

# **AQUACULTURE AND THE NEW ZEALAND COASTAL POLICY STATEMENT**

**An independent assessment of the feasibility of including objectives and  
policies for aquaculture in the New Zealand Coastal Policy Statement**

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## EXECUTIVE SUMMARY

The Government has expressed a range of goals in order to support environmentally sustainable aquaculture in New Zealand. The Government's goals are within a framework of five guiding principles: maximising economic benefits, stewardship, innovation, Maori participation, and good governance.

Stakeholders have identified a number of issues relevant to the achievement of the Government's goals for aquaculture. These range from the provisions of the relevant legislation through to specific issues faced by councils, industry and Maori in their respective roles for aquaculture development.

The NZCPS is a national policy statement under the RMA and is at the top of the RMA planning hierarchy for the coastal environment. The NZCPS has a significant influence on the other RMA coastal planning instruments, and is therefore a possible tool to help promote the Government's goals for aquaculture and address the relevant issues.

The role of the NZCPS is to achieve the purpose of the RMA in the coastal environment, and objectives and policies in the NZCPS are only relevant to the extent that they are within the ambit of the RMA. This places both legal and practical limits on the ability of the NZCPS to address all of the Government's goals for aquaculture, and all of the issues identified by stakeholders.

There is a spectrum of possible responses that the NZCPS could adopt towards aquaculture. It is possible for the NZCPS to contain directive and aquaculture specific objectives and policies. For example, the NZCPS could contain an objective requiring that AMAs be established in each region within a particular timeframe. However, while this is possible in theory, it is not considered feasible.

It is feasible for the NZCPS to contain less directive objectives and policies that focus on or are relevant to aquaculture. These could, for example, encourage councils to undertake work to determine whether aquaculture is appropriate within their region. Further, the NZCPS could contain generic objectives and policies that do not focus on aquaculture, but address a range of issues that are relevant to the development of aquaculture. This could include objectives and policies providing greater clarity on, for example, the matters of national importance under section 6 of the RMA.

If the Minister of Conservation does decide to address aquaculture specifically in the NZCPS, it is feasible to include a high level objective supporting sustainable aquaculture, and less directive objectives and policies on matters such as experimental aquaculture and Maori issues.

A summary of the options that are considered to be feasible is set out at the conclusion of section 6 of this report.

# SECTION ONE

## INTRODUCTION

### Background

- 1.1 This report provides an independent assessment of the feasibility of including specific objectives and policies in a revised New Zealand Coastal Policy Statement ("NZCPS") to promote the New Zealand Government's goals for aquaculture.
- 1.2 There has been substantial reform of the Resource Management Act 1991 ("RMA") in relation to aquaculture. In particular, new aquaculture development may not be undertaken in the coastal marine area unless it is located in an aquaculture management area ("AMA") as identified in a regional coastal plan under the RMA. This places aquaculture in a unique position under the RMA, and the RMA planning regime is vitally important for the aquaculture industry.
- 1.3 The NZCPS is a national policy statement under the RMA that is focused on the coastal environment, and it is therefore highly relevant to aquaculture. The Minister of Conservation is undertaking a review of the NZCPS.
- 1.4 The Government has signalled its support for the development of environmentally sustainable aquaculture in New Zealand. The Ministry for the Environment, Department of Conservation, Ministry of Economic Development, Te Puni Kokiri and the Ministry of Fisheries ("the Implementation Agencies") are responsible for implementing the recent aquaculture reforms.
- 1.5 The Implementation Agencies have identified the NZCPS as a possible tool to encourage and assist regional councils in AMA planning. Accordingly, the Implementation Agencies have sought an independent assessment of the feasibility of including objectives and policies in the NZCPS to promote the Government's goals for aquaculture.
- 1.6 This report has been informed by discussions with the Implementation Agencies, a number of regional councils, industry (New Zealand Aquaculture Limited and the New Zealand Seafood Industry Council) and representatives from Te Ohu Kaimoana/The Takutai Trust (the Maori Aquaculture Trust). The authors very much appreciate the important contribution from these stakeholders.

### Structure of report

- 1.7 This report is divided into six sections:
  - **Section One:** Introduction
  - **Section Two:** The RMA Regulatory Framework for Aquaculture
  - **Section Three:** The Government's Goals for Aquaculture
  - **Section Four:** The Issues Relevant to Achieving the Government's Aquaculture Goals

- **Section Five:** The Use of the NZCPS to Promote Aquaculture Goals and Address Relevant Issues
- **Section Six:** Conclusions

- 1.8 Section 2 of the document provides a brief overview of the relevant regulatory regime. It outlines the aquaculture provisions in the RMA and describes the purpose and scope of the NZCPS.
- 1.9 Section 3 outlines the Government's goals for aquaculture.
- 1.10 Section 4 summarises a range of issues relevant to achieving the Government's goals for aquaculture. This section and the following two sections are informed by discussions with the stakeholders identified in paragraph 1.6 above.
- 1.11 Section 5 considers the implications and feasibility of including objectives and policies for aquaculture in the NZCPS.
- 1.12 Section 6 draws a number of conclusions based on the foregoing analysis.

## SECTION TWO

# THE RMA REGULATORY FRAMEWORK FOR AQUACULTURE

### Introduction

- 2.1 Aquaculture in the coastal marine area requires statutory authorisations including for the occupation of coastal space, the erection of structures and the carrying on of aquaculture activities. The extent to which aquaculture can be undertaken in the coastal marine area is therefore heavily dependent upon the regulatory framework that governs occupation, structures and activities in that area. The purpose of this section is to outline the nature of that regulatory framework, particularly under the RMA.

### Historical regulatory framework

- 2.2 Prior to the RMA, aquaculture was managed under the Marine Farming Act 1971. When the RMA was enacted, the Marine Farming Act was repealed, but existing leases and licences were continued and protected through transitional provisions.
- 2.3 With the enactment of the RMA, aquaculture was then regulated under a “dual” authorisation system. Under that system, new marine farms required both coastal permits under the RMA, and marine farming permits under the Fisheries Act 1983.

### The Aquaculture Law Reforms

- 2.4 In the late 1990s there was a significant increase in demand for access to unpolluted and nutrient-rich water for the purposes of aquaculture. The increased demand highlighted the need for a more controlled planning system with better integration between coastal planning, aquaculture and fisheries management, and the agencies responsible for those functions. Regional councils were having to deal with applications for marine farms on a first-come, first-served basis with little guidance on how marine farming fitted into overall coastal management:<sup>1</sup>

*"The results were bottle-necks and high processing costs for applicants, submitter fatigue, costly delays in developing regional coastal plans, local moratoria and poor environmental outcomes as there was little strategic direction on the location of marine farms to deal with their cumulative effects. Marine farmers, local communities, fishers and the Government wanted change."*

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<sup>1</sup> Ministry for the Environment, Ministry of Fisheries, Department of Conservation "Aquaculture Reform 2004: An Overview"

- 2.5 In August 2000, the Government released the public consultation document "Aquaculture – Join the Discussion". The Government proceeded with developing the proposed law reforms and, in March 2002, the Resource Management (Aquaculture Moratorium) Amendment Act came into force. The purpose of this moratorium was to allow for policy work to be undertaken and the law to be reformed without a "goldrush" of further applications. This moratorium applied originally for two years, but was extended to 31 December 2004.
- 2.6 The other issue that arose during this period was the Waitangi Tribunal's report on marine farming (WAI953), which led to the Maori Commercial Aquaculture Claims Settlement Act 2004.
- 2.7 In August 2004, the Aquaculture Reform Bill was introduced for its first reading, and in December 2004 the Aquaculture Reform Bill passed into law. The new legislation took effect from 1 January 2005. This led to the amendment of a number of Acts including the RMA and Fisheries Act, and the enactment of the Maori Commercial Aquaculture Claims Settlement Act 2004 and the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

## **The current regulatory framework**

- 2.8 The central feature of the new regulatory framework is that it replaces the former dual authorisation process with a single process for aquaculture planning and consents through the RMA. In particular (subject to certain transitional provisions), aquaculture can only occur in certain zoned areas in regional coastal plans known as AMAs. While the effects of aquaculture on fishing will still be considered, this process has been moved forward and is now part of the AMA planning process, rather than a separate consent process following the RMA consent process.
- 2.9 These reforms place aquaculture in a unique position under the RMA, as councils have to undertake a special planning process to create AMAs before new aquaculture development can proceed. This contrasts with other activities in the coastal marine area, where resource consents can be applied for immediately without the need for a separate planning process (although this does depend on the provisions of the particular regional coastal plan).
- 2.10 The other feature of the reform was that it provided for the settlement of claims for Maori commercial aquaculture in the period post 21 September 1992. The Crown has committed to providing iwi with the equivalent of 20 percent of "existing" aquaculture space in the coastal marine area, issued on or after 21 September 1992. If actual space is not available, the Crown must provide the financial equivalent. At the same time, 20 percent of all new aquaculture space is to be transferred to iwi. The aquaculture rights (or financial equivalent) allocated through the settlement process will be held by the Maori Commercial Aquaculture Settlement Trust and managed by its trustee until distribution to iwi is effected.

## **The Resource Management Act 1991**

- 2.11 The RMA is one of New Zealand's most significant environmental statutes. The RMA was enacted following a major law reform process in the late 1980s and early 1990s, bringing together under a

single statutory regime the management of a wide range of natural and physical resources. This included activities in the coastal marine area such as aquaculture.

2.12 Aquaculture is now regulated primarily under the RMA. The NZCPS is a national policy statement under the RMA, and it has significant potential to influence the manner in which aquaculture is carried out in the coastal marine area.

2.13 Part 2 of the RMA sets out the purpose and principles of the Act. The purpose of the RMA is to promote the sustainable management of natural and physical resources. The expression "sustainable management" is defined in the Act as meaning:

*"(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*

*(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

*(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

2.14 Sections 6-8 of the RMA set out the important guiding principles for the legislation. Section 6 of the Act sets out matters of national importance as follows:

*"Matters of national importance*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

*(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*

*(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

*(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

*(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*

*(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

*(f) The protection of historic heritage from inappropriate subdivision, use, and development.*

*(g) The protection of recognised customary activities.”*

2.15 Section 7 sets out a range of other matters as follows:

*"Other matters*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*

*(a) Kaitiakitanga:*

*(aa) The ethic of stewardship:*

*(b) The efficient use and development of natural and physical resources:*

*(ba) the efficiency of the end use of energy:*

*(c) The maintenance and enhancement of amenity values:*

*(d) Intrinsic values of ecosystems:*

*(e) Repealed.*

*(f) Maintenance and enhancement of the quality of the environment:*

*(g) Any finite characteristics of natural and physical resources:*

*(h) The protection of the habitat of trout and salmon:*

*(i) the effects of climate change:*

*(j) the benefits to be derived from the use and development of renewable energy.”*

2.16 Section 8 relates to the Treaty of Waitangi and states:

*"Treaty of Waitangi*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”*

2.17 The Courts have been clear that the RMA must be interpreted and administered in a manner that promotes the purpose and principles of the legislation as set out in Part 2, and the sole aim is to achieve the sustainable management of natural and physical resources in accordance with section 5 of the Act.

2.18 Part 3 of the RMA sets out a range of duties and restrictions under the Act. Of particular relevance in this context is section 12, which restricts a range of uses of the coastal marine area. Section 12 sets out a range of activities and occupation that may not be undertaken in the coastal marine area unless expressly allowed by a rule in a regional coastal plan or proposed regional coastal plan,

or a resource consent. Section 12A states that no person may occupy the coastal marine area for the purpose of an aquaculture activity except in an AMA.

- 2.19 The RMA identifies a range of functions for decision-makers such as the Minister for the Environment, Minister of Conservation, and regional councils and territorial authorities. The RMA also sets out a hierarchy of standards, policy statements and plans. This includes national policy statements, regional policy statements, regional plans and district plans. The general theme is that instruments lower in the hierarchy must be consistent with instruments higher in the hierarchy. For example, a regional coastal plan is required to give effect to a NZCPS (which is a national policy statement under the RMA).
- 2.20 The Act includes a "resource consent" process. A resource consent is a permission to undertake an activity that otherwise would not be allowed by virtue of the Act or a relevant plan. For example, a coastal permit for occupation of the coastal marine area for a marine farm is a form of resource consent under the RMA.
- 2.21 There is a particular procedure created under the RMA for aquaculture. As a result, aquaculture is in the unique position that councils have to undertake a special planning process to create AMAs to allow new aquaculture development to proceed. The process for establishing an AMA is based on the standard plan change process under the RMA with certain modifications. New AMAs can be established through three different mechanisms:
- (a) A council-initiated plan change, under which 40 percent of new space may be allocated to iwi (i.e. 20 percent of new space is set aside for iwi, and up to an additional 20 percent may be required by the Crown in relation to settling the existing space obligation);
  - (b) A council-invited private plan change, under which the private plan initiator has the first opportunity to apply for 80 percent of the approved AMA space once 20 percent has been set aside for iwi;
  - (c) A standard private plan change, under which the initiator of the private plan change does not have any preferential access rights over the remaining 80 percent of approved AMA space, once 20 percent has been set aside for iwi.
- 2.22 In addition to the usual plan change processes under Schedule 1 of the RMA, Schedule 1A sets out the process for councils to refer the proposal for an AMA plan change to the Ministry of Fisheries to undertake an undue adverse effects test. This test considers whether the proposed AMA will have an undue adverse effect on commercial, customary or recreational fishing. If an AMA passes the undue adverse effects test, it may continue through the plan change process.
- 2.23 If the plan change is successful and an AMA is established in an operative regional coastal plan, then before marine farming can commence authorisations to apply for resource consents must be issued, and resource consents (coastal permits) must be granted.

## The NZCPS

- 2.24 The purpose of a NZCPS is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand.
- 2.25 Since the purpose of a NZCPS is to achieve the purpose of the RMA, any objectives and policies in the NZCPS are only relevant to the extent that they are focussed on achieving the purpose of the RMA. The NZCPS does not provide a forum for the Minister of Conservation to state a wide range of Government policies which fall outside the scope of the RMA. This is an important factor in assessing whether the NZCPS could be used to address the Government's goals for aquaculture and the issues relevant to achieving those goals.
- 2.26 The other point to note is that the NZCPS applies to the "coastal environment" of New Zealand. This expression is not defined in the RMA, but the Courts have held it to include an area of coastal land adjacent to the coastal marine area. Generally, the Courts have held that this extends back from the coastal marine area to the first ridge line, although this is not necessarily a fixed rule.
- 2.27 Section 57 of the RMA states there is to be, at all times, at least one NZCPS prepared and recommended by the Minister of Conservation. This is in contrast to other national policy statements and national environmental standards, which are optional.
- 2.28 The NZCPS is prepared using one of two processes set out in the Act. The first process involves appointing a Board of Inquiry to inquire into and report on a proposed NZCPS. This involves public notification of the draft and the opportunity for the public to make submissions and attend a hearing. The RMA also allows the Minister of Conservation to establish and use a different process, which may well be shorter and not include the Board of Inquiry process.
- 2.29 A NZCPS may state objectives and policies about any one or more of the matters set out in section 58 of the Act:

*"Contents of New Zealand coastal policy statements*

*A New Zealand coastal policy statement may state objectives and policies about any one or more of the following matters:*

- (a) National priorities for the preservation of the natural character of the coastal environment of New Zealand, including protection from inappropriate subdivision, use, and development:*
- (b) The protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga:*
- (c) Activities involving the subdivision, use, or development of areas of the coastal environment:*
- (d) The Crown's interests in land of the Crown in the coastal marine area:*

- (e) *The matters to be included in any or all regional coastal plans in regard to the preservation of the natural character of the coastal environment, including the specific circumstances in which the Minister of Conservation will decide resource consent applications relating to—*
  - (i) *Types of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area; or*
  - (ii) *Areas in the coastal marine area that have significant conservation value:*
- (f) *The implementation of New Zealand's international obligations affecting the coastal environment:*
- (g) *The procedures and methods to be used to review the policies and to monitor their effectiveness:*
  - (ga) *national priorities for maintaining and enhancing public access to and along the coastal marine area:*
  - (gb) *the protection of recognised customary activities:*
  - (h) *Any other matter relating to the purpose of a New Zealand coastal policy statement.”*

## **Legal effect of the NZCPS**

2.30 In terms of the hierarchy of planning instruments under the RMA, the NZCPS is the top level coastal planning document. As a result, a regional policy statement must give effect to the NZCPS. A regional plan (including a regional coastal plan) and a district plan must also give effect to a NZCPS. In this sense, the NZCPS has a significant influence over the other planning instruments that are lower in the RMA planning hierarchy. Further, when considering any application for resource consent, a consent authority must have regard to a NZCPS.

## **The review of the NZCPS**

2.31 In 2002, the Minister of Conservation commissioned an independent review of the NZCPS. This independent review was completed by Dr Johanna Rosier and released in 2004.<sup>2</sup> The Department of Conservation produced an Issues and Options<sup>3</sup> paper in August 2006 as part of the consultation process leading up to a draft revised NZCPS being released.

2.32 A revised NZCPS is expected to be available for public consultation in late 2007.

<sup>2</sup> Dr J Rosier "Independent Review of the New Zealand Coastal Policy Statement" May 2004

<sup>3</sup> Department of Conservation "Review of the New Zealand Coastal Policy Statement: Issues and Options" August 2006

## **SECTION THREE**

### **THE GOVERNMENT'S GOALS FOR AQUACULTURE**

- 3.1 The Government has identified an environmentally sustainable aquaculture industry as having a significant role to play in New Zealand's economic transformation. Accordingly, the Government agreed to support the industry-led New Zealand Aquaculture Strategy released in July 2006, which sets the industry's long-term goal of achieving \$1 billion worth of sales per annum by 2025.
- 3.2 Consistent with its support for the industry-led aquaculture strategy, the Government has formulated a National Aquaculture Position Statement signalling the Government's support for the development of environmentally sustainable aquaculture in New Zealand. In the National Aquaculture Position Statement, the Government has committed to working in partnership with the aquaculture industry, local government, Maori and communities to maximise the contribution aquaculture makes to the New Zealand economy and its potential for growth. As such, the Government recognises that environmentally sound aquaculture has a legitimate place on land and in coastal waters, in conjunction with other uses of the natural environment.
- 3.3 The Government has a number of specific goals for aquaculture that are contained in the National Aquaculture Position Statement. These goals fit within a framework of five guiding principles which the Government will follow to maximise the contribution aquaculture makes to the New Zealand economy. The goals reflect, and in some instances expand upon, the Government's goals for aquaculture as expressed in the key pieces of legislation regulating aquaculture, such as the RMA and the Fisheries Act. The Government's goals are outlined in table 3.1.
- 3.4 The aim of this report is to assess the feasibility of including objectives and policies in a revised NZCPS to promote the Government's goals for aquaculture. When considering this, it is important to emphasise that the NZCPS is a planning document under the RMA. As such, it fits within the RMA "sustainable management" effects-based framework. Consequently, there are legal and practical limits to the nature of the objectives and policies that the NZCPS may contain.
- 3.5 For example, the Government's goal of "maximising economic benefits" can only be addressed through the RMA/NZCPS to the extent that the RMA enables people and communities to provide for their social, economic and cultural wellbeing within the overall purpose of sustainable management of natural and physical resources. In other words, the RMA provides a planning framework in which people can seek to provide for their wellbeing, but objectives and policies in the various planning instruments (including the NZCPS) can only facilitate this to the extent that it is consistent with the RMA.
- 3.6 Some of the Government's goals could be addressed directly by objectives and policies in the NZCPS, because the matters addressed by the goals fall squarely within the RMA framework. For example, the environment sub-goal within the stewardship goal can be addressed directly. There are also goals, or parts of goals, that can be addressed more indirectly. For example, while the NZCPS cannot include objectives and policies for market development or investment, other objectives and policies can encourage a more supportive planning framework for aquaculture, which in turn may provide a more conducive environment for market development or investment.

**Table 3.1: The Government's goals for aquaculture**

<p>1. <b>Maximising economic benefits:</b> Sustainable aquaculture has the potential to make a significant contribution towards New Zealand's economic transformation. As such, efforts to maximise the economic benefits from the industry to New Zealand are encouraged.</p> <p>1.1 Market development and promotion: The Government supports the aquaculture industry in developing local and international market prospects.</p> <p>1.2 Investment: The Government supports investment in aquaculture development.</p> <p>1.3 Public perception: The Government supports the aquaculture industry in promoting its contribution to the New Zealand economy to the general public.</p> <p>1.4 Regional development: The Government supports aquaculture development that revitalises regional New Zealand.</p>
<p>2. <b>Stewardship:</b> The aquaculture industry in New Zealand has a responsibility to act as a conscientious steward of the physical and social environment in which it is situated. The Government supports the industry in taking a long-term view and making wise decisions about its development to protect the future interests of all New Zealanders.</p> <p>2.1 Environment: The Government supports the development of environmentally sustainable aquaculture in New Zealand.</p> <p>2.2 Community: The Government supports aquaculture development that benefits local communities.</p> <p>2.3 Biosecurity and food safety: The Government supports investment in biosecurity initiatives that protect the quality of aquatic environments and the safety of aquaculture products.</p>
<p>3. <b>Innovation:</b> Innovation within the aquaculture industry will continue to be an integral component of its ability to achieve its long-term goals. Developing New Zealand talent and technology as well as linking into global sources of knowledge and skills will be crucial.</p> <p>3.1 Research and development: The Government supports research and development as a key mechanism for the growth of the aquaculture industry.</p> <p>3.2 Skills and knowledge: The Government supports initiatives to enhance the knowledge base of the industry via training in education programmes.</p> <p>3.3 Networking and industry co-ordination: The Government supports the creation of local and international partnerships to foster innovation and knowledge transfer.</p>
<p>4. <b>Maori participation:</b> The aquaculture industry provides Maori with a number of opportunities to strengthen existing involvement, encourage new initiatives, and expand their economic base. The participation of Maori in the growth of the aquaculture industry</p>

will be critical to its future success.

- 4.1 Economic development: The Government encourages sustainable Maori economic development in the aquaculture industry.
  - 4.2 The Maori aquaculture settlement: The Government is committed to implementing the Maori Commercial Aquaculture Claims Settlement Act 2004.
  - 4.3 Partnerships: The Government supports and encourages durable and long-term partnerships between Maori, local government, industry and key stakeholders.
5. **Good governance:** Good governance is required to enable the industry to develop to its full potential within a sustainable and supportive regulatory framework. The Government is committed to fostering governance arrangements which promote industry development.
- 5.1 Enabling regulation: The Government is committed to providing and supporting regulatory frameworks which foster growth in the aquaculture industry and take account of the need for environmental and economic sustainability, and other uses of public space.
  - 5.2 Planning for the future: The Government is committed to taking a long-term, proactive stance supporting aquaculture development.

## SECTION FOUR

### THE ISSUES RELEVANT TO ACHIEVING THE GOVERNMENT'S AQUACULTURE GOALS

- 4.1 The Government has expressed its support for environmentally sustainable aquaculture, and set the goals to be achieved in order to maximise the contribution aquaculture can make to the New Zealand economy.
- 4.2 The achievement of the Government's goals is dependent on input or action by central and local government, industry, Maori and communities. Discussions with stakeholders identified a range of issues relevant to achieving the Government's aquaculture goals, some of which may be able to be addressed by objectives and policies in the NZCPS. This section provides an overview of the issues identified by stakeholders, before outlining in more detail the issues that could be addressed by objectives and policies in the NZCPS to promote the Government's aquaculture goals.
- 4.3 A number of stakeholders considered that the legislation provided an appropriate framework for aquaculture, although the complexity of the planning process presented difficulties, and some expressed concern that the workability of certain provisions may act as a constraint on aquaculture development. However, other stakeholders had significant concerns over the legislative framework. One significant issue for all stakeholders was cost, particularly the cost of AMA plan changes under Schedule 1 of the RMA, and any appeals to the Environment Court that may follow. A related issue is a lack of clear information about the impacts of aquaculture (including economic benefits) to support certain decisions. Adverse public perception of aquaculture in terms of environmental effects and limiting public access was also an issue for stakeholders.
- 4.4 For some councils, these issues combine to mean there is little incentive to undertake aquaculture planning. When faced with a community hostile to aquaculture, and without clear evidence of economic benefits from aquaculture, some councils are reluctant to commit ratepayer funds to aquaculture planning.
- 4.5 There are a number of councils that have commenced planning processes and a range of other preparatory work for new aquaculture. This includes significant excluded areas and constraints mapping work. Councils are also working on issues relating to existing space (such as the transition of existing consents into the new regime, or dealing with off-site farms) and options to increase flexibility for more innovative uses within existing space.
- 4.6 There is an opportunity for objectives and policies in the NZCPS to address some of these issues in order to promote the Government's aquaculture goals. As emphasised in the previous section, the NZCPS is unable to address all of these goals. This is due to the scope of the NZCPS being limited by the overall purpose of the RMA. The same principle applies to the issues identified in this section, and for the same reason the NZCPS will only be able to address some of those issues. For example, the NZCPS cannot address issues associated with the legislation itself, the cost of aquaculture planning, a lack of available information or adverse public perception. Stakeholders did identify issues that may benefit from objectives and policies in the NZCPS, which are outlined below.

## Issues identified by councils

- 4.7 Councils identified the complexity of and information requirements for aquaculture planning as one of the most relevant issues affecting aquaculture development. In defining AMAs, regional councils need to address the actual and potential adverse effects (including cumulative effects) that aquaculture has on the environment, and on other uses of the coastal marine area. This includes information about the actual and potential effects on the carrying capacity of the marine ecosystem. Some councils commented that a comprehensive level of “constraints mapping” is costly, time-consuming, and requires detailed scientific information that is difficult and expensive to obtain. This is compounded by the need to consider the effects of land use on the coastal marine area, and the fact that regional councils do not have jurisdiction over many land use practices affecting the coastal marine area.
- 4.8 Councils stated that they have little guidance on how to identify and evaluate the range of possible uses and values in the coastal marine area. In particular, identifying and evaluating natural character areas is consistently seen as difficult. Once councils have identified values and uses, they find it difficult to allocate space in the coastal marine area between the competing uses. Many councils noted the lack of a statement by the Crown (as landowner of the coastal marine area) about the mix of uses it considers appropriate for the area. Some councils considered that such a statement would assist in the balancing exercise required to allocate space between the matters set out in Part 2 of the RMA (such as natural character, public access and significant habitats) as well as commercial uses (such as aquaculture).
- 4.9 Finally, some councils noted that section 64A of the RMA, which requires councils to consider whether a coastal occupation charging regime should be included in regional coastal plans when preparing or reviewing those plans, affects their ability to undertake the plan changes necessary to create AMAs. They considered that objectives and policies in the NZCPS could help clarify where and when coastal occupation charges are appropriate, and how they should be designed.

## Issues identified by industry

- 4.10 Industry representatives identified uncertainty in the planning process as a key issue, as it reduces the likelihood of potential developers investing to establish AMAs. Like councils, industry specifically identified the difficulty of identifying and evaluating values and uses for the coastal marine area as an issue that the NZCPS may be able to address. Potential developers may be more willing to invest if there is clearer guidance about what areas may be appropriate for aquaculture, or how aquaculture will be prioritised in the allocation process. Similarly, more guidance about how to interpret section 6 issues, and a clear vision for the mix of uses the Crown considers appropriate in the coastal marine area, may increase the likelihood of investment.
- 4.11 Industry were interested in the concept of non-directive objectives and policies in the NZCPS that may assist aquaculture development. Industry also identified the need for planning frameworks to take an integrated approach to coastal planning, particularly as it relates to marine water quality.

4.12 Finally, industry highlighted the importance of small scale or experimental aquaculture in the process of establishing larger marine farms, because it allows a precautionary assessment of the effects of an activity. Given its importance, industry considered that objectives and policies in the NZCPS that assisted with approvals for small scale or experimental aquaculture would be useful.

### **Issues identified by Maori**

4.13 As potential aquaculture developers, Maori reflected many of the same views as the wider industry. At the same time, there are other issues that are particular to Maori.

4.14 It is critical for Maori that in the commercial aquaculture context, councils work with the properly mandated representatives (listed in Schedule 4 of the Maori Fisheries Act 2004) when appropriate, since doing so is an essential part of implementing the Maori commercial aquaculture settlement. When councils do so, it is important that the mandated representatives have comprehensive information available to help councils plan for aquaculture.

4.15 Further, it is important that councils are aware of the complexities that arise when a council has to deal with more than one iwi in its region, with different hapu within one iwi, and of the mechanisms for dealing with these complexities. Similarly, councils must be aware of any conflicting interests that may exist between iwi, and between different hapu, in relation to both commercial aquaculture and cultural interests.

4.16 Like the wider industry and councils, Maori felt that aquaculture development could benefit from generic objectives and policies in the NZCPS concerning the Crown's interest in land in the coastal marine area. This included identifying the possibility of creating AMAs to satisfy the Maori commercial aquaculture settlement. More broadly, additional guidance would be useful for councils to apply the provisions in Part 2 of the RMA relevant to Maori interests (including sections 6(e), 7(a) and 8) where Maori are seeking to use, develop or protect coastal resources.

## SECTION FIVE

# THE USE OF THE NZCPS TO PROMOTE AQUACULTURE GOALS AND ADDRESS ISSUES

### PART A INTRODUCTION

- 5.1 The previous sections described the regulatory framework for aquaculture, the nature of the NZCPS and the Government's goals for aquaculture, and summarised the issues identified by stakeholders relevant to achieving the Government's goals. This section considers the feasibility of including objectives and policies for aquaculture in the NZCPS to promote the Government's aquaculture goals and address the relevant issues identified by stakeholders.
- 5.2 Feasibility may be assessed initially at the legal level. As discussed earlier, there are limits within which the NZCPS, as a statutory instrument, must operate. The first task is to outline the legal scope of the NZCPS, and consider the extent to which NZCPS can focus on a particular activity and be directive in terms of outcomes sought.
- 5.3 An assessment of feasibility also involves considering whether including objectives and policies in the NZCPS is practical. The second part of this section identifies a range of possible approaches that the NZCPS could adopt in relation to aquaculture, and the feasibility of each approach.
- 5.4 The conclusions on feasibility in this section were reached after considering the very useful feedback from the stakeholders interviewed, and after an analysis of the statutory context and other relevant material. These conclusions are summarised in section 6 of this report.

### What is the scope of the NZCPS?

- 5.5 The purpose of the NZCPS is identified in section 56 of the RMA as:

"To state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand."

- 5.6 The NZCPS is a national policy statement under the RMA, and section 56 makes it clear that it can only address RMA issues. The contents that may be included in the NZCPS are set out in section 58 of the Act. This section lists a number of issues and concludes by stating that the document may state objectives and policies about "any other matter relating to the purpose of a New Zealand Coastal Policy Statement." This reinforces that the NZCPS may only state objectives and policies to the extent that they focus on the purpose of the RMA.
- 5.7 It is also important to emphasise that the NZCPS is a national policy statement that is prepared through a public process, and that any objectives or policies would have to survive the section 32 process. The Minister may either choose to adopt the Board of Inquiry process set out in sections 47 to 52 of the RMA, or a more condensed process under section 46A of the Act. In either case this will involve giving the public time and opportunity to make submissions on the proposed NZCPS, and will require a report and recommendations to be made to the Minister. The Minister

must then consider the report and recommendations and may (but need not) make any changes to the proposed NZCPS. Therefore, as the NZCPS is prepared through a public process, any aquaculture focussed statements made in a proposed NZCPS may be subject to change as a result of the process. There is no certainty that any aquaculture statements in the proposed NZCPS would remain unaltered in the final version, although this applies equally to any of the material in the proposed statement.

## Can the NZCPS focus on a particular activity?

- 5.8 The NZCPS can focus on a particular activity in the coastal marine area such as aquaculture. Section 58(c) of the RMA states that the NZCPS may state objectives and policies about “activities” involving subdivision, use or development of areas of the coastal environment. On that basis, there is no reason why the NZCPS could not include specific objectives and policies addressing aquaculture, or any other relevant activities. Further, the ability to state objectives and policies relating to “the Crown’s interests in land of the Crown in the coastal marine area” would also potentially form a basis for such objectives and policies. There is also the unique position of aquaculture within the RMA framework and this may justify the inclusion of objectives and policies for aquaculture in the NZCPS.
- 5.9 A number of stakeholders stated that it would be inappropriate for the NZCPS to focus on a particular activity such as aquaculture, as it is only one of a number of potential uses of the coastal marine area. The stakeholders considered that while aquaculture may be a highly relevant Government goal at present, this may not be the case throughout the life of the revised NZCPS. Further, there could be other uses of the coastal environment (such as wave and tidal energy or bioprospecting) which might assume equal or more importance, and these may equally deserve to be addressed. Stakeholders were also concerned that if aquaculture was identified specifically, this would place pressure on the Minister to include objectives and policies on a range of other specific activities in the coastal marine area.

## How directive can the NZCPS be?

- 5.10 The NZCPS is a national policy statement under the RMA which is intended to give central Government guidance on the purpose of the RMA as it applies in the coastal environment. Section 58 of the RMA makes it clear that the NZCPS may state objectives and policies about a range of matters. The question that arises is whether the NZCPS can be particularly directive if it is only able to state objectives and policies. By way of comparison, there are other instruments under the RMA which are able to express not only objectives and policies, but also rules and methods.
- 5.11 The Court of Appeal made it clear in *Auckland Regional Council v North Shore City Council*<sup>4</sup> that policies may be either flexible, inflexible or broad or narrow. The Court stated that a policy can in fact be something highly specific. Other Courts have also applied this principle to objectives, which, like policies, can be either general or specific.<sup>5</sup>

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<sup>4</sup> (1995) NZRMA 424

<sup>5</sup> For example, see *Campbell v Christchurch City Council* [2002] NZRMA 332

5.12 Therefore, there is nothing to prevent objectives and policies being expressed in the NZCPS that both focus on aquaculture, and are highly specific and directive in terms of what is to be achieved. For example, in theory, the NZCPS could contain an objective such as:

“There will be aquaculture management areas established over at least 10% of the coastal marine area in each region within three years of this statement coming into effect.”

5.13 It is questionable whether such an objective would be feasible, and in fact whether the outcomes sought would be achievable. However, in theory there is nothing to prevent such an objective being included in the NZCPS.

5.14 Councils were generally unsupportive of an approach in the NZCPS that focussed specifically on aquaculture or sought to direct councils to undertake aquaculture planning. In particular, there was a consensus that directive statements in the NZCPS were the incorrect tool to achieve the Government’s goals, and that they would not work in the practice of regional coastal planning. It was emphasised that the primary issues faced by aquaculture were not in the nature of a “policy gap” and therefore the NZCPS was not an appropriate mechanism to address these issues. Industry and Maori, while supportive of mechanisms to encourage AMA planning, also questioned whether a specific or directive approach was appropriate or workable in practice.

## **PART B THE SPECTRUM OF POSSIBLE APPROACHES FOR THE NZCPS**

5.15 There is a spectrum of possible approaches that a revised NZCPS could adopt in relation to the Government’s aquaculture goals and the issues identified earlier in this report. This spectrum includes:

- A clear Crown statement or vision about how councils should allocate between competing uses and values in the coastal marine area;
- Directive aquaculture objectives and policies;
- Non-directive aquaculture objectives and policies; and
- A range of non-directive objectives and policies which do not focus specifically on aquaculture, but on generic issues that are relevant to aquaculture.

### **Crown direction on allocation of space in the coastal marine area**

5.16 A number of stakeholders commented that what is lacking is a clear Crown statement on the allocation of space between competing uses and values in the coastal marine area. In other words, there is no clear statement from central Government indicating how to balance conflicts between, for example, the protection of natural character as against coastal subdivision. This is a very complex issue. One of the central questions for the Minister in the NZCPS review will be the extent to which there will be Crown direction or guidance on how a regional council should allocate between competing uses and values in the coastal marine area.

- 5.17 The reality with occupation and use of coastal space is that there is a range of competing uses and values, and any allocation carries with it an opportunity cost. For example, if space is allocated for aquaculture, it may be at a cost to values in the coastal marine area such as natural character, biodiversity or cultural sensitivities. Similarly, there may be a conflict with recreational use or navigation. On the other hand, aquaculture may allow people and communities to provide for social, economic and cultural wellbeing, so not allocating the space to aquaculture also carries an opportunity cost. The RMA presently addresses these potential conflicts through the planning and resource consent processes, and in the end a decision-maker forms an “overall broad judgment” under Part 2 of the Act as to which use or value prevails.
- 5.18 It is questionable whether the NZCPS is the appropriate place to address the allocation of coastal space to one specific activity, without dealing in a far more comprehensive way with the overall Crown vision for allocation in that area. If aquaculture is identified as an activity for which space should be allocated, this raises the question of how this reconciles with the other uses of, and values in, the coastal marine area. This is particularly relevant for those matters expressly protected through the RMA such as the matters of national importance in section 6. Further, the RMA does not deal with all resource allocation issues in the coastal marine area, and hence if the allocation issue is addressed in a comprehensive way, then it would have to be through a process that covers more than just RMA matters.

### **Directive aquaculture objectives and policies**

- 5.19 It would be open for the Minister to articulate highly directive aquaculture objectives and policies in the NZCPS, and one example of this could be a direction to undertake planning and establish AMAs in the coastal marine area. Regional councils would then be required to give effect to these objectives and policies, and review and change regional policy statements and regional coastal plans accordingly.
- 5.20 As identified earlier, stakeholders generally considered that this directive approach would be inappropriate in the NZCPS. The reasons for this view included that it would be inappropriate to focus on one activity, as there would be a number of other activities that may equally deserve attention. There could also be a range of future innovative uses of the coastal marine area, and stakeholders considered that generic policies would be preferable as they allow flexibility moving forward. Stakeholders also commented that aquaculture is not suitable in all regions and it would be inappropriate to impose obligations to undertake AMA planning in regions where this activity is not relevant. Further, some councils commented that at present there is not significant demand for additional aquaculture space in their region.
- 5.21 It should also be noted that many councils are already undertaking aquaculture planning or taking preliminary steps to form the basis of AMA planning. For example, there has been significant work undertaken in the constraints mapping process in a number of regions, and this is being supported by scientific research. There are also excluded area processes underway, and a number of councils either do or are seeking to address aquaculture specifically in regional coastal planning processes. There is also work being done in relation to existing space (such as the transition of

existing consents into the new regime, or dealing with off-site farms) and options to increase flexibility for more innovative uses within existing space.

## **Non-directive aquaculture objectives and policies**

5.22 While directive objectives and policies in the NZCPS are not supported by stakeholders generally, there is more support for non-directive but guiding objectives and policies to support aquaculture. Potential examples of this approach are discussed below.

### **A high level objective for aquaculture**

5.23 If the Minister decided to focus specifically on aquaculture, one option would be to include in the NZCPS a high level objective stating that sustainable aquaculture is a priority for the Crown. This objective could be expressed on the basis, for example, that it relates to the Crown's interests in land of the Crown in the coastal marine area under section 58(d) of the RMA. The purpose of this objective would not be to direct any specific outcome in regional coastal plans, but to provide high level support in the NZCPS for sustainable aquaculture. The objective could state that to the extent that aquaculture can be developed in a sustainable way that meets the purpose of the RMA, then regional councils should give active consideration to providing for aquaculture through regional coastal plans. Further, there is no reason why a similar objective could not be expressed for other industries to the extent that they are sustainable, such as wave and tidal energy or bioprospecting.

### **Encouragement for aquaculture preparatory work**

5.24 A further option would be for the NZCPS to contain objectives and policies that encourage regional councils to undertake work to determine whether aquaculture is appropriate within their region. This approach would not involve the NZCPS directing that AMAs be created, but rather encouraging councils to undertake preparatory work as to whether aquaculture may be appropriate within their region. If aquaculture is determined to be appropriate, then councils would outline in regional coastal plans how aquaculture is to be addressed. Again, this may not lead directly or immediately to the formation of AMAs, but it may lead to a clearer aquaculture planning context for the industry.

5.25 One problem with this approach is that much of the preparatory work (such as constraints mapping or excluded areas) takes place outside the regional coastal plan framework, and is often done to inform subsequent plan reviews. This raises the question of whether the NZCPS could influence this preparatory work. In any case, there may still be value in regional coastal plans articulating the results of preparatory work, even if it is to confirm that aquaculture is not relevant in a particular region. What is important is that the NZCPS does not require councils to undertake expensive reviews of regional coastal plans where aquaculture is not relevant to the particular region.

5.26 Again, it is important to emphasise that a number of councils have been doing preparatory work for some time, and that regional coastal plans do include important information about the values in the coastal marine area, where these values are known. There has also been extensive efforts by

councils to obtain and document this information outside the planning process. This should further improve when second generation plans are developed.

### **Experimental and existing aquaculture**

- 5.27 One issue raised by industry was the difficulty of having to work through the AMA planning process to establish small areas for experimental aquaculture. It may be that the NZCPS could contain non-directive objectives and policies that apply specifically to small scale experimental aquaculture, to support this where it is sustainable in terms of the RMA. For example, the NZCPS could articulate the need to allow for flexibility and innovation in the coastal marine area, and encourage councils to provide for this through small and focussed AMAs. Councils may consider, for example, providing for experimental aquaculture in small AMAs as controlled or restricted discretionary activities. For a controlled activity this would mean a resource consent application must be granted, but could be subject to conditions imposed by the consent authority. For a restricted discretionary activity, the consent authority can restrict the matters upon which it has discretion in deciding whether to grant the resource consent or not. There are similar issues that arise in relation to providing for flexibility to change species within existing marine farm sites.
- 5.28 The RMA contains a specific regime for dealing with applications over existing aquaculture sites, and in short gives existing consent holders a preferential right to reapply for resource consents to replace existing consents once they expire. The value of existing investment is of particular interest to industry, and is a matter that consent authorities must have regard to under section 104(2A) in making resource consent decisions. One potential approach would be for the NZCPS to seek to increase certainty for existing marine farmers in terms of reapplying for consents over existing marine farm sites by, for example, providing policy guidance around the criteria set out in section 165ZJ of the RMA.
- 5.29 It may also be possible to include objectives and policies relating to the efficient use of the coastal marine area for aquaculture. Section 7(b) identifies the principle of “the efficient use and development of natural and physical resources.” If the Crown was seeking to ensure that existing aquaculture space is used efficiently (such as encouraging higher value species), then the NZCPS could articulate objectives and policies to this effect.

### **Maori issues**

- 5.30 Maori are in an interesting position in terms of aquaculture, as they can occupy a number of different roles. Maori (and the Crown) are particularly interested in seeing AMAs developed, as these form the basis for the aquaculture settlement under the Maori Commercial Aquaculture Claims Settlement Act 2004. One possibility would be for the NZCPS to encourage regional councils to engage with Maori, to determine whether it is possible to establish specific AMAs for the purpose of allocating space to the Trustee under the settlement legislation. This mechanism is provided for in section 165C(1)(b) of the RMA.
- 5.31 Another perspective Maori have on aquaculture is the kaitiaki role that Maori exercise over the coastal marine area. From this perspective, Maori may have concerns about aquaculture being established in their rohe, and this has been a theme in a number of cases under the RMA where Maori have opposed aquaculture development. However, it was indicated that the kaitiaki role can also include facilitating appropriate development opportunities for Maori in the coastal marine area.

As discussed earlier, this is relevant to the constraints mapping work for councils. There are also a number of other potential Maori interests in the coastal marine area, including fishing interests, maitaitai, area closures and customary rights orders under the Foreshore and Seabed Act 2004. The NZCPS could encourage councils to work with Maori to ensure that regional coastal plans identify those areas that may or may not be appropriate for aquaculture from a Maori perspective, in the same way as councils may do for other interests such as natural character or biodiversity.

### **Coastal occupation charges**

5.32 A number of stakeholders identified coastal occupation charges as an issue generally in the coastal marine area, and particularly for aquaculture. The NZCPS could include objectives and policies that seek to clarify the statutory criteria for coastal occupation charges under section 64A of the RMA. As an example, the NZCPS could provide policy guidance around the criteria concerning “the extent to which public benefits from the coastal marine area are lost or gained” under section 64A(1)(a), and provide some clarity for how this would apply in the aquaculture context.

### **Generic objectives and policies in the NZCPS**

5.33 At this end of the spectrum is the option that the NZCPS contains objectives and policies that do not focus specifically on aquaculture, but rather address a range of issues relevant to the development of aquaculture in the coastal marine area. This could include, for example, objectives and policies further expanding on the matters of national importance identified in section 6 of the RMA. These statements would of course be relevant to a wide range of other activities and values in the coastal marine area, as well as aquaculture.

5.34 While most stakeholders did not consider that specific policies addressing aquaculture would be appropriate, there was general support for the concept of the NZCPS addressing these more generic matters, and that this may provide more clarity for aquaculture in the planning framework.

### **Part 2 RMA matters**

5.35 There are a number of uses and values in the coastal marine area that have the potential to conflict with aquaculture. These matters are potential impediments to the creation of AMAs, and can include:

- Areas of high natural character or landscape value;
- Areas of significant habitat;
- Areas of high cultural sensitivity to Maori;
- Areas of high public access value (including recreation);
- Areas important for navigation; and
- Areas of high amenity value.

5.36 There is potential to further clarify the meaning of these matters through the NZCPS. For example, the NZCPS could provide policy guidance on what is meant by the various Part 2 matters,

such as “natural character” under section 6(a), “outstanding landscapes” under section 6(b), “significant habitats” under section 6(c) or the matters relating to Maori interests under section 6(e). This may assist councils when addressing these matters of national importance through regional coastal plans.

- 5.37 Further, there could be objectives and policies in the NZCPS requiring councils to identify areas of high value (such as for natural character, habitat or Maori related reasons) and describe the areas in which certain activities may be appropriate. As a result, the plan could provide more clarity as to what opportunities and constraints exist for activities (including aquaculture) in the region. This would not create AMAs, but would give regional councils more direction in terms of identifying those high value areas through regional coastal plans, and industry more certainty in terms of where impediments to AMAs may exist. The current NZCPS already addresses issues such as natural character, significant habitats and public access. As part of the NZCPS review, there will no doubt be discussion about whether and how these matters need to be expressed in the revised NZCPS.
- 5.38 There have been numerous cases where aquaculture resource consent applications have been considered in the Courts, and have been declined or modified on the basis that the proposal conflicts with, for example, natural character, biodiversity or cultural values.<sup>6</sup> From an aquaculture perspective, it would be useful if regional coastal plans could be far more explicit about the areas where impediments are likely to exist and the values that are at stake. This would provide the industry with more information about the likely impediments that may be faced in an AMA or resource consent process.
- 5.39 This would not of course close the door to the development of AMAs in any areas of the coast of high value, but it would identify the likely constraints that would be faced if those processes were undertaken. One council stakeholder described this as “knowing your coast”.

## **Other non-aquaculture specific objectives and policies**

- 5.40 This section considers two other examples of potential NZCPS objectives and policies which focus on non-aquaculture matters, but which have the potential to support sustainable aquaculture development. The examples are water quality and the precautionary principle/adaptive management.

### **Water quality**

- 5.41 One example of a coastal marine issue which is very important to aquaculture is that of water quality. This issue is also relevant to a range of other uses and values in the coastal marine area, but for aquaculture high quality water is essential for the industry to develop and endure. This highlights the need for integrated management across the land/sea boundary. It is of little use if AMAs are developed in the CMA, but land management practices render the water in that area unusable for aquaculture.

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<sup>6</sup> For example, see *Clifford Bay Marine Farms v Marlborough DC* (Unreported, Environment Court, 22 September 2003, C131/2003), and *Kuku Mara Partnership (Admiralty Bay) v Marlborough DC* (2005) 11 ELRNZ 466.

- 5.42 One option would be for the NZCPS to articulate objectives and policies relating to maintaining or enhancing water quality in the coastal marine area. As the NZCPS relates to the “coastal environment” there is the ability for these policies to affect land based regional and district plans to the inland boundary of the coastal environment.
- 5.43 Further, a regional policy statement must give effect to the NZCPS, and this in turn affects all regional and district plans. The difficulty is that water quality is often affected by actions further inland, and there is a need to ensure that the relevant planning instruments throughout a catchment address water quality in an integrated manner. The NZCPS could contain objectives and policies for integrated management focussing on water quality, and while these would not focus specifically on aquaculture, they could be of significant benefit to the industry. For example, a policy could articulate that criteria for land-based activities must include a consideration of any downstream effect on water quality in the coastal marine area.

### **The precautionary principle and adaptive management**

- 5.44 The precautionary principle applies where there is scientific uncertainty about the potential for adverse effects resulting from a proposed activity, and this requires caution in decision-making in light of this uncertainty. One example of a precautionary mechanism is adaptive management. Adaptive management has been relevant in a number of aquaculture cases relating to both coastal planning and resource consent applications. Adaptive management often involves a staged approach to marine farming, where baseline monitoring is undertaken and stages of the marine farm are established, with monitoring in between stages to determine whether the level of adverse effects are acceptable. If the results of the monitoring are acceptable, then subsequent stages can proceed.
- 5.45 One option is for the NZCPS to articulate criteria for how the precautionary principle, and in particular adaptive management, would work in the coastal marine area generally. While decision-makers in some cases have accepted that adaptive management is appropriate, in other cases they have refused to accept it as a method to avoid, remedy or mitigate potential adverse effects. However, as some decision-makers are relying on adaptive management in the coastal marine area, then the NZCPS could state policies articulating when it may or may not be appropriate. This is another example of where the NZCPS could clarify generic issues that have the potential to support aquaculture development.

## **SECTION SIX**

### **CONCLUSIONS**

- 6.1 This report has considered the Government's goals for aquaculture, and the issues relevant to achieving those goals. The central issue in this report is whether the NZCPS could be used as a tool to achieve those goals and address the relevant issues.
- 6.2 The RMA is central to the development of the aquaculture industry, as new aquaculture development may only occur in AMAs in regional coastal plans under the RMA.
- 6.3 The NZCPS is a national policy statement, and is therefore at the top level of instruments in the RMA planning hierarchy. Objectives and policies expressed in a NZCPS must be given effect to in lower planning instruments such as a regional coastal plan.
- 6.4 However, the NZCPS is not able to address all goals and issues, but only those that can be addressed through the RMA framework. The NZCPS is a RMA policy tool, and is not able to implement a range of non-RMA Government objectives.

#### **What the NZCPS cannot achieve for aquaculture**

- 6.5 In theory, the NZCPS could contain highly directive objectives and policies relating to aquaculture, such as to require the formation of AMAs. However, there are a number of problems with this approach, and these are summarised below.
- 6.6 The NZCPS is a policy instrument, and hence it is only of use if there is a "policy gap" in the aquaculture context. A number of stakeholders, including industry in particular, identified that the impediments to aquaculture development were not in the nature of policy.
- 6.7 It was the view of some stakeholders that there were issues with the legislative reforms, and these were the basis for AMAs not being developed. Other stakeholders considered that the legislation was workable, and that good progress was being made in regions where aquaculture was appropriate, even if it appeared to be proceeding slowly. In either case, it would not be appropriate to use the NZCPS if the issues relate to matters such as the legislation or the speed of implementation.
- 6.8 Even if directive aquaculture objectives and policies were included, the NZCPS is prepared through a public process, and there is no certainty of outcome in terms of the final version of the document.
- 6.9 If the Government's goal is to achieve sustainable aquaculture, then the mechanism for achieving that in the coastal marine area is the RMA. The purpose of the RMA is the sustainable management of natural and physical resources. If aquaculture is to be sustainable, then presumably it must comply with Part 2 of the Act. The Minister would need to be careful not to distort the RMA process by including directive objectives and policies in the NZCPS that seek to promote one activity, such as aquaculture.

- 6.10 It is questionable whether directive objectives and policies would work, given that regional coastal plans are still subject to the overriding nature of Part 2 of the RMA. Further, it is questionable whether such objectives and policies would survive the section 32 RMA process.
- 6.11 Aquaculture specific and directive objectives and policies were not generally supported by councils, industry or Maori stakeholders that were interviewed.
- 6.12 Aquaculture is unsuitable for certain regions of the country, and in some other regions there does not appear to be demand for aquaculture space. It would be inappropriate to require regional councils in these areas to undertake expensive planning processes for aquaculture, when there is no suitable water space or demand from the industry.
- 6.13 There are significant questions relating to the allocation of coastal space. It is questionable whether it would be appropriate to use the NZCPS to direct the allocation of coastal space to a specific activity, without the Crown dealing in a far more comprehensive way with this issue. It is not clear whether the revised NZCPS will attempt to articulate such an overall Crown vision for the coastal environment. In the absence of this, if aquaculture is singled out as an activity for which space should be allocated, this raises the question of how this reconciles with the other uses and values in the coastal marine area, especially those protected through the RMA such as the matters of national importance in section 6.

### **How the NZCPS could support the Government's goals for aquaculture**

- 6.14 While it is not considered feasible to include directive objectives or policies relating to aquaculture, there are a number of ways in which the NZCPS could support the development of aquaculture.
- 6.15 If the Minister did decide to address aquaculture specifically (and noting that many stakeholders did not support this), it may be feasible to include a high level objective in the NZCPS which indicates that there are appropriate uses and development in the coastal marine area, and aquaculture is an important priority for the Government in terms of enabling economic wellbeing. The objective could state that to the extent that aquaculture can be developed in a sustainable way that meets the purpose of the RMA, then regional councils should give active consideration to providing for aquaculture through regional coastal plans. Such an objective would not seek to be directive about matters such as AMA formation, but it would provide high level support for sustainable aquaculture in the coastal marine area. Further, there is no reason why a similar objective could not be expressed for other industries to the extent that they are sustainable, such as wave and tidal energy or bioprospecting.
- 6.16 Further, if the Minister did decide to address aquaculture specifically, there could also be non-directive objectives and policies included in the NZCPS focussing on issues such as experimental and existing farms, preparatory work for AMA planning, Maori issues and coastal occupation charges.

- 6.17 The NZCPS could also provide more direction on generic issues (such as the section 6 matters of national importance) as they apply to the coastal environment. This could involve expanding and providing more direction on, for example, the meaning of “natural character” under section 6(a), “outstanding landscapes” under section 6(b), “significant habitats” under section 6(c) or the Maori interests protected under section 6(e). The NZCPS could include more detailed criteria for what matters require particular protection, and this could assist regional councils in their regional coastal planning.
- 6.18 The NZCPS could encourage regional councils to articulate more clearly areas of high value in regional coastal plans (such as for natural character, landscape or biodiversity reasons), so that the areas that may or may not be appropriate for aquaculture are more clearly understood by the industry and communities.
- 6.19 There is also the possibility that the NZCPS could address generic issues that are particularly relevant to aquaculture such as water quality and adaptive management. For example, water quality is of particular relevance to aquaculture, and the NZCPS could encourage integrated management across the land/sea boundary for the purpose of enhancing coastal water quality. Again, these objectives and policies would not be focussed specifically on aquaculture, but would be relevant to a wide range of uses and values in the coastal marine area.

## Feasibility of Options

6.20 The following table summarises the feasibility of various options discussed in this report.

<b>OPTION</b>	<b>IS THE OPTION FEASIBLE?</b>
Objectives and policies that direct AMA formation or other specific outcomes for aquaculture	<b>No</b>
A high level objective supporting sustainable aquaculture in the coastal environment, and where appropriate requiring active consideration of aquaculture in regional coastal plans	<b>Yes</b>
Aquaculture specific objectives and policies focussing on matters such as experimental and existing farms, preparatory work for AMA planning, Maori issues and coastal occupation charges	<b>Yes</b>
Objectives and policies focussing on generic issues such as the matters of national importance under section 6 of the RMA	<b>Yes</b>
Generic objectives and policies encouraging councils to identify in regional coastal plans areas of high value where activities (including aquaculture) may not be appropriate	<b>Yes</b>
Generic objectives and policies addressing matters of relevance to aquaculture such as water quality and adaptive management	<b>Yes</b>