



**RMLA<sup>NZ</sup>**  
THE ASSOCIATION FOR  
RESOURCE MANAGEMENT  
PRACTITIONERS  
*Te Kahi Ture Taiao*

## **DEVELOPMENT OF PROPOSED MARINE FARM DURATION OF CONSENT EXTENSTIONS**

**Preliminary feedback to Ministry for Primary Industries on behalf of RMLA**

**(Te Kahui Ture Taiao | The Resource Management Law Association of NZ Inc)**

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### **About RMLA**

1. This preliminary feedback is on behalf of RMLA, the Association for Resource Management Practitioners / Te Kahui Ture Taiao. RMLA promotes within New Zealand:
  - a. An understanding of Resource Management Law and its interpretation in a multi- disciplinary framework.
  - b. Excellence in resource management policy and practice.
  - c. Resource management processes which are legally sound, effective, and efficient and which produce high quality environmental outcomes.
2. RMLA has a mixed membership – we could be described as a “broad church”. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councilors, central government policy analysts, industry representatives and others. Currently the Association has approximately 1,000 members. Within such an organisation there is inevitably a divergent range of interests and views of members.

### **RMLAs reason for providing feedback**

3. RMLA welcomes the opportunity to provide feedback on the proposal to extend marine farm consents without a re consenting or review of conditions process as set out in the email dated 2 March 2024 to the President of the RMLA together with the attached Supporting Material One Pager Consents Extension.
4. RMLA’s main objective in providing feedback is to ensure that a coherent and workable body of resource management and environmental law and practice is developed in New Zealand. As a result, it is not the RMLA’s practice to comment on matters of policy. Instead, its submissions focus on what (if any) changes should be made to the proposal to ensure that the instrument being considered will:
  - a. Be consistent with the general framework of existing laws and policies and legally sound;
  - b. Be practicable, effective and efficient;
  - c. Assist in promoting best practice; and
  - d. Produce high quality environmental outcomes.

5. RMLA understands the proposal arose in response to this Government’s coalition agreement “to provide investment certainty, and remove regulations that impede the productivity and potential to the seafood sector”<sup>1</sup> and in particular<sup>2</sup>:
  - a. To provide certainty of tenure for all consent holders and give greater confidence to invest in farm production and innovation.
  - b. To avoid a bottleneck of re consenting (300 out of 1200 marine farm consents shall expire and likely seek replacement consents in 2024<sup>3</sup>.
  - c. To provide certainty as soon as possible by implementing the proposal in early 2024.
6. The Proposal is to, via an amendment to the Resource Management Act 1991 (**RMA**)<sup>4</sup>:
  - a. Extend the expiry date by 25 years of all existing marine farming consents.
  - b. Provide the extension automatically (without application).
  - c. Only the expiry date of each consent will change, with no changes to or reconsideration of consent conditions.
7. In short, a number of RMLA members have serious concerns about the Proposal and the basis on which the need for such an unprecedented extension to a group of resource consents has been justified. RMLA provides the preliminary and high-level feedback in the following paragraphs.

#### *Conditions*

8. The basis of sustainable management as captured in the Resource Management Act 1991 (**RMA**) is the sustainable management of natural and physical resources to enable people to meet their economic, cultural, and spiritual wellbeing whilst maintaining the life supporting capacity of Earth for ourselves and our future generations. It is necessary to avoid, remedy or mitigate the adverse effects of the use of those resources.
9. Conditions are the primary tool of avoiding, remedying, or mitigating adverse effects. The alternative is to amend the scope of the activity or prohibit the activity.
10. Marine Farm consents have developed differently to the majority of other economic activity consents:
  - a. Marine Farm permits were converted into RMA consents some decades ago after being granted under the Marine Farming Act 1971 (**first generation consents**). The Marine Farming Act 1971 did not consider the broad range of adverse effects the RMA requires to be considered and addressed. At the time of conversion the existing permit conditions were reviewed however this was generally a limited and surface review given the nature of the existing conditions and the limited understanding of marine farming effects and the environments within which they were situated.

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<sup>1</sup> Right Honorable Dame Cindy Kiro GNZM, QSO, Governor-General of New Zealand, *Speech from the Throne*, 6 December 2023, [Speech From the Throne - 2023-vr5697 - New Zealand Gazette](#)

<sup>2</sup> Supporting Material One Pager Consents Extension, MPI (undated)

<sup>3</sup> Supporting Material One Pager Consents Extension, MPI (undated)

<sup>4</sup> Supporting Material One Pager Consents Extension, MPI (undated)

- b. The majority of first generation consents have since been replaced. However, they were often granted on a precautionary basis and/or with monitoring conditions designed to enable sufficient evidence to be generated during the operation of the consent to better inform the decision maker at the next re-consenting. Coastal environments are difficult to assess and management effects on (especially for offset/compensation) and require a site-by-site assessment and cannot be achieved by blanket application of generalized understandings.
  - c. Marine Farming is subject to an area of constant environmental change which is not yet understood fully, particularly having regard to climate change effects which significantly impact marine farming. It is for this reason that monitoring consents and renewals play a critical process in determining, assessing and addressing adverse effects.
  - d. Section 128 review conditions have evolved since the granting of first generation consents. Those within first generation consents are narrow in comparison and the general powers under s128 are also narrow and may not enable Council the opportunity to carry out necessary reviews as MPI intends.
  - e. Section 128 conditions pass the onus and the cost of evidence production to Council and therefore ratepayers. Councils presently struggle to meet their financial obligations and will continue to do so with the increasing cost burdens of infrastructure and climate change. The Consent Holder who benefits economically from the continuation of the activity properly bears the onus of the cost of ensuring adequate effects management is in place and this has been a principle of consenting under the RMA.
  - f. Given marine farm consents are for a duration of 20 to 35 years many of the first generation marine farm consents have conditions that are 2 to 3 decades out of date with current scientific understanding and acknowledged changes in the environment at marine farm sites.
11. It is for these reasons that RMLA has concerns about the proposal to rollover existing consent conditions on marine farm consents for a further 25 years with no review of the existing consent conditions.
  12. Some members have suggested that any proposed 'rollover' should at the least involve an opportunity to review the results of any required monitoring/investigations and to include conditions to address any identified significant adverse effects. Alternatively a fit for purpose section 128 condition could be imposed on any consents that are automatically extended.

*Achieving the purpose of RMA 1991*

13. Appropriate public engagement which is necessary to ensure sufficient information is available to understand the scope and effects of the consent is circumvented. Adverse effects are not limited to the scientific effects but include cultural, amenity and public use effects which may change over time.
14. Appropriate engagement with mana whenua, support of kaitiaki and acknowledgment of Customary Marine Title/applications is circumvented by this proposal. This is particularly significant given the requirements of Part 2, the mandatory statutory duty within the RMA placed upon Local Government and Government. Further given the age of the first generation consents there has been significant development in the organisation and ability of mana whenua to engage and express their position which was not previously adequately captured.

15. Marine Farms occupy public space to the exclusion of members of the public and mana whenua. Marine Farms do not pay an occupation levy despite generating income from the occupation. There are no other significant economic generation activities that have this economic advantage. To extend the duration of occupation amplifies the effect of perceived privatisation of public space which is an adverse effect acknowledged by the Courts. It further amplifies the preferential economic treatment of this economic activity by continuation of occupation without levy and the avoidance of consent renewal.
16. The benthic environment and halo effect of marine farms has been little understood with only recent improvements in understanding. As a result, there is increased understanding of which sites are inappropriate for marine farming. The understanding of the benthic environment and halo effect will continue to develop over time (particularly with climate change, acidification of sea water and increased sediment flows from land because of storms), and it is important that local authorities maintain and continue to secure a better understanding the drive for this arising from policy and plan preparation to set the framework for consenting in that region.
17. The New Zealand Coastal Policy Statement 2010 (**NZCPS**) is of particular importance in respect of sustainable use and management of the coastal environment. The bespoke development process for the NZCPS sets it apart and illustrates its importance in comparison to the balance of National Policy Statements. The automatic renewal without consideration of appropriateness of site and conditions appears to conflict with the NZCPS (for example Policy 8, Policy 11, Policy 12, Policy 13, Policy 14, and Policy 21). Consent decisions must have regard to the NZCPS as a higher order planning document.
18. The NZCPS is 14 years old. The development of offshore aquaculture and offshore windfarm activities were more theoretical than practical in 2010. Any revised NZCPS may be drafted to contain enhanced provisions that will address these offshore activities and marine farms. It is premature to pre-empt the application of the revised NZCPS by enabling extension of the duration of existing consents to the degree proposed. The revised NZCPS may be more favorable to marine farms, or it may be more onerous. If it is more favourable, those existing consent holders will not receive the advantage and if it is more onerous those existing consent holders shall have an advantage in comparison to new marine farms, with either result defeating the intention to improve confidence in the industry.
19. The proposed change and reasons for the proposed change are not for environmental reasons or to achieve sustainable management and use. The proposed change is to achieve economic confidence, stability, and growth of the industry. The proposed change will not be in accordance with Part 2, and it avoids the consideration and application of matters outlined in sections 6 to 8 and does not achieve the purpose set out in section 5. The failure to enable the assessment and avoidance, remedy and mitigation of adverse effects is the opposite of the purpose and function of the RMA.
20. The RMA sets the duration of consents which varies dependent upon the activity being consented. The duration set reflects the common understanding of scientific knowledge and ability to sustainably manage the resource and effects of that activity during that duration. The RMA provides the ability to reduce the duration of a consent but not increase it. Reduction occurs where there are reasonable grounds to do so. This is often where there is a lack of understanding of the extent of effects or effectiveness of the management of effects. A proposed blanket extension of the duration period (particularly where this occurs after the granting of consent) prevents:

- a. The individual analysis taking place for each consent.
  - b. Presupposes the analysis for the activity of marine farming has been sufficiently assessed, considered and consulted to determine the period is appropriate as a starting point for that activity.
21. Those consents granted were granted based on an understanding of effects of the duration period granted. If those consents were considered at the time of granting for a duration of 50 to 55 years based on the evidence that was submitted to demonstrate effects over a period of 25 years, they would not have been granted or would have been granted for a reduced duration (for the period that could be assessed based on the evidence presented). To grant a consent where the effects are unknown is not provided for by s104 of the RMA.
22. The extension as proposed creates an inequity with other consent holders who also have significant investment reliant on (time-limited) consents (e.g. water takes for horticulture irrigation) or green energy which jeopardizes public confidence in the consenting process.

#### *Process*

23. The time period to provide comment on the proposal is insufficient to enable proper consideration and adequate consultation. This is particularly significant as it relates to large organisations with many members and Iwi and in respect of s6 and s8 of the RMA.
24. The information provided by MPI to support its invitation for comment is exceedingly brief and does not contain an explanation of the assessment process undertaken to develop the proposal, for example to recommend 25 years as opposed to a shorter period of say 5 or 10 years. Further there is no explanation or assessment of the implications of such an extension, including on the environment.

#### *Ineffective Remedy*

25. Many RMLA members consider the position that the proposal will provide confidence to consent holders and encourage development and innovation is ill founded:
- a. Consent holders must operate within the scope and conditions of their existing consents. Where the development or innovation is beyond the scope or conditions, they will be required to apply for a replacement consent or variation of consent conditions. It is less likely this will be sought where the risk is a reduced duration period.
  - b. The operation of the marine farm industry may be less effective as without the renewal process there will be less phasing out of farms which are in unsuitable and therefore less productive or effectively farmable locations.
  - c. Marine farms will be less profitable and economic if they continue to operate in unsuitable areas or without suitable conditions (for example increased disease and die off as a result of increased water temperatures and acidification of sea water).
  - d. The marine farm industry may suffer a reputational loss if they are perceived by domestic and international consumers as not operating in accordance with best current environmental practices by avoiding the re consenting process for essentially half a century.

- e. Adverse effects in respect of biosecurity and quality of our coastal environment may also have adverse effects upon our reputation and economic effects upon other industries that rely on a positive reputation and healthy coastal environment (e.g. tourism).
- 26. The intention to avoid the renewal of 300 marine farm consents (one quarter of existing consents) taking place during the same year (2024) due to limited resources to do so by extending all consents to a uniform date only defers the difficulty to take place in 25 years' time. It does not address the challenge of limited experts to inform the consenting process.
- 27. The National Environmental Standard for Marine Aquaculture 2020 provides for efficient re-consenting of marine farms by enabling a non-notified process where there are no issues and also a restricted discretionary activity status. A restricted discretionary consent enables the understanding of suitability of sites and effects to be efficiently considered whilst enabling a consenting process to remain in place. This process combined with s128 and the ability to seek enforcement orders more suitably addresses the certainty sought by and for marine farm consent holders and further reduces the reliance upon experts at consenting.
- 28. Many marine farm consents have bond conditions which do not provide for inflation adjustments beyond the currently consented period and therefore bond values would unlikely achieve the intended purpose of removing derelict farms consequently creating issues with stranded assets that must be picked up by the ratepayers.

**Source of feedback**

- 29. Our feedback is high level and we have not formally consulted our members but rather advised them of the Proposal through our weekly newsletter and invited members to provide feedback by email. It should be noted that some of our members may share different opinions to the views expressed in this feedback.

Signed on behalf of RMLA



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