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"More fish in the water/Kia maha atu nga ika ki roto i te wai"

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Submission on behalf of an organisation

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Submission in response to the aquaculture Technical Advisory Group report

Overview

option4 has serious concerns about how the Government's proposes to enable aquaculture growth and pursue *"much needed reforms"*. This is because of our past experience with aquaculture development, which has proven to be detrimental for both the environment and non-commercial fishing interests.

While there maybe political momentum to institute hasty, radical changes there are no shortcuts to achieving a robust outcome that is supported by those who will be most affected, both tangata whenua and local communities.

If the Government is, or already has, determined to implement the TAG proposals then option4 submits there should be meaningful consultation with non-commercial environmental and fishing interests (non-commercial interests) so that the public's concerns and input are incorporated into the drafting stages of policy and legislation.

Intensive inshore aquaculture can be a dirty business. Today's intensive aquaculture farmers are not paying the costs for tomorrow's clean up. Given local and overseas experience, that cost will fall to following generations of taxpayers even though the benefits of such development is limited to a few individuals or private entities.

Low-density aquaculture in selected Aquaculture Management Areas (AMAs) does have merit. However, enabling aquaculture to develop in and outside Aquaculture Zones, beyond existing and agreed AMAs, is unacceptable for other users of marine space and those with an interest in the environmental effects of intensive inshore aquaculture farming.

There is already high demand, particularly in densely populated areas, for access to sheltered bays and inlets for recreational use and anchorages. Addressing the needs of existing marine users ought to be a priority before any reforms are made and occupational rights are given away.

Redefining coastal areas and existing Aquaculture Management areas as Aquaculture Zones will enable privatisation of our coastline to occur without meaningful input and participation by those who will be affected and excluded. Privatisation of our coastline is unacceptable.

Moreover, until the nature and extent of the proposed occupation, access, and navigation rights are determined these TAG reforms cannot proceed.

Also, until the Foreshore and Seabed debate has been resolved there is nothing for the government 'to give away'. History has proven that redress is a costly exercise and does not necessarily address all outstanding grievances.

Caged, finfish farming has been resisted for years due to the adverse effects on the environment and the community. Overseas experiences have been mixed at best. Some examples of unpredicted consequences of intense aquaculture can be found in the recent ISA outbreak in the Chilean salmon industry, the coastal devastation in SE Asia from shrimp farms, and the contamination and ongoing restoration of the Seto Sea.

New Zealand cannot afford to sacrifice its environmental image and fisheries management reputation for the sake of opportunistic private profiteering from aquaculture development. It is the 100% Pure New Zealand brand that supports ongoing and valuable land-based tourism. It is the same uncluttered, pristine nature of our coastline that supports a billion dollar boat building and service industry.

option4 rejects the TAG recommendations to enable "supplementary-fed" activity.

We note the Japanese government has spent millions of dollars over the past decade to clean up the aftermath of large-scale, intensive inshore marine farming, and shifted the focus onto smarter technology and on-land aquaculture operations. This has been a cooperative effort between the government and commercial developers and is now proving to be both environmentally and economically sustainable.

option4 recommend further research is conducted into how the Japanese have developed their marine aquaculture operations to produce red seabream, yellowtail, flatfish, coho salmon, kuruma prawn, scallops, oysters, abalone, sea squirt, green turtles and seaweeds.

A more reasoned and strategic view of sustainable aquaculture development needs to dominate the Government's response – not a knee-jerk embrace of the illusion that aquaculture permits will reveal a landscape of unseen riches.

Chapter 1. Active role for Government

It makes administrative sense to have a single Minister and agency responsible for aquaculture, but both the Minister and Agency need to be immune to political interference. To ensure a balanced approach a Minister responsible for protecting and enhancing the non-commercial environmental and fishing interests of New Zealanders also needs to be appointed.

The Non-commercial Interests Minister would be responsible for ensuring that the public's interest in having a healthy coastal environment, safe navigation, and access to enjoy the common, marine space is protected.

Giving the Aquaculture Minister the ability to override a regional council decision against aquaculture farming in an area by inserting appropriate provisions in Resource Management Act (RMA) plans where *"there is a national interest in doing so"* sets a dangerous precedent which could have an adverse effect on non-commercial interests. option4 object to this power being given to the Aquaculture Minister.

More poor Government decisions have been made under the banner of "national interest" than any other, and it serves to completely undermine the processes of regional government and removes any incentive for their future engagement. It is a flawed suggestion and would only be acceptable if the Minister's regulations are more restrictive than local controls and the Non-commercial Interests Minister was empowered to veto any proposed plan changes. This is vitally important because the TAG proposals suggest there would be no appeal rights, except to the Regulation Review Select Committee.

It is unrealistic to expect the proposed Aquaculture Agency to perform the dual roles of promoting marine farming while being the 'watchdog'. 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, its processes, 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). It would be a mistake to repeat the failings of the current fisheries management regime, where those who pay levies wield the most influence on priorities, research and management outcomes.

Development of an Aquaculture Development Strategy ought to occur in conjunction with the long-awaited finalisation of the national policy on recreational fishing, signed off by the Minister of Fisheries in 1989. Doing this simultaneously would ensure that the Aquaculture policy includes provisions that require local authorities to take into account recreational and tourism interests when considering aquaculture-related plan changes and consents. It would also enable national aquaculture standards and policies to be flexible enough to allow for some variations between regions.

2. Re-setting aquaculture planning

option4 reject any suggestion to enable development of aquaculture outside Aquaculture Management Areas because of the adverse effects on non-commercial environmental and fishing interests. If Aquaculture Zones are to be established then they should only apply to existing AMAs.

Regional councils have spent vast amounts of money and resources in establishing AMAs, using a process that has taken into account the community's input. This regime has enabled some local authorities to determine that offshore farming sites are preferable to near-shore farms because of the high population density and the potential to adversely affect existing marine use and community enjoyment.

Perhaps the lack of any new AMAs being gazetted is an accurate reflection of public opinion on the matter and not a signal of faulty process, as is often heard. The public do not want the near-shore waterways cluttered with fish farms of any description, and do not want the environmental costs that inevitably follow.

Aquaculture development needs to be limited to the confines of the Aquaculture Zones. This limitation should also apply to any decision made in the *national interest* by the Aquaculture Minister.

TAG is correct to identify that aquaculture planning needs to occur in a timely manner and produce *"high quality plans which are supported by local communities,"* however, the proposal to enable aquaculture

development outside AMAs could lead to an unsatisfactory decision to approve a marine farm in the *national interest* that overrides the aspirations of the local community.

Suggested reforms will limit the opportunity for non-commercial interests to participate in the planning 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.

Coastal marine space is common property and we cannot expect the New Zealand public to forego their traditional access and navigation rights so that aquaculture farmers can exploit the natural waterways for their private benefit.

3. Enhancing consents for aquaculture

option4 has serious concerns about the TAG recommendations to enhance resource consents because it is not clear from the TAG report whether legislative reform will change the nature of resource consents into a form of 'property' and what access and retention rights will be associated with this 'property'. This needs to be clarified before any changes are made, as any reforms will have a major impact on both the environment and the community.

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

option4 recommend that replacement consents for existing aquaculture operations be treated as discretionary, rather than controlled activities.

In addition, we recommend that existing prohibitions on aquaculture in regional council plans carry over without needing to be justified under s32 of the Resource Management Act 1991, aside from those which have evolved from the moratorium. AMAs and the prohibition clauses are positive outcomes derived from public dissatisfaction with the rampant development of coastal areas that failed to give adequate protection to both the environment and community's aspirations.

option4 recommend non-complying activity status for activities outside current AMAs. Councils need time to develop a policy framework to assess these applications. Councils should be required to enact plan changes to determine where aquaculture will be a controlled, discretionary, non-complying or prohibited activity before any reforms take effect.

If the TAG reforms are enacted in the absence of a relevant regional plan the new reform Act needs to provide deemed objectives and standard policies that must be followed.

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 strict 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.

option4 oppose the recommended default minimum term of 20 years for aquaculture consents. While this may seem attractive to TAG and industry for commercial reasons 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.

Given the adverse effects of aquaculture on communities and the environment, existing farms must go through a notified resource consent process at the expiry of relevant consents before they are permitted to continue operating. An exception could be made if the council has amended their plan to allow for a different process however, any amendments to council plans must be open to submission and appeal.

Councils 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 Aquaculture Minister is given the ability to override a local decision 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.

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

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. Regional authorities should be obliged to establish key performance indicators relating to environmental protection when granting consent for aquaculture activities.

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).

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.

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.

While it maybe administratively convenient to have all coastal plans or consents flexible enough to enable supplementary-fed 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.

option4 rejects outright the TAG recommendations to enable "supplementary-fed" activity in our marine space.

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.

TAG is correct to highlight that this clause ought not to apply to consents granted due to Crown Treaty obligations.

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.

4. Allocating space for aquaculture

The tendering process proposed by the TAG report 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.

5. Cost recovery and charges

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

option4 also support the TAG proposal to establish an Aquaculture Fund, administered by the Aquaculture Agency, and paid for via an annual Aquaculture levy.

We do not believe the proposed annual levy of $100 to $200 per hectare of inshore marine space is appropriate given historical experience of councils being left with the burden of cleaning up the leftovers of failed aquaculture operations. The annual per hectare levy for near-shore and offshore farms needs to be set in conjunction with local councils, tangata whenua, and the community. After all, it is common marine space that belongs to tangata whenua and the community that is being utilised by private profiteers.

Regional authorities and the Aquaculture Agency ought to be given the opportunity to decide how often the annual levies will be reviewed, as opposed to a Ministerial fee review every five years. Together these two entities will have an understanding of the cost of administering the aquaculture activity within their jurisdiction.

option4 do not support the TAG recommendation to amend s64A of the RMA so that coastal occupation charges no longer apply to marine farmers, even though Southland is the only province nationally that still charges fees for coastal occupation. This provision ought to remain available, as it is inequitable that non-commercial users pay occupation charges when commercial users occupying public space for private gain do not.

We do agree with 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.

Also, we understand that the review of the Foreshore and Seabed Act is most likely to influence any outcome from this process.

6. Streamlining the interface between aquaculture and fishing

The Resource Management Act 1991 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 Undue Adverse Effects (UAE) threshold. Around Auckland decision-makers will also need to take into account sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000.

A lack of knowledge about the full impacts of aquaculture has justified the precautionary approach taken since 2004. Any resultant process of re-aligning the Undue Adverse Effects test within RMA process needs to allow for the input and participation of non-commercial environmental and fishing interests, tangata whenua and local communities because these are the groups that will be most affected.

Information sharing

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. 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 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.

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.

In the absence of any discussion about the longevity of the Aquaculture Zones coupled with the recommendation to have a default minimum 20-year term apply to each aquaculture consent, this proposal is highly contentious.

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.

Coastal plans need to be reviewed on a regular basis to ensure they remain relevant to local people, and that aquaculture activity is not having an undue adverse effect on tangata whenua and the local community.

UAE outside an Aquaculture Zone

We note the discussion around undue adverse effects outside an Aquaculture Zone is solely focused on commercial fishing. TAG note that MFish are responsible for assessing the impact on non-commercial fishing, both customary and recreational.

We also note that the proposed process is based on the assumption that legislation will be amended to enable aquaculture activity outside of designated Aquaculture Zones. As mentioned previously, option4 do not support aquaculture development outside Aquaculture Management Areas.

option4 agree that negotiated outcomes to address the adverse effects on commercial fishing prior to a formal UAE test would 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 negotiating access is the same.

As discussed in Chapter 3, until the nature and extent of the occupation right and those associated with an aquaculture resource consent are clarified option4 cannot support this aspect.

That is because 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 occupation right being more valuable than the actual farm returns. This outcome would be detrimental to non-commercial environmental and fishing interests. A scheme that permits the objector to dress as the applicant, and then enables a negotiated "settlement" simply puts all the power in the hands of the objector, allowing it to choose a preferred applicant.

Also, considering these negotiations would apply to 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.

Customary hapu fishing groups have been established in some areas to assist with fisheries issues, regulations and customary activities. These groups also need to be included in the discussions about customary fishing.

option4 support TAG's proposal to amend 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.

Any amendments need to acknowledge that Maori non-commercial interests are broader than just fishing; these interests encompass environmental, social, cultural aspects.

Moreover, 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”, option4 recommend that Maori “recreational” fishing interests be protected within the proposed framework.

7. Maori commercial aquaculture settlement

option4 agree with the TAG recommendation that the Government consult with Maori about the proposed changes to aquaculture management to avoid any further legal challenges. The Crown has an obligation to fulfil its Treaty Settlement commitments both in terms of the commercial settlement and its ongoing obligations in regards to non-commercial fishing interests.

8. Transition arrangements

The TAG 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.

option4 supports the recommendation from the Port Fitzroy Protection Society, that the Hauraki Gulf be removed from any changes to current legislation and to keep the existing and proposed AMAs.

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

Future developments

option4 appreciates the opportunity to make a submission on the aquaculture Technical Advisory Group report and recommendations. We wish to be kept informed of future developments.

Trish Rea
On behalf of the option4 team