

Submission to the Primary Production Select Committee on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

June 2024



Who is Taituarā?

Taituarā — Local Government Professionals Aotearoa ('Taituarā') is Aotearoa New Zealand's leading membership network for professionals working in, and for, local government. We have a thriving membership base of over 1,000 members drawn from local authority Chief Executives, managers, and staff across all 78 local authorities.

Taituarā strengthens the local government sector as a whole by using our members' insight and experience to influence the public policy debate and to ensure the technical, practical, and administrative implications of legislation will work 'on the ground' – as effectively and efficiently as possible.

Submission

1. Thank you for the opportunity to comment on the Bill. We support the submission of Te Uru Kahika.

The Bill is not necessary

2. Marine farming and aquaculture play an important role in New Zealand's economy. That said, while we understand the Bill is a product of the coalition agreements, Taitaurā is unconvinced that the Bill is necessary. We also note that the Regulatory Impact assessment for the Bill states the status quo 'is working efficiently and effectively and provides for better environmental and Treaty outcomes than the other options'.
3. Around 300 marine farms have consents due to expire by the end of 2024, and a further 150 have consents due to expire by 2030. Councils have proactively engaged with the industry and several consent holders have already applied for or are preparing to apply for renewed consents and are able to continue operating while their applications are processed (section 124 of the RMA). Local government is well positioned to deal with the remaining applications when they are lodged.
4. The current legislative framework enables consents to be renewed for terms up to 35 years – that is for a longer period of time than the Bill proposes – and for most there is a minimum of term at least 20 years (section 123A of the Resource Management Act – the 'RMA'). Consent authorities already must

have regard to the value of the investment of the current consent holder (section 104 of the RMA) and the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 ('NES-MA') offer certainty to existing marine farmers.

5. A key driver for the NES-MA was anticipating the 2024 expiry date and the expiry dates of other existing consents thereafter. The NES-MA precludes public or limited notification of certain types of applications. Our regional sector members are unaware of any evidence that the NES-MA is not working and the Regulatory Impact Statement for the Bill backs this up. As an alternative to extending consent timeframes Te Uru Kahika suggested that an alternative might be to consider making re consenting marine farms a controlled activity under the NES-MA.
6. We are also concerned that marine farms with a history of non-compliance stand to benefit from a universal extension, that marine farms established in inappropriate areas will remain, and that the Bill overrides council and community-agreed plans to provide for aquaculture.
7. An extended 20-year term will also hinder integrated management and marine spatial planning/strategic implementation and may have unintended consequences for other activities such as renewable energy.
8. While the Bill contains an optional review of consent conditions, the review of consent conditions should be obligatory and cost recoverable. A point we address in the next section.
9. We also note that the Regulatory Impact Statement highlights issues with the Crown's Treaty of Waitangi obligations and Treaty Settlement commitments.

Recommendation

1. The Select Committee
 - notes the status quo is working as intended
 - rejects the need for the Bill
 - recommends that the Bill does not proceed based on the benefits and costs outlined in the Regulatory Impact Assessment.

If this is not acceptable, the Select Committee should recommend a shorter extension period or an alternative process for providing certainty such as controlled activity status for consenting marine farms and excluding areas of a consented farm that have not been exercised.

If the Bill goes ahead, a cost recoverable consent review is required

10. Marine Farms occupy public space to the exclusion of members of the public and mana whenua. Conditions are the primary tool of avoiding, remedying, or mitigating adverse effects. Some of the legacy consents (RMA consents that arose out of converted marine Farm permits under the Marine Farming Act 1971) were granted at a time when there was limited understanding of marine farming effects and some consents conditions have not been reviewed. In other cases, precautionary approaches have been taken and conditions have been used to enable evidence to be acquired for future decisions upon consenting that pertain to the site and the dynamic nature of the coastal environment.
11. It is imperative that the Bill does not lock in sub-standard and/or timebound consent conditions for an additional 20 years enables the ability to monitor environmental effects, ensures appropriate biosecurity conditions, or enables adaptation to a changing climate.
12. Adverse effects are not limited to scientific effects. As the RMLA has noted in pre-Bill engagement, they include cultural, amenity and public use effects which may change over time. Appropriate engagement with manawhenua, Customary Marine Title/applications and the public is necessary to ensure the sufficiency of information for decision-making. There is no evidence to support the blanket removal of hearings.
13. We are also concerned that innovation will be stifled under the blanket extension and that bond conditions will further fall out of step with the ability to remove and remediate derelict farms, derelict farms will not be remediated, and space will not be freed up for new activity.
14. A consent review is therefore necessary.

15. The consent review process envisaged by the Bill passes the onus and the cost of evidence production to Council and therefore ratepayers (clause 165ZFHI(4)). This is unacceptable. It is another unfunded mandate and transfers the cost of doing business from private individuals and companies who make money from their activities to the ratepayer. It is also unreasonable, given the dynamic nature of the coastal environment and climate effects, to apply a single shot consent review process (clause 165ZFHI(3)(b)) given the inability to amend the duration of the coastal permit extension.
16. We are also aware that councils are questioning the officials' estimation of consenting costs and defer to their responses.
17. Given the lack of evidence that may be available it is also problematic that appeal rights are limited to those who were notified and made a submission.

Recommendations

2. If the Bill proceeds, retain the ability for consent authorities to conduct consent condition reviews but remove clause 165ZFHI(4) – which prohibits consent authorities from recovering the costs of a consent review – as this is an unfunded mandate and unacceptably transfers the cost of doing business from the private sector to ratepayers.
3. Enable consent authorities to conduct one or more reviews of conditions and/or enable the consent authority to impose a shorter timeframe for the extension of the coastal permit.
4. Make hearings discretionary.

Seeking permission of the DG MPI to do a review is an unnecessary step

18. Given the restrictions on the consent authority's ability to conduct a review e.g.
 - the purpose of a review is to 'better promote the sustainable management of the natural and physical resources that are associated with the relevant marine farm'
 - the inability to prevent a permit holder from carrying out an activity permitted by the coastal permit
 - the inability to cost recover
 - the inability to change the timeframe etc

- providing a proposal and seeking the concurrence of the Director-General of the Ministry of Primary Industries (MPI) that the proposal meets the purpose of the review is both unnecessary, costly and an overly bureaucratic step in a streamlined approach to reconstenting. There is also the potential to create a bottleneck within MPI as review requests come to the Director-General en masse. We note the Departmental Disclosure statement states this is an unusual feature of the Bill.

19. A better use of MPI's time and resource would be in assisting with the reconstenting exercise under the status quo.

Recommendations

5. Remove the requirement for a proposal to be submitted to the Director-General of the Ministry of Primary Industries before a review of conditions can occur.



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