b>1149</b>	<b>1782</b>	<b>689</b>	<b>60%</b>	<b>602</b>	<b>52%</b>
<b>TOTAL (excl Tasman)</b>	<b>1094</b>	<b>1711</b>	<b>650</b>	<b>59%</b>	<b>572</b>	<b>52%</b>

Source: MPI Marine Farming Database, March 2018

<sup>30</sup> Some farms (particularly in Marlborough) have multiple consents. As replacement consents are granted, any farms with multiple consents will be consolidated into a single coastal permit.



## **Annex 2. Other relevant statutes**

### **Fisheries Act 1996**

Under the Fisheries Act, all coastal permit applications for new marine farming space must pass an Undue Adverse Effects test, undertaken by Fisheries New Zealand. The purpose of the Undue Adverse Effects test is to determine whether a new area of marine farming would unduly affect customary, recreational, or commercial fishing.

A proposed marine farm cannot proceed if it would have undue adverse effects on customary or recreational fishing, or commercial fishing for non-quota management system stocks. When commercial fishing for Quota Management System stocks is unduly affected, compensation can be paid to affected quota owners. The Undue Adverse Effects test is not required for a replacement consent application that is for the same area (that is, existing marine farming space).

The Fisheries Act also requires all marine farms register on the Fish Farmer Register.

### **Biosecurity Act 1993**

The Biosecurity Act 1993 provides a legislative framework to manage risks from the introduction and spread of harmful organisms (pests and diseases). Aquaculture biosecurity focusses on preventing introduction of aquatic pests and diseases, and eradicating or managing them if they become established. The intention is to avoid, or minimise and manage potential risks to people, the environment and the economy.

Biosecurity New Zealand is responsible for border control and responding to detections of new pests and diseases. Regional councils also have an important role under the Biosecurity Act through development and enforcement of regional pest management strategies, and surveillance programmes. In addition, under the RMA, regional councils can control the types of activities and resource use which could introduce or exacerbate biosecurity risks in the marine environment. In particular, they can impose (and monitor) consent conditions to avoid release and spread of harmful organisms.

The Biosecurity Act and RMA are both important to achieving comprehensive protection from coastal biosecurity threats.

### **Marine and Coastal Area (Takutai Moana) Act 2011**

The Marine and Coastal Area (Takutai Moana) Act 2011 creates a special status for the common marine and coastal area, meaning neither the Crown nor any other person can own it. This Act also provides for recognition of the customary rights of iwi, hapū and whānau, including customary marine title and protected customary rights.<sup>31</sup>

Existing aquaculture activities are 'accommodated activities' and are permitted to continue in the common marine and coastal area, provided there is no change in location or amount of space occupied. Three aspects of the Takutai Moana Act are, however, relevant to replacement consenting under the RMA:

1. Customary marine title groups have a right to grant or decline permission (RMA permission right) for any marine farming that will occupy new space (including realignment as part of a replacement consent application). Permission must be sought by the consent applicant before the consent may commence.

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<sup>31</sup> Ministry of Justice. <https://www.justice.govt.nz/maori-land-treaty/marine-and-coastal-area/>

2. Before lodging a consent application, applicants must notify and seek the views of any group which has applied for recognition of customary marine title in the area.<sup>32</sup> A list of applicant groups by regional council is available on the Ministry of Justice website.
3. Resource consent for new space cannot be granted if it is likely to have adverse effects that are more than minor on a protected customary right.

### **Treaty of Waitangi settlements**

The Māori Commercial Aquaculture Claims Settlement Act 2004 provides for Iwi to receive settlement assets that are representative of 20% of aquaculture space. Settlements are made under regional agreements and can deliver a mix of settlement assets—comprising marine farming space, cash or a mix of both.

In addition, individual Treaty of Waitangi settlements include Statutory Acknowledgements. Statutory Acknowledgements are an acknowledgement by the Crown of mana in relation to specified areas – particularly cultural, spiritual, historical and traditional associations with an area. The presence of a Statutory Acknowledgement in an area requires a council to have regard to it in forming an opinion as to whether an iwi or tangata whenua group specified in a Statutory Acknowledgement may be adversely affected by a consent application.

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<sup>32</sup> Ministry of Justice. <https://www.justice.govt.nz/maori-land-treaty/marine-and-coastal-area/information-for-developers/>

### Annex 3. Ministry for the Environment Fitness for Purpose Assessment: Environmental Management Regulatory System

Overall Condition and Fitness for Purpose against Common Agency Criteria			
Effectiveness	Efficiency	Durability and Resilience	Fair and Accountable
<b>To what extent do the systems deliver the intended outcomes and impacts?</b>	<b>To what extent do the systems minimise the unintended consequences and undue costs and burdens?</b>	<b>How well do the systems cope with variation, change and pressures?</b>	<b>How well do the systems respect rights and deliver good process?</b>
<p>Generally the Ministry's systems deliver all or most of the intended outcomes, but legal and environmental timeframes can be lengthy, making impacts hard to measure.</p> <p>Resource constraints (skills and financial), compliance and enforcement, and implementation can raise concerns.</p>	<p>More investment is required in understanding the value-add of the Ministry's regulatory systems, especially whether long-term best value is being delivered as opposed to managing shorter-term risks.</p> <p>Process efficiency is generally high but inflexibility limits innovation. At the same time, variations in local approaches, undertaken for a range of reasons, create inconsistency and inefficiency for users.</p>	<p>Reviews are undertaken at reasonable frequency but the resulting changes challenge councils' and users' ability to implement.</p> <p>Integrated management across environmental domains (eg, land/coast) remains a challenge.</p>	<p>Central government roles are generally limited and deliverables are achieved.</p> <p>Local discretion and the resulting variation make tracking performance difficult.</p> <p>Councils usually understand their obligations. However, in the rest of the regulated community the ability to carry out these obligations varies (especially for small businesses).</p>
Condition and Fitness for purpose of the regulatory system for the coast			
<p>While the objectives of the system are clear, there has as yet been no comprehensive attempt to review if they are being achieved. Recent work suggests that the system is only achieving some of the desired outcomes. Available information suggests implementation is not effective in some areas. Some attention to these issues may be necessary in the future.</p>	<p>There is limited understanding of the value-add of the system and the consequences it has. Only limited assessment of costs and burdens has been undertaken in the past. Additional investigation is needed to form a holistic system conclusion.</p>	<p>The system has so far been able to make limited changes in reaction to a changing context. However, it has not successfully responded to some of the more challenging issues, such as integrated land-sea management. Work to identify and overcome the barriers preventing such changes may be necessary.</p>	<p>Central government agencies in the system generally meet their statutory and non-statutory deliverables. The system accounts for local circumstances by giving the regulated community a certain level of discretion and/or is developed further to account for altered circumstances, eg by introducing alternative decision making processes. There is variation in the resources available to central and local government agencies.</p>