Analysis of Re-starting Aquaculture report, preliminary comments to assist submissions in response

For non-commercial environmental and fishing interests.

By option4

3 December 2009

Executive summary

The government and some industry representatives are concerned that aquaculture development has been slowed by inefficient, complex process and the lack of any new allocation of marine space for farming since 2004. A Technical Advisory Group (TAG) was formed in early August 2009 to provide the government with recommendations that aim to streamline the application and management processes so that greater returns are generated. Their report, recommendations and action points have been released in the document, *Re-Starting Aquaculture*. Submissions in response are due by 16 December 2009.

There are some positive and negative aspects to the Technical Advisory Group's recommendations. There is a strong focus on the economic benefits of the proposed reforms and less consideration of the social and cultural values associated with having uncluttered coastal regions, freedom of access and navigation.

The Technical Advisory Group acknowledges the current reviews of the Foreshore and Seabed Act 2004, the New Zealand Coastal Policy Statement and Resource Management Act 1991 may influence governance arrangements and the final outcome of this process.

Ultimately the success of the reforms will be reflected in community support for an aquaculture regime that maintains high environmental standards, enables meaningful input and participation from non-commercial environmental and fishing interests, and generates the growth in farming returns for both farmers and the national economy.

Non-commercial environmental and fishing interests will need to consider the legislative and practical, regional implications and submit their views by mid December.

The following analysis highlights some areas of concern, indicates proposals that need further consideration and notes the recommendations that have merit. These are preliminary comments to assist non-commercial environmental and fishing interests as they develop their submissions.

Contents

Background

A Technical Advisory Group (TAG) was formed in early August 2009, chaired by Sir Doug Kidd, to provide the government with recommendations *"to enable the development of sustainable aquaculture in New Zealand"*. TAG was expected to provide recommendations and an advisory report to the government by 30 September.

In engaging the Advisory Group the government emphasised their view that inflexible rules are limiting progress and this *"represents a significant opportunity cost in terms of lost aquaculture development and income"*.

A 67-page report, *Re-Starting Aquaculture*, Report of the Aquaculture Technical Advisory Group, dated 15 October 2009, was publicly released in early November. It contains 57 recommendations and nine action points that are considered necessary to achieve a growth in aquaculture earnings from $360 million per annum to over $1 billion by 2025.

Analysis and comments on TAG recommendations

Targeted consultation

TAG has recommended the government undertake targeted consultation with iwi, regional councils and the fishing industry during the development of aquaculture policy and drafting of the legislation. [p10]

Analysis and comment

Meaningful consultation with non-commercial environmental and fishing interests needs to be incorporated in the drafting stages of policy and legislation to achieve a robust outcome that is supported by tangata whenua and local communities.

1. Active role of government

TAG has recommended that the Resource Management Act 1991 (RMA) and Fisheries Act 1996 be amended to enable a shift of management responsibility from Regional Councils to a central Aquaculture Agency, a separate entity within the Ministry of Fisheries (MFish). This agency will be funded by a per-hectare levy imposed on farmers. The levy will be paid into an Aquaculture Fund and administered by the Agency. Funds will be distributed, on application, for functions associated with aquaculture management such as planning, consents and technical work. [Ch1; pp16-20]

The TAG recommend that within a year an Aquaculture Agency is established and one Minister, from Fisheries, Environment or Conservation be appointed as the Minister responsible for aquaculture. [Ch1; p16]

This Minister will have the power to intervene and approve an RMA plan change on the basis of national interest. [Ch1.5; p19]

Analysis and comment

It would be prudent for people with a comprehensive knowledge of the Resource Management Act, the Fisheries Act 1996, private plan changes, the call-in process and the New Zealand Coastal Policy Statement to review the TAG proposals relating to legislative amendments and possible development of an Aquaculture Development Strategy. It is difficult to make informed comments on this aspect without an in-depth understanding of their application.

It makes administrative sense to have a single Minister and agency responsible for aquaculture. However, giving that Minister the ability to override a decision against aquaculture farming in an area by inserting appropriate provisions in RMA plans where *"there is a national interest in doing so"* sets a dangerous precedent. While there would be a requirement to consult there would be no appeal rights, except to the Regulation Review Select Committee. [Ch1.5; p19]

This proposal does not augur well for non-commercial interests, as the process would leave the Minister open to political interference. A regime similar to the Marine Reserves Act, which requires the Minister of Conservation to obtain concurrence from two others Ministers (Fisheries and Transport) before a marine reserve can proceed, may address this shortcoming.

It is unrealistic to expect the Aquaculture Agency to perform the dual roles of promoting marine farming while being the 'watchdog'. [Ch1.3; p17]

As aquaculture activity increases there will be heightened demands on the Agency, and priorities are likely to be focused on the development aspect of marine farming to the possible detriment of the Agency's assessment and monitoring functions.

The Agency, process and priorities need to be protected from undue influence by the annual levy payers. The industry will be supporting the Agency via a modest annual levy (TAG recommends $100 to $200 per hectare). There would be disadvantages to repeat the failings of the current fisheries management regime, where those who pay levies have a major influence on management outcomes.

2. Re-setting aquaculture planning

TAG recommends removing the prohibition on aquaculture outside Aquaculture Management Areas (AMAs), and all associated provisions including AMAs, Excluded Areas and Invited Private Plan Changes. There are nine other recommendations including one to declare all existing AMAs as Aquaculture Zones under the new regime. These Zones will not be exclusively for aquaculture. [Ch2; pp24-28]

Analysis and comment

Again, it would be wise for people who understand the Resource Management Act to review this list of recommendations.

Currently, aquaculture can only be developed within Aquaculture Management Areas (AMAs). This regime has enabled local authorities, such as the Auckland Regional Council, to determine that offshore farming sites are preferable to near-shore farms because of the high population density. Although not mentioned in the TAG report, consideration also needs to be given to how the proposed reforms fit within the Hauraki Gulf Marine Park Act 2000.

The TAG team is concerned that aquaculture planning occurs in a timely manner and produces *"high quality plans which are supported by local communities"*, however, the proposal to enable aquaculture development outside AMAs could lead to an unsatisfactory decision being made to approve a marine farm in the 'national interest' that overrides the aspirations of the local community.

Aquaculture Zones potentially have multiple uses, including rotational farming. The ability to specify a maximum amount of aquaculture permitted within the Zone has appeal, in that the area and environmental carrying capacity (egg. Biomass limits) can be specified. [Ch2.3; p26]

Establishing these Aquaculture Zones will require a pre-planning stage to:

- ⇒ Determine the Undue Adverse Effects (UAE) on fishing;
- ⇒ Address Treaty Settlement issues to enable 20 percent to be allocated to Maori interests;
- ⇒ Determine where aquaculture activity will be sited; and
- ⇒ Integrate the shellfish safe-water classification process. [Ch2.3; p26]

Potentially this pre-planning will reduce the protracted marine farm application process currently available. It would also give more certainty to Maori commercial interests and reduce costs for farming applicants. It could possibly reduce the opportunity for non-commercial interests to participate in the process.

A robust system needs to be in place to ensure that adequate opportunity and consideration is given to non-commercial environmental and fishing interests prior to an Aquaculture Zone being established.

3. Enhancing consents for aquaculture

TAG makes 14 recommendations to enhance resource consents, by changing the nature of coastal permits to deliver greater certainty and attract investment in the aquaculture sector. These measures include legislative and regulatory changes and the establishing an "experimental aquaculture" category of coastal permits. [Ch2.3; pp31-37]

Analysis and comment

The TAG recommendations relating to legislative changes are worthy of further investigation as to whether the proposed changes will change the nature of resource consents into a form of 'property' with any associated access or retention rights. Cross-linking the register to the Personal Properties Security Register and provisions for leasing and sub-leasing resource consents also need to be considered. [Ch3.2.1; p31]

Aquaculture register

Depending on the outcome of the above investigation, TAG's recommendation to establish a central, aquaculture register under the Fisheries Act appears to be a sensible approach to recording and providing

access to relevant information. Rules for public access to that information will need to be established beforehand if, as TAG suggests, an industry-owned organisation manages this register. [Ch3.2.2; p32]

Experimental consents
Explicit provision for experimental aquaculture of limited size and duration, with no ability to renew or translate into a standard consent, would be a positive development if there were environmental standards applied to the consent. Similar standards that apply to current adaptive management regime consents, where progress between stages is dependent on a review and monitoring environmental effects, ought to be a minimum requirement. [Ch3.2.3; p32]

Explicit occupation right
The TAG report recommends a regulatory change to enable explicit occupation of coastal space for aquaculture. Currently a separate occupation permit is required within the resource consent. Again, the nature of the occupation right will need to be considered in conjunction with the review of the Foreshore and Seabed Act and subsequent determination of who has the right to allocate coastal space, and on what terms. [Ch3.2.3; p32]

Minimum 20 year permit term
Setting the default, minimum coastal permit term at 20 years may seem attractive to TAG and industry for commercial reasons. From a non-commercial environmental and fishing perspective, the current provisions that provide Councils with the flexibility to set the permit period between 10 and 35 years is appropriate. Social, cultural and access needs change over time and local authorities require the flexibility to adapt to these changes and not be constrained by national, default regulatory terms. [Ch3.3.2; p33]

Simplifying consent renewals
Simplifying the consent renewal process makes sense and will reduce costs and time requirements. It is appropriate to enable current consent holders to notify the Council of their intention to continue operating without the need to make a full application, and have that notification treated as an application on the same basis as their current terms and conditions. However, the requirement to provide an assessment of environmental effects ought to remain as a condition of renewal. [Ch3.3.3; pp33-34]

Maintaining environmental standards, monitoring and mitigating the effects of aquaculture activity on the local environment are an important component to satisfy both regulatory and community needs.

Controlled or restricted discretionary activities
The TAG report recommends that the default for a new consent relating an existing aquaculture activity be treated as a “controlled” or “restricted discretionary” activity, with some exceptions allowed. Without further investigation of the Resource Management Act it is unclear what the implications are in relation to this recommendation. Additional research is recommended. [Ch3.3.3; p34]

Evergreen consents
Enabling the rollover of existing consents, with more than half their term to run, would improve investment certainty for the applicant. This needs to be conditional on maintaining, monitoring and mitigating the effects of the aquaculture activity on the environment. [Ch3.3.3; p35]

Live-fish farming
Coastal plans largely determine the ability of aquaculture operators to vary their technology, how they can respond to changing environmental requirements or change their farmed species. The TAG report identifies the two broad categories of environmental effects of farmed species as:

- ⇒ Self-fed (e.g. Mussels and seaweeds)
- ⇒ Supplementary fed (e.g. Salmon and butterfish). [Ch3.3.4; p35]

TAG recommends that all regional coastal plans are flexible enough to enable these two categories of aquaculture. If that flexibility is not provided for, that the full range of tools identified in the TAG report be applied to achieve this outcome. This recommendation is likely to be the most contentious and attract the majority of comment. [Ch3.3.4; p35]

There are many reports describing the detrimental, long-term effects of caged, finfish farming on the environment and wild-stocks of the same species or baitfish. Many of New Zealand's potential baitfish species, such as anchovies, pilchards and jack mackerel, are under-utilised at present, that is the total allowable commercial catch (TACC) is not constraining current commercial effort, either by choice or lack of availability. Importation of baitfish raises separate issues.

A considerable public education and consultation process will be required if this recommendation is to be given effect.

While it maybe administratively convenient to have all coastal plans or consents flexible enough to enable supplementary-feed aquaculture it would be more practical, and less contentious, to have this decided at a local level, in conjunction with adequate community education and consultation with tangata whenua and the public. This is vitally important given the long-term, adverse environmental effects of supplementary-fed aquaculture farming.

Reduce the consent lapse period to three years
The recommendation to reduce the consent lapse period from five to three years, with some exceptions, is supported. Speculation for coastal space is a high probability and this "use it or lose it" clause addresses that eventuality. To be effective this clause will need to quantify what activity, or percentage of the consent application, needs to be activated in order to comply with the original application, i.e. a couple of dropper lines of growing mussels would not meet the threshold. [Ch3.3.5; p35]

TAG is correct to highlight that this clause ought not to apply to consents granted due to Crown Treaty obligations. [Ch3.3.5; p35]

Moreover, given that these Treaty settlements will involve allocation of 20 percent of all granted consents, and that in some areas that parcel might not be large enough to make farming a viable option; it would be prudent for both the Crown and Maori to be specific about the nature and extent of those rights.

Obtaining a coastal permit
Specifying a standard set of information requirements for aquaculture resource consents seems to be a logical approach for both applicant and decision-maker, to enable a more efficient consenting process. [Ch3.5.1; p36]

Also, proposed changes to enhance the standing of the consent authority hearing appear to be sensible. [Ch3.5.2; p37]

Notwithstanding the need for an independent appeals process, the consenting authority, such as a local Council, ought to have the ability to prohibit marine farms within their jurisdiction, to satisfy local aspirations. This process will be made more complex if the responsible Minister is also given the ability to step in and change regional plans to enable the development of aquaculture in particular areas.

The proposed changes to the Environment Court appeal process seems fraught with difficulties, particularly for non-commercial environmental and fishing interests.

The subjective nature of determining what new evidence is allowed to be presented to the Environment Court, based on what was, or was not, available prior to the consenting authority hearing, raises serious issues. [Ch3.5.2; p37]

Also, given the resources required, legal action is not taken lightly by non-commercial environmental or fishing interests, yet recourse to the Environment Court needs to remain open to ensure a balanced and robust outcome.

Limiting new evidence to parties who did not participate in the earlier consent hearing is also a constraint for non-commercial environmental and fishing interests. [Ch3.5.2; p37]

Recognition needs to be given to the non-commercial sector's reliance on a limited pool of resources and people who have genuine concerns and who are both capable of, and available, to participate in such processes.

4. Allocating space for aquaculture

The Technical Advisory Group reports discusses the planning and consent stage of the aquaculture space allocation process, which aligns with current Resource Management Act tools. The planning and consent stages requires consideration of Fisheries Act processes such as the Undue Adverse Effect (UAE) test and negotiations, to account for existing marine space usage. TAG does not differentiate between use of marine space for aquaculture and other uses. [Ch4; p38]

In areas of low demand TAG reports there maybe some benefits to treating all marine space uses on a par with aquaculture, particularly if Aquaculture Management Areas (AMAs) are abolished and Aquaculture Zones are established. This would give the Council, as the consenting authority, the flexibility to allocate space as it deems necessary. [Ch4; p38]

TAG reports in high-demand regions Councils would not be limited to only allocating space for aquaculture within AMAs, and could use existing Resource Management Act tools to establish aquaculture within Aquaculture Zones. [Ch4.1; p38]

Where an Aquaculture Zone is established through a regional coastal plan change, the plan will also state:

- ⇒ the amount of space within the zone that is to be allocated to aquaculture; and
- ⇒ The mechanism for allocating that space between aquaculture users. [Ch4.2; p39].

TAG recommends allocating marine space via a tendering process as opposed to the current "first in, first served" process. The tendering process would occur after 20 percent had been set aside to fulfil Crown obligations to Maori under the Treaty Settlement. [Ch4.2; p39]

Amendments to the RMA are also suggested to enable Councils in high-demand areas to temporarily suspend receipt and/or processing of consent applications. Councils would then be obliged to make alternative planning arrangements within a set time period. [Ch4.4; p40]

TAG recommends the RMA be amended to provide a statutory test to trigger consideration of alternative allocation tools. Those mechanisms include:

- ⇒ Tendering;
- ⇒ Preferential allocation;
- ⇒ Balloting;
- ⇒ Combining applications and hearing them together; and
- ⇒ Using rules to change activity status once a threshold is reached.

Councils may decide to use a planning process to manage demand. [Ch4.4.2; p41].

Analysis and comment

The TAG tendering process has merit, given that Councils are familiar with tendering regimes, and it would go someway to addressing the 'race for space'.

Successful tenderers would be authorised to apply for a resource consent in a nominated area. While the TAG report notes that these authorisations are transferable, there are no details as to what this means, more details are required before an informed comment can be made. [Ch4.2; p39]

5. Cost recovery and charges

The TAG makes seven recommendations relating to cost recovery through existing RMA provisions and coastal occupation charges. [Ch5; p42]

The Technical Advisory Group proposes annual levy on aquaculture users, of between $100 and $200 per hectare for near-shore farms. TAG suggests a separate, appropriate charge is devised for offshore farms. [Ch5; p43]

Analysis and comment

The TAG recommendation to continue cost recovery for Council services such as processing resource consents and private plan changes and monitoring is supported.

As mentioned earlier, the TAG proposal to establish an Aquaculture Fund, administered by the Aquaculture Agency, and paid for via an annual Aquaculture levy is worth supporting.

Non-commercial interests will need to give consideration to the TAG's proposed annual levy on aquaculture users for both near-shore (between $100 and $200) and offshore farms (undefined). Also, whether the Minister's obligation to review the levy every five years is appropriate.

Southland is the only province nationally that still charges fees for coastal occupation. Submitters need to consider whether it is appropriate to follow the TAG recommendation to amend s64A of the RMA so that coastal occupation charges no longer apply to marine farmers. [Ch5.4; p44]

Other rating mechanisms, which recognise the use of public space for private gain, were discussed briefly in the TAG report. Submitters may want to review those comments in section 5.2.2, 5.3 and 5.5, and respond.

People may also want to comment on the TAG recommendation that the broader issue of coastal occupation charges for other occupiers of the coastline is considered as part of Phase II of the RMA review. [Ch5.4; p44]

The review of the Foreshore and Seabed Act is most likely to influence any outcome from this process. [Ch5.3; p43]

6. Streamlining the interface between aquaculture and fishing

The TAG report makes six recommendations to improve the interface between aquaculture and fishing, mostly revolving around streamlining the process to align the Resource Management Act and Fisheries Act Undue Adverse Effects (UAE) test. [Ch6; pp45-50]

TAG notes that the Undue Adverse Effects test applies to all fishing, commercial and non-commercial, both customary and recreational. TAG recommends that the Ministry of Fisheries continue its responsibility to assess whether non-commercial fishing will be adversely affected by an aquaculture activity. [Ch6; p50]

The majority of discussion in this section is focused on commercial fishing and at what stage the UAE test is applied. TAG recommends having concurrent RMA and Fisheries Act processes to reduce process time and achieve a negotiated outcome. [Ch6.2; pp46-48]

TAG also recommends the government work with the New Zealand Seafood Industry Council, Te Ohu Kaimoana and Aquaculture New Zealand to discuss further incentives to reach agreement without having to resort to the formal UAE process. [Ch6.5; p50]

Analysis and comment

People with a more comprehensive understanding of the RMA appeal and call-in process may want to study this chapter in more detail to ensure environmental and non-commercial fishing interests are given adequate opportunity to have input into the recommended assessment process.

The Resource Management Act obliges Councils to avoid, remedy or mitigate adverse effects associated with aquaculture, including effects on fisheries resources and fishing, even if those effects do not surpass the UAE threshold. [Ch6.1; p45]

Consideration of aquaculture activity around Auckland will require decision makers to take into account sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000. This Act is not mentioned in the TAG report.

Undue Adverse Effects process
TAG recommends a significant redesign of the UAE process as set out in section 186G of the Fisheries Act 1996. (Appendix C in the TAG report). [Ch6.1; p45]

Realigning the MFish Undue Adverse Effects test with the RMA process seems an appropriate approach to enable a speedier outcome, while retaining the statutory integrity of the Fisheries Act process. [Ch6.2.1; p46]

Information sharing
In section 6.2.3 TAG recommend that RMA Schedule 1 is amended to oblige a regional council and MFish to work together during the preparation of a coastal plan to ensure relevant information is available. An example is given describing the use of overlay maps to depict where fishing activity generally occurs. This sharing of information would be for information purposes only, although it may also be a useful starting point for inputs into the Undue Adverse Effects assessment. [Ch6.2.3; p48]

On face value this seems to be a logical approach but without a case study it is difficult to measure the effectiveness of this proposal. For example, MFish has little spatial information related to non-commercial fishing due to its random nature. Amateur fishers are permitted to fish anywhere, outside nominated exclusion zones. Customary fishing permits are more area-specific but due to the low volumes would not likely register on a wide-scale map. Currently, MFish will not release, to the public at least, spatial information on commercial catch if there are three or less fishers in a statistical fisheries management area.

Any amendment to the RMA Schedule 1 needs to be more specific about the level of detail MFish will be expected to provide about commercial and non-commercial fishing to satisfy this clause.

Impacts on fishing
TAG also proposes that in an Aquaculture Zone the impacts on fishing are only addressed at the planning stage, rather than for each, specific resource consent, provided the Zone's specified limits have not been exceeded. [Ch6.2.4; p48]

This recommendation maybe appropriate for low-demand areas but is not realistic for high-demand areas, and it would also be dependent on the life-term of the Aquaculture Zone.

This clause is highly debatable given the absence of discussion about the longevity of the actual Aquaculture Zones and the recommendation to have a default minimum 20-year term apply to each aquaculture consent.

Social, economic, cultural, access and environmental needs change over time. The placement of other spatial tools such as marine reserves and customary management tools can affect access to near-shore areas.

A possible solution is to specify that coastal plans are reviewed on a regular basis to ensure that they remain relevant to the local community.

UAE <u>outside</u> an Aquaculture Zone
Section 6.3 sets out a process so that an applicant can address potential undue adverse effects (UAE) on commercial fishing <u>outside</u> an Aquaculture Zone by negotiation, and with the assistance of MFish. An option for negotiation with commercial interests prior to an UAE assessment is also suggested, as are legislative amendments to align the legal appeal process. [Ch6.3; pp48-49]

This section is solely focused on adverse effects on commercial fishing. Non-commercial fishing is discussed later, in section 6.4, where TAG identifies that MFish is responsible for assessing the impact on non-commercial fishing, both customary and recreational.

The option to negotiate and address the adverse effects on commercial fishing prior to a formal UAE test would assist in accelerating the process. The suggested three-month period for negotiating and agreed outcome also has potential. [Ch6.3.1; p49]

Again, the outcome of the Foreshore and Seabed review may have an impact on placement of Aquaculture Zones and associated agreements.

Moreover, this process is based on the premise that legislation will be amended to enable aquaculture activity outside of designated Aquaculture Zones.

Negotiated outcomes are preferable to achieve efficiency, however, there are two other issues that need serious consideration:

⇒ The nature of the occupation right given to the aquaculture developer; and

⇒ The possibility that the aquaculture developer and commercial fishers utilising the area are the same.

As discussed in Chapter 3, it would be prudent to determine the nature and extent of the occupation right and those associated with an aquaculture resource consent before giving support to this aspect.

The proposed pre-negotiation process between the aquaculture developer and commercial fishing interests would be an informal process that excludes non-commercial interests.

If these negotiating parties are the same, or inter-related entities, there could be an incentive to monopolise marine space as opposed to developing aquaculture. This could lead to the actual occupation right being more valuable than the actual farm returns. This outcome would be detrimental to non-commercial environmental and fishing interests.

Also, considering these negotiations are for areas outside an already-agreed Aquaculture Zone strong representation of non-commercial interests will be required to ensure a balanced outcome and ongoing access and protection of the marine environment.

Non-commercial fishing

The TAG report recognises that the Undue Adverse Effects test applies to *all* fishing, both commercial and non-commercial. TAG discusses the Crown's obligation to protect "customary fishing" and recommend an aquaculture consent applicant discuss their proposal with tangata whenua and address any concerns. In the absence of defined rohe moana and kaitiaki TAG recommend working with the relevant Mandated Iwi Organisation. [Ch6.4; p50]

TAG also suggests an amendment to the Resource Management Act to provide customary interests with an appeals process. This would enable tangata whenua to request MFish to undertake an Undue Adverse Effects assessment in relation to customary fishing. This UAE test would be Crown-funded and no consent would be granted until the UAE issues were resolved. Identified issues would need to be resolved by the applicant, or the application would be declined. [Ch6.4; p50]

Maori non-commercial interests are broader than just fishing, they also include environmental, social, cultural aspects. Similarly, the non-commercial interests of both Maori and non-Maori depend on having abundance and availability of fish in a healthy marine environment that sustains life.

Considering the majority of food gathering by Maori is categorised by the authorities as "recreational" Maori will need to ensure their amateur fishing interests are protected. Recreational representatives will need to advocate their interests are protected within this proposed framework.

7. Maori commercial aquaculture settlement

The TAG report makes four recommendations to enable the government to fulfil its Treaty Settlement, in regards to allocating 20 percent of new aquaculture space to Maori interests. [Ch7; p51-54]

Within existing Aquaculture Zones the Council will identify the 20 percent of representative space that will be allocated to Maori, or this will be settled by negotiation between the Council and Iwi. [Ch7.2; p51]

In Chapter 7.3 TAG work on the assumption that aquaculture will be permitted outside of designated Aquaculture Zones. Under this scenario, and because there is no fixed quantum of space, Maori will be given the equivalent of 20 percent of any allocated space. [Ch7.3; p51]

This allocation of space authorises Maori to apply for a resource consent under the aquaculture management framework that exists. It does not automatically give rights to develop a farm. Also, because these allocations are Treaty Settlements they will not lapse after three years. (Refer report Chapter 3.3.5)

Joint ventures, particularly in areas outside of designated Aquaculture Zones, are a possibility due to the variable nature of how much when space is allocated, and what can be farmed in that area. [Ch7.3.1; p52]

TAG recommends the government consult with Maori about the proposed changes to aquaculture management to avoid any further legal challenges. [Ch7.5; p54]

Analysis and comment

The Crown has an obligation to fulfil its Treaty Settlement commitments. Maori will need to analyse and submit in response to ensure their interests are catered for.

8. Transition arrangements

The TAG report recommends working with regions to both prepare them for transition to the new regime and fast-track the transition process by deeming through legislation or regulation Aquaculture Zones, where the Undue Adverse Effects has been undertaken, in selected regions. [Ch8; pp55-57]

Analysis and comment

The recommendation to work with a small number of regions who have undertaken much of the technical and consultation work to develop aquaculture planning, to fast track transition to Aquaculture Zones assumes these Zones will be acceptable.

Given the Zone's potential wide-ranging uses, adequate consultation will need to be undertaken with tangata whenua and the local communities to ensure they understand the implications before these Zones are established. Previous regional consultation would have related only to the limited-use Aquaculture Management Areas.

Any transition will need to adequately assess the undue adverse effects on non-commercial social, cultural, economic, environmental and fishing interests.

Given the potential investment in increased aquaculture activity and opportunities for employment, it would be in everyone's long-term interests that local aquaculture activity has the support of tangata whenua and the local community.