

File No: 25 12 05
Document No: **29359178**
Enquiries to: Alejandro Cifuentes



11 June 2024

Pāremata Aotearoa
New Zealand Parliament
Primary Production Committee

Private Bag 3038
Waikato Mail Centre
Hamilton 3240, NZ

waikatoregion.govt.nz
0800 800 401

Email: pp@parliament.govt.nz

Tēnā koutou katoa,

Waikato Regional Council Submission on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

Thank you for the opportunity to submit on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill. Please find attached the Waikato Regional Council's (the council's) submission, formally endorsed by the Strategy and Policy Committee on **11 June 2024**.

Should you have any queries regarding the content of this document please contact Alejandro Cifuentes, Team Leader, Policy Implementation directly on (07) 8592786 or by email Alejandro.Cifuentes@waikatoregion.govt.nz.

Ngā mihi,

A handwritten signature in black ink, appearing to read "Tracey May".

Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

Introduction

1. We appreciate the opportunity to make a submission on the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill (the Bill).
2. The council's preference is that the process to determine resource consent decisions be guided by science and undertaken within a timeframe that allows for proper consideration of the expertise and experience in aquaculture consenting provisions and planning. It is important that consenting authorities make wise decisions for both the industry and the environment upon which their activities depend. We see the proposal as a somewhat blunt instrument that will limit the ability of consenting authorities to work with consent holders to ensure sustainable management of the region's resources.
3. The Bill could affect the implementation of regional strategies. The Waikato region is currently in the early stages of implementing a Regional Aquaculture Strategy (Growing together – Whakatupu ngātahi) (the strategy) which has a vision for the Waikato to be world-class in sustainable and innovative aquaculture management with a doubling of our export growth by 2044. The strategy promotes a growth pathway for aquaculture to become a more productive industry that continues to support regional and local prosperity. Innovation underpins this growth – both through improving the value from existing farming space and exploring opportunities for new farming on land and in the open ocean. The Strategy was developed in consultation with iwi, stakeholders, and with industry members.
4. The strategy's growth pathway also sets objectives of a sustainable, resilient and inclusive aquaculture industry. This means aquaculture will lead in environmental practices across the value chain, be strong and protected from external risks of pests, disease and climate change, and work in collaboration with iwi and communities to realise meaningful jobs, wellbeing and prosperity. The strategy also recognises the importance of partnering with iwi to ensure their values and aspirations, commercially, culturally and as kaitiaki are provided for.
5. Given the limited consultation carried out to develop the Bill, the council is concerned that the government may not fully appreciate the effects a blanket extension could have on regional economies and the mechanisms designed to ensure local effects from aquaculture activities are properly managed.
6. The council submission explains the regional context for the Waikato and makes recommendation on specific clauses to:
 - a. Take into account existing and proposed coastal plans. We request that extensions are not granted to marine farms located in any of the Proposed Waikato Regional Coastal Plan overlays which determine an area inappropriate for aquaculture.
 - b. Provide for a consent condition review at the cost of the consent holder, to ensure consent conditions are updated to address issues (e.g. biosecurity) that have emerged since the last consent conditions review in 2005 when the historic fishery licenses became resource consents. This will also limit any undue transfer of costs to ratepayers for activities that are normally covered by consent applicants.
 - c. Provide a mechanism to adjust existing bond conditions to account for inflation.
 - d. Remove clauses that enable the surrender of a replacement permit that is yet to be exercised.
 - e. Allow for submissions to be heard as part of the submissions process.
7. We also note the Bill is aimed at avoiding a 'bottleneck' for future consent replacement and provide "greatest certainty to consent holders, particularly for those with consent expiring soon." However, this aim is likely to be unrealised, given that an automatic extension will only create problems in the

future if the shortcomings of the current framework are not addressed, given the nature of the requirements and capacity needed to obtain a resource consent. We consider the perceived challenges around costs and processing times could be addressed by increasing efficiencies through streamlined collective re-consenting.

8. We look forward to future opportunities to provide input into the Select Committee processes and would welcome the opportunity to comment on any issues explored during their development.

Submitter details

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Contact person:

Alejandro Cifuentes
Team Leader, Policy Implementation
Email: Alejandro.Cifuentes @waikatoregion.govt.nz
Phone: (07) 8592786

Local context for the Waikato

9. The proposal would not significantly improve conditions for consenting of marine aquaculture activities in the region. In the Waikato region, we have not experienced resourcing issues for processing current replacement consents, as these applications have been lodged and decided sporadically, with no resource consents declined to date.
10. The council supports a consenting process that ensures that the effects from marine farming on significant/outstanding values are appropriate and sustainable, for marine farms located in areas identified in the Proposed Waikato Regional Coastal Plan as inappropriate for aquaculture (i.e. outstanding natural character, significant to iwi, significant biodiversity, significant national surfbreaks).
11. Extending consent durations would cover approximately 14 soon-to-expire (1 January 2025) unconsented marine farms in significant/outstanding areas within the region, and approximately 20 marine farms outside these areas. Eight of the 14 unconsented farms located in significant/outstanding areas have replacement consent processes nearing completion, pending addressing cultural concerns. About eight other farms in significant/outstanding areas have already obtained consent for 35 years (except one for 25 years). Although we recognise that an automatic extension has a relatively higher degree of certainty for the applicant, some farms could not get replacement consents for a longer period, which has typically been 35 years for the region.
12. Further, we highlight that two marine farms (currently being processed), and located in Aotea Harbour in a significant cultural and ecological area, are important spat catching farms for the industry and this should be considered and assessed against potential impacts on cultural values.

Issues with a blanket automatic renewal

13. Farms that are 'rolled over' and continue to have no or outdated biosecurity provisions have greater potential to introduce marine pests that may have significant effects on local ecology or the productivity of nearby marine farms. This could occur in marine farms currently operating under already extended coastal permits. Such long consenting terms are unresponsive to environmental changes and variations of public values and needs over time.
14. We also note that bond conditions for some consents do not provide for inflation adjustments at all or beyond the currently consented period and therefore bond values would unlikely achieve the intended purpose of removing derelict farms. Thus, this creates issues with stranded assets that will likely be picked up by ratepayers.

Submission on specific clauses - Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill

Clause	Request	Comment
<p>Clause 4 – new sections 165ZFHE (Consent holder must confirm which permit is operational) and 165ZFH (Decision to operate under extant coastal permit)</p>	<p>Remove new section 165ZFHE and consequentially remove section 165ZFH</p> <p>And</p> <p>Carry out any other relevant consequential amendments.</p>	<p>We question the relevance of this provision, since one of the aims of the Bill is to provide an extension for farms with consents expiring between the end of 2024 and 2030. Recently approved resource consents are likely to expire well outside this 6-year period. As highlighted in our general comments, for the Waikato, most recent consents have been granted for a duration of 35 years.</p> <p>Good practice is likely to be impacted if consent holders were to be allowed to operate under a permit that is intended to be replaced, this does not happen elsewhere in the administration of the Act. Notwithstanding specific circumstances of different resource consents, allowing applicants to surrender the replacement permit would likely let them continue to have no or outdated biosecurity provisions, therefore increasing the risk of introducing marine pests that may have significant effects on local ecology or the productivity of nearby marine farms. Further, this would likely ignore all the cultural, environmental and monitoring considerations that would be refreshed in the new permit. This provision is likely to result in a less effective and efficient use of natural resources.</p>
<p>Clause 4 – new section 165ZFH (Decision to operate under replacement coastal permit)</p>	<p>Amend as a consequence of removal of new section 165ZFHE as follows:</p> <p><u>165ZFH Decision to Activities to operate under extant consent until operate under replacement coastal permit comes into force</u></p> <p>(1) This section applies if <u>when</u> the holder of an extant coastal permit decides to operate under a <u>has already been granted a</u> replacement coastal permit <u>which is yet to come into force</u> (see section 165ZFHE(2)).</p> <p>(2) A permit holder is entitled to operate under the extant coastal permit until</p>	<p>As outlined above, the system should limit the ability to prefer a permit that is likely to increase the risk of not meeting the purpose of the RMA (which is aligned with the purpose of review under this bill – new section 165ZFHJ) and would increase uncertainty in the system for applications that have gone through the RMA process and likely included submissions and/or Environment Court proceedings.</p> <p>However, we consider it appropriate to retain an amended version of new section 165ZFH as a transitional provision for permit holders that have a replacement that is yet to come into force.</p>

	<p>the replacement permit comes into force.</p> <p>(3) A permit holder who surrenders <u>who continues to use</u> an extant coastal permit and <u>then transitions to</u> uses a replacement permit under section 165ZFHE(2)(b) remains liable under this Act for—</p> <ul style="list-style-type: none"> (a) any breach of the conditions of the extant coastal permit occurring before that permit is surrendered; and (b) completing any work to give effect to that permit, unless the consent authority directs otherwise before the replacement consent comes into force when it acknowledges the surrender. <p>Or</p> <p>Any amendments the Select Committee deems appropriate to provide for the changes requested.</p>	
<p>Clause 4 – new section 165ZFHH (Application of extension where coastal permit under appeal)</p>	<p>Amend new section 165ZFHH(1)(a) as follows:</p> <p>165ZFHH Application of extension where coastal permit under appeal</p> <p>(1) The extension of a coastal permit described in section 165ZFHC(1) applies to a coastal permit that—</p>	<p>This is a minor suggested amendment to facilitate the interpretation of this section. We recommend explicitly mentioning consenting authorities to avoid any confusion with the role of the courts within the same section.</p>

	<p>(a) was granted or declined <u>by a consenting authority</u> before the date on which this subpart comes into force; and</p> <p>Or</p> <p>Any amendments the Select Committee deems appropriate to provide for the changes requested.</p>	
<p>Clause 4 – new section 165ZFHI (Power to undertake review)</p>	<p>Amend new section 165ZFHI(3)(a) as follows:</p> <p>(3) A review undertaken under this subpart—</p> <p>(a) must commence, <u>by providing a proposal under section 165ZFHK</u>, not later than 2 years after this subpart comes into force; and</p> <p>Or</p> <p>Any amendments the Select Committee deems appropriate to provide for the changes requested.</p>	<p>We recommend adding a direct reference to section 165ZFHK, as this ties the commencement of the process to the provision of the proposal to review consent conditions to the Director-General of the Ministry for Primary Industries.</p> <p>This will provide further clarity when interpreting the subsequent timeframes in section 165ZFHK, as providing the proposal starts the clock for a subsequent process of assessment and submissions under subsections (2)-(6).</p>
<p>Clause 4 – new section 165ZFHI (Power to undertake review)</p>	<p>Amend new section 165ZFHI(4) as follows:</p> <p>(4) Despite section 36, a consent authority is not entitled to recover the costs of a review undertaken under this subpart.</p>	<p>Providing a cost recovery mechanism will limit any undue transfer of costs to ratepayers for activities that are normally covered by consent applicants. This way the applicant will have a greater incentive to work with councils to ensure consent conditions are updated to address issues (e.g. biosecurity) that have emerged since the last consent conditions review.</p>

<p>Clause 4 – new section 165ZFHK (Concurrence of Director-General required for review to proceed)</p>	<p>Amend new section 165ZFHK(2) as follows:</p> <p>(2) Not later than 20 working days after receiving a proposal, the Director-General must—</p> <p>(a) decide whether to concur with the consent authority that the proposal is consistent with the purpose of the review; and</p> <p>(b) notify the relevant consent authority in writing of that decision; <u>or</u></p> <p><u>(c) request information under subsections 3.</u></p> <p>Or</p> <p>Any amendments the Select Committee deems appropriate to provide for the changes requested.</p>	<p>As drafted, there is a high risk that the Director-General could be in breach of their obligation to make a decision within 20 working days. This could be the case if the Director-General makes a request even one working day after receiving the proposal from the consenting authority, and comments are provided at the end of the 20 days provided for in subsection 3.</p> <p>The requested amendment provides for a clearer distinction of timeframes, allowing the Director-General to make a decision within 20 working days under subclauses (2)(a) and (2)(b). Subclause 5 attempts to do this, but we consider it's not clear enough. Our suggested amendment is complementary to subclause 5.</p>
<p>Clause 4 – new section 165ZFHL (Process applying to review)</p>	<p>- Amend new section 165ZFHL to add the Minister of Conservation</p>	<p>Under s30(1)(d) of the RMA, the Minister of Conservation has functions in conjunction with regional councils within the common marine and coastal area. Furthermore, the Minister of Conservation has a key function in the preparation of the New Zealand Coastal Policy Statement, the approval of regional coastal plans and the monitoring of the effect and implementation of New Zealand coastal policy statements and coastal permits for restricted coastal activities (s28 RMA).</p>
<p>Clause 4 – new section 165ZFHL (Process applying to review)</p>	<p>Remove subclause (3) in new section 165ZFHL</p>	<p>Normally, if there is a right to make a submission, there is a corresponding right to be heard. The implication is that the consenting authority will have to make a decision “on the papers,” i.e. having regard to the submissions made, but without the benefit of hearing from the submitters via a hearing.</p>