8 February 2002

Members
Primary Production Select Committee
c/- R J Bunch
Select Committee Office
Parliament Buildings
WELLINGTON

Tena koutou katoa

Enclosed is the submission of Te Ohu Kai Moana (Treaty of Waitangi Fisheries Commission) on the Resource Management (Aquaculture Moratorium) Amendment Bill.

To summarise our submission, Te Ohu Kai Moana accepts the need for reform of the management of aquaculture. We would like to see in place an efficient and effective regime for aquaculture which:

- Provides better recognition of the customary relationship of Maori with the marine environment
- Manages the cumulative effects of aquaculture
- Addresses competition for coastal space
- Manages the effects of allocation on existing users and rights holders.

While the Resource Management (Aquaculture Moratorium) Amendment Bill ("the Bill") is intended to provide the transition to an improved management regime, Te Ohu Kai Moana is concerned that the blunt approach taken by the Bill imposes unnecessary costs on applicants, including Maori, and the industry.

Te Ohu Kai Moana opposes the Bill as currently drafted because:

- It has a disproportionate effect on Maori by stifling major aquaculture initiatives involving Maori interests. These initiatives provide development opportunities for Iwi/Maori in disadvantaged areas of the country, and a way for Maori to exercise their customary rights in the coastal marine environment
- It is inconsistent with the principles of natural justice, in that those affected have made their applications in good faith that they will be processed
- It will put back new aquaculture developments for about 7 years – and consequently cause the New Zealand industry to lose market share to overseas competitors.

In addition, our experience of moratoria has not been a positive one. A moratorium was put in place in 1992 to prevent a "race for fish" while species were brought into the Quota Management System (QMS). Maori are to be allocated 20% of the Total Allowable Catch (TACC) for all new species. The moratorium was intended to be in place for two years. That moratorium has had a distorting effect on fisheries managed outside the QMS. While Maori had expected to be allocated 20% of their share of the TACC for new species within two years, ten years have passed with those benefits still to be realised.

In our view, a more appropriate approach would involve the following:

- A moratorium that does not bind us into a potentially unworkable regime
- A clear and simple process for councils to lift the moratorium
- Allowing existing applications to be processed
- Closer cooperation between the Ministry of Fisheries (MFish) and regional councils in processing applications during the transition period.

Naku noa, na

Craig Lawson
GENERAL MANAGER, POLICY

Submission to Primary Production Select Committee on the Resource Management (Aquaculture Moratorium) Amendment Bill

From Te Ohu Kai Moana (Treaty of Waitangi Fisheries Commission)

1.0 Introduction

This submission is from Te Ohu Kai Moana – the Treaty of Waitangi Fisheries Commission.

We wish to appear before the Committee to speak to our submission. We can be contacted through:

Kirsty Woods
Senior Analyst
Te Ohu Kai Moana
(04) 499-5199

We wish that the following appear in support of our submission:

Robin Hapi (Chief Executive)
Kirsty Woods (Senior Policy Analyst)

2.0 Te Ohu Kai Moana

Te Ohu Kai Moana (The Treaty of Waitangi Fisheries Commission) has a statutory role to facilitate the entry of Maori into, and the development by Maori of the business and activity of fishing, including aquaculture. Te Ohu Kai Moana has widespread interests in the seafood industry, including aquaculture and wild fisheries.

Te Ohu Kai Moana, and Maori in their own right, are major commercial stakeholders in New Zealand's seafood industry. Maori have a substantial interest in over 300,000 tonnes of quota representing about 35% of the Total Allowable Commercial Catch (TACC). As part of this, Te Ohu Kai Moana also has a 50% share of Sealord, 84% of Moana Pacific and 100% of Pacific Marine Farms Ltd. Among other things, these companies are working with Iwi in different parts of New Zealand to develop joint aquaculture ventures.

3.0 The Treaty of Waitangi and Maori customary rights

Maori had rights to use and manage resources for a full range of uses at the time the Treaty of Waitangi was signed. These included the right to harvest natural resources for sustenance, ceremonial and trading purposes (equivalent to commercial uses in today's economy). The term Maori "customary" rights implies a full range of uses of all resources whether located on the land or the sea.

Clearly, Te Ohu Kai Moana has a fundamental concern with protecting and enhancing the rights of Maori secured and guaranteed by Te Tiriti o Waitangi: "te tino rangatiratanga…o ratou wenua o ratou kainga me o ratou taonga katoa", or the "full and undisturbed possession of their lands and estates fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession". These rights include a development right. As the Waitangi Tribunal noted in its Muriwhenua Fishing Report, Maori were major developers of resources in western terms before 1840, at a time when custom reigned. There is nothing in Maori tradition which dictates that those practices handed down should not be developed to suit the circumstances – as long as they are practised within sustainable limits.[1]

Through the Treaty of Waitangi, Maori have a special relationship with the Crown. Part of the relationship involves a duty by decision-makers to undertake active protection of the Article 2 rights of Maori. For some issues, Maori have negotiated settlements to address claims they have made under the Treaty. These include the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 which provides for Maori commercial and non-commercial fishing rights.

As noted above, Maori have a customary relationship with Tangaroa – the sea and all the resources it contains. Maori assert this relationship through a number of means including claims before the Courts, the Waitangi Tribunal and existing legislation such as the Resource Management Act 1991 and the Fisheries legislation (including that relating to Maori interests). An existing claim to the title of the foreshore and seabed is being lead by the Iwi of Te Tau Ihu and is presently before the Court of Appeal. Te Ohu Kai Moana supports this claim.

4.0 The effect of the Resource Management (Aquaculture Moratorium) Amendment Bill ("the Bill")

Te Ohu Kai Moana opposes the Bill as presently drafted because:

- It has a disproportionate effect on Maori as it stifles major aquaculture initiatives involving Maori interests. These initiatives provide development opportunities for Iwi/Maori in disadvantaged areas of the country, and a way for Maori to exercise their customary rights in the coastal marine environment
- It is inconsistent with the principles of natural justice, in that those affected have made their applications in good faith
- It will put back new aquaculture developments for about 7 years – and consequently cause the New Zealand industry to lose market share to overseas competitors.

As the Bill stands, the moratorium will be in place for up to two years from the date of enactment – unless councils apply to the Minister of Conservation to have the moratorium lifted by Order in Council. Given the retrospective nature of the moratorium, the Bill will therefore have effect for almost 2.5 years.

[1] Waitangi Tribunal, 1989, p 238

Meanwhile there is still a considerable amount of work to do to clarify the detail of the longer term reforms, and there is no guarantee that they will be enacted as proposed. Criteria for AMAs are unclear. In such an uncertain environment, there is little incentive for councils to amend their plans until after the new reforms are enacted.

We ask therefore that the Select Committee consider that:

- if the reforms are enacted as proposed, aquaculture will be prohibited outside Aquaculture Management Areas (AMAs)
- there is no requirement on councils to develop AMAs at all
- even if AMAs are proposed by councils once the reforms are in place, they will take time to implement
- the Department of Conservation will be required, as part of the reform, to develop a National Coastal Policy Statement for aquaculture.

This being the case, we estimate that new aquaculture developments could be "frozen" for about 7 years.

4.1 Effect of the Bill on Maori

As has been noted, Maori continue to exercise a customary relationship with the marine environment. Maori assert their rights to that relationship through the claim to the foreshore and seabed, and other mechanisms such as the Resource Management Act 1991 and the Fisheries Act 1996.

Rather than wait for the resolution of claims, many Iwi/Maori are taking the initiative to maintain their relationship with the resources of the marine environment by getting into the business of aquaculture through existing processes. Some initiatives are being taken by Iwi themselves, others by companies in partnership with Iwi. Such initiatives provide benefits to Iwi and their wider regions including: economic development, job opportunities and enhancement of species that have value for customary purposes (both commercial and non-commercial).

Te Ohu Kai Moana understands that about 200 marine farming applications currently lodged with councils are affected by the Bill. Leaving aside applications in the Tasman District[2], the applications involve around 42,000 ha of space. About forty percent of the total area concerned involves Maori interests.

Of these applications, around 150 have been notified - meaning that they have generally met all the information and consultation requirements councils seek before calling for public submissions. These applications involve around 17,000 ha of space. According to information obtained by Te Ohu Kai Moana, around 14,500 ha involves Maori interests. The overall status of affected applications, including those made by Iwi/Maori interests, is set out in Appendix One.

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[2] Te Ohu Kai Moana notes that the status of applications before Tasman District Council is subject to legal debate before the Environment Court.

Applications we are aware of that involve Iwi/Maori interests are identified below.

Te Ohu Kai Moana subsidiaries

- Sealord Shellfish Ltd is working in partnership with Iwi to develop joint aquaculture ventures. In three cases, Iwi are the majority shareholder in these applications. Iwi have yet to confirm their shareholding in two others, primarily because the moratorium was announced. We understand the applicant companies involved have spent about $1.25 million on research, planning and legal advice. For more detail, we refer you to submissions made by Sealord Shellfish Ltd, Ngati Kahungunu, Whakatohea, Te Arawa, Ngai Tamanuhiri and Hauraki.

- Moana Pacific Fisheries Ltd has entered in to a joint venture with an Iwi owned fishing company**,** Haku Tamure Sea Farms Ltd (formed on behalf of Ngati Wai). This venture is a small scale and experimental, and involves the development of fin-fish farming technology.

- Pacific Marine Farms. Ahu Ahu Aquaculture, a subsidiary of Pacific Marine Farms, has lodged an application for about 600 ha of coastal space. The application had yet to be notified at the time the Moratorium was announced.

Other initiatives

Other Iwi initiatives involve:

- Te Atiawa Manawhenua Ki Te Tau Ihu Trust (Marlborough).
- Te Aupouri Maori Trust Board (Northland)
- Ngati Whatua (Auckland/Northland)
- Hauraki Marine Development Trust (Auckland)
- Rangitoto Mussels Ltd - 100% owned by whanau companies with the support of Ngati Koata (Marlborough).
- Wakatu Incorporation – working in partnership with Ngati Koata (Marlborough).

As many of these parties will describe to you, they have been involved in, and have planned for these initiatives over many years. In some cases their applications have been under consideration by councils for some years (for example Te Atiawa Manawhenua Ki Te Tau Ihu Trust lodged their applications with the Marlborough District council over two years ago. They form part of the long term development initiatives of the Iwi concerned, and contain creative proposals to meet both the commercial and non-commercial customary aspirations of the people concerned – in some cases where sources of kai are depleted.

A brief summary of these applications, their status, areas concerned and relevant Iwi/Maori interests is attached in Appendix Two. We understand that most of these Iwi and companies will be making more detailed submissions to you on the effects of the moratorium. Rather than provide further detail, we refer you to their submissions.

4.2 Inconsistency with the principles of Natural Justice

As noted above, applications affected by the moratorium could well be waiting a great deal longer than two years before they can be considered again. Some will be declined outright if they do not fall within an AMA. There is no provision in the Bill for compensation.

This situation is contrary to the principles of natural justice, as:

- The affected applications were made in good faith that they would be processed in the light of regional coastal plans in place at the time
- Applicants have gone to considerable expense and time preparing environmental effects assessments and consulting with affected parties. Much of this information is now available to councils and can be used as a basis for future planning without applicants having their case heard. Again we refer you to individual submissions for details of the time and costs spent by applicants in each case.

We also ask the Committee to note that no-one is proposing that their applications be automatically approved. There is a process in place for councils to consider these applications under existing regional coastal plans. That means that in some circumstances, applications may still be declined. Where "speculative" applications are a concern, councils have the power to decline them now. In addition, the Minister of Conservation will still have a role in approving "restricted coastal activities", a category which, we understand, applies to the majority of applications.

4.3 Market share

Parties affected by the moratorium have invested in developing and establishing local and overseas markets for their products. Our subsidiaries advise us that demand currently exceeds supply. Where this situation continues for too long, we risk losing our potential markets to other competitors.

The moratorium, combined with the time it will take for councils to implement proposed changes (assuming they are enacted), means that the industry faces the very real prospect of losing market share. We refer you to submissions being made by the Aquaculture Council and Sealord Shellfish Limited (amongst others) who will provide more evidence to support this view.

5.0 The problem the Bill is aiming to fix

The Government has identified the following overall objective for the reform of aquaculture:

> *To enable aquaculture to increase the contribution it makes to the national economy, while not undermining the regime established to manage fisheries sustainably, undermining Treaty settlements, or allowing adverse effects on the*

environment.

Te Ohu Kai Moana accepts the need for reform of the management of aquaculture. We would like to see in place an efficient and effective regime for aquaculture which:

- Provides better recognition of the customary relationship of Maori with the marine environment
- Manages the cumulative effects of aquaculture
- Addresses competition for coastal space
- Manages the effects of allocation on existing users and rights holders.

Part of the difficulty is that there is still a considerable amount to do to develop the reform proposals into a workable package. However, it is not clear that requiring councils to develop AMAs for all aquaculture activity, and to prohibit aquaculture elsewhere, is appropriate or necessary to achieve the objectives of the reform. For example the intensity and scale of different forms of aquaculture (e.g. oysters, mussels, fish farming) varies a great deal. The approach also appears to cut across the general approach of the Act which is effects based.

On the issue of competition for space, the preamble to the Bill states that "the magnitude of the problem is significant in that many regional councils and unitary authorities are unable to cope with the "gold rush" for coastal space that has already started." The Bill does not make clear which councils are faced with this problem.

The Resource Management Act 1991 (RMA) requires regional councils to establish objectives, polices and methods for implementing policies in their plans. Plans also have to state the reasons for adopting the objectives, policies and methods. In doing so, councils have a duty, under s 32 of the RMA, to consider alternatives, and assess the costs and benefits of adopting any particular objective, policy or method.

What is necessary and appropriate in one region may be quite different in another, and the RMA therefore allows councils to develop planning mechanisms to suit their circumstances – providing they are consistent with the purpose and principles of the RMA and any national/regional policy statements. The "one size fits all" approach being taken by the reform is inconsistent with this philosophy.

Te Ohu Kai Moana observes that it is not yet clear how AMAs will be defined or what criteria will determine their acceptability. AMAs may be an appropriate planning tool in regions in which there is competition for coastal space, and/or the management of cumulative effects is a serious issue. However, advice provided by officials has not demonstrated that AMAs are necessary in all circumstances. Thus we seriously question how far the benefits that will be gained from the moratorium outweigh the costs imposed on Maori and other affected applicants or the industry generally.

Te Ohu Kai Moana notes that these costs have not been quantified in the Regulatory Impact and Compliance Cost Statement, contained in the pre-amble to the Bill.

6.0 Solutions

Te Ohu Kai Moana appreciates that the management of aquaculture is complex and that reform is highly desirable. However we do not believe that the current system is so inadequate that councils and the Ministry of Fisheries cannot work together to process existing applications during the transition to a new regime.

In Te Ohu Kai Moana's view, a fairer and more flexible approach to the transition will be necessary if the adverse effects that we have outlined are to be mitigated. WE consider the following questions are helpful in developing an alternative approach:

- Which areas are under most pressure?
- What form of marine farming is causing problems?
- Where are councils facing difficulty in managing competition for coastal space?
- Where is conflict between marine farming and fishing likely to be a problem?
- What would prevent MFish and councils from co-operating more closely in the processing of applications during the transition to a reformed management regime (i.e. processing applications in parallel)?
- How could a rush of applications be prevented, while allowing genuine applicants to continue to go through the consent process?

If competition for space is not a problem in a particular region, then it appears to us that the Moratorium in its present form cannot be justified. In some regions there are very few applications for marine farms (e.g. Hawke’s Bay, Gisborne and Bay of Plenty). Based on the information announced for the longer term reforms, it seems to us that it will be no less difficult for councils to address the environmental effects of such applications now than it will be once the reforms are enacted.

In other areas (e.g. Northland) applications are small-scale, involving either oyster farms or experimental fin-fish farming, as noted above (see section 4.1). Te Ohu Kai Moana is not convinced that the current regime cannot provide adequately for such applications to be processed by councils in an appropriate way.

Te Ohu Kai Moana is well aware that marine farming has the potential to adversely affect fishing. As noted earlier, Te Ohu Kai Moana holds considerable interest in quota. In our submission on the aquaculture reforms, we proposed that the new regime should contain a principled process for resolving conflicts over rights to coastal space. As such any displacement of existing rights should recognise the degree of displacement and provide appropriate compensation. Consequently methods for assessing the potential loss of existing users would need to be developed. We have also advocated in our submission on the Oceans Policy that this approach apply to all uses of coastal space.

However the Government has decided that any changes to the test are an issue to be considered in the Oceans Policy, that the current “test” that marine farming initiatives do not have an “undue adverse effect on fishing” should to be retained pending the outcome of the policy. Te Ohu Kai Moana has some concerns about the way this test will be implemented and will work to provide alternatives as the reform package is further developed. In the meantime, we believe it should be possible for MFish to

work more closely alongside regional councils assess the effect of applications on fishing during the transition period.

The variety of circumstances faced by councils leads us to conclude that a more appropriate approach would involve a mix of the following:

- A moratorium that does not bind participants into a potentially unworkable regime
- A clear and simple process for councils to lift the moratorium
- Allowing existing applications to be processed
- Closer cooperation between the Ministry of Fisheries (MFish) and regional councils in processing applications during the transition period.

7.0 Proposed changes to the Bill

7.1 Don't tie participants into a potentially unworkable planning regime

The purpose of the moratorium as currently stated in clause 3, is, amongst other things, to:

> *(b) provide regional councils with the opportunity, during the moratorium, to include rules in their regional coastal plans to provide for -*
> *(i) zones where aquaculture can be undertaken with a coastal permit; and*
> *(ii) zones where aquaculture is prohibited.*

As already noted, there is still a considerable amount of work to do to develop the proposed reforms into a workable package. The wisdom of demanding AMAs for all forms of aquaculture, regardless of intensity, scale and regional differences has not been fully debated. There is no guarantee that the final reform Act will contain this provision, or that it is a workable concept. Te Ohu Kai Moana recommends that the purpose of the Bill be stated more simply.

Recommended change: 1

- Amend clause 3, **Purpose of the Act** as follows:
  - Delete subsection (b);
  - Insert a new subsection (b):
    To provide regional councils with the opportunity to modify or uplift the moratorium in respect of their particular region, in specific circumstances.

7.2 Provide a clear and simple process for councils to lift the moratorium

As presently drafted, clause 150C provides for the moratorium to be lifted by Order in Council, made on the recommendation of the Minister of Conservation. The relevant council must make a recommendation to the Minister before she/he in turn makes a recommendation to the Governor-General. The Minister must also take into account the purpose of the moratorium, and the provisions in the relevant coastal plan,

including rules providing for the size and location of zones in which aquaculture activities are allowed or prohibited.

Te Ohu Kai Moana assumes there are two reasons for giving the Minister of Conservation this role:

- central government wishes to retain some form of quality control over regional plans
- the Minister's involvement is necessary for the "mechanics" of lifting the moratorium.

If the Minster's involvement is intended to maintain a level of "quality control" over plans - and this is not clear - then criteria for making an assessment of quality are absent. This being the case, the lifting process is not likely to be straight forward or quick - especially as criteria for AMAs have yet to be clarified as part of the overall reform package.

If the issue is one of "mechanics", then we believe there are alternatives that would allow councils to lift the moratorium where they consider it appropriate.

Te Ohu Kai Moana, along with the Seafood Industry Council, has sought advice on an alternative mechanism which would provide for councils to lift the moratorium, while providing an opportunity for the Minister to identify any issues of national interest**.**

This mechanism would enable councils to lift the moratorium by using the Special Order and Special Consultative Procedure provisions in the Local Government Act 1974. We favour this mechanism because it:

- uses an existing consultative mechanism that is designed to be "triggered" by a reference in other legislation;
- is not unduly onerous, yet requires councils to use a clearly specified consultation process (see Appendix Three); and
- enables the Minister of Conservation (and any other interested party) to raise any issues of concern, including issues of "national interest", during the consultation period.

Recommended change: 2

- Amend clause 3, **Purpose** of the Act (see **Recommended change: 1**)

- Amend clause 5, section **150A Interpretation** as follows:

  - Delete subsection (b)(ii) of the definition for "**moratorium**"
  - Add a new subsection (b)(ii) of the definition for "**moratorium**":
    in relation to a coastal marine area described in a special order of the regional council having responsibility for that coastal marine area made under ***section 150C****, the date specified in the special order*

- Amend clause 5, section **150B Moratorium** to provide for councils to lift the moratorium **(see recommended change: 4).**

- Amend clause 5, section **150C Earlier expiry of moratorium in relation to specified areas** as follows:
  - Delete subsections (1) and (2)
  - Add new subsections (1) and (2):

    (1) A regional council may, from time to time, following the special consultative procedure specified in section 716A of the Local Government Act 1974 and by special order under section 716B of that Act, specify a date earlier than the date that is 2 years after the commencement of the ***Resource Management (Aquaculture Moratorium) Amendment Act 2001*** *as the date on which the moratorium ends in relation to any or all of the following :*
    (a) all the coastal marine area of the region;
    (b) any specific part or parts of the coastal marine area of the region; or
    (c) any specific aquaculture activity in the coastal marine area of the region (or part or parts thereof)
    - described in the special order.

    (2) The regional council must not make a special order under this section unless it has taken into account –
    (a) the purpose of the ***Resource Management (Aquaculture Moratorium) Amendment Act 2001****;*
    (b) the provisions in the relevant regional coastal plan and any relevant proposed regional plan; and
    (c) Part II of this Act.

If the recommendation to allow councils to lift the moratorium is not acceptable, then new clause 5, section 150C should be amended as follows:

Recommended change: 3

- Amend clause 5, new section **150C Earlier expiry of moratorium in relation to specified areas** as follows:

  - Delete subsection (2)(b)
  - Add a new subsection (2)(b)

    The Minister has taken into account –
    (a) the purpose of the Resource Management (Aquaculture Moratorium) Amendment Act 2001;
    (b) the provisions of the relevant regional coastal plan and any relevant proposed regional plan; and
    (c) Part II of this Act.

7.3 Allow existing applications to be processed

7.3.1 Option one

Te Ohu Kai Moana recommends that applications made by 28 November 2001 be excluded from the moratorium. We make this recommendation on the grounds that:

- It provides a simple and clear "cut-off" point
- It ensures that Iwi/Maori and others who lodged applications in good faith have an opportunity to be heard
- It ensures that provision is made for managed aquaculture development during the transition to a new management regime.

If this approach is to be accepted, then clause 5, sections 150D and 150E become redundant.

Recommended change: 4

- Amend clause 5, new section **150B Moratorium** as follows:

  - Delete subsection (1)
  - Renumber subsection (2), which has been deleted and replaced with a new subsection (1) and reword:

    (1) subsection (2) applies if an application is made to a regional council during the moratorium

  - Renumber subsections (3), (4) and (5) to become subsections (2), (3) and (4) respectively and reword as follows:

    (2) The regional council –
    (a) must not consider the application; and
    (b) must not approve the application; and
    (c) must return the application, and any fee accompanying it, to the applicants as soon as practicable.

    (3) This section does not apply to an application relating to a coastal marine area that, immediately before the moratorium, was lawfully occupied by the applicant for aquaculture activities, or for which the applicant held a resource consent to occupy that part of the coastal marine area for aquaculture activities.

    (4) This section does not apply to an application made to a regional council before the moratorium.

  - Add new section 5 as follows:

(5) This section does not apply to an application made to a regional council where the moratorium has been lifted by a special order of the council under section 150C in respect of:
(a) the relevant part of the coastal marine area to which the application relates; or
(b) the particular aquaculture activity to which the application relates.

- Delete clause 5, section **150D Pending applications.**
- Delete clause 5, section **150E Transitional provisions**.

7.3.2 Option two

If the above recommendations are not acceptable, Te Ohu Kai Moana recommends that **at the very least,** applications that were notified on or before 28 November 2001 be excluded from the moratorium. We make this alternative recommendation on the grounds that:

- It provides a clear and simple "cut-off" point
- It provides relief for most applicants, including Maori, who have invested considerable resources in environmental assessment work,
- Councils are in general satisfied that applications that they notify contain all the information necessary for the public to make informed submissions
- It would provide for some new development to proceed during the transition period.

Te Ohu Kai Moana recognises that according to the provisions of some regional coastal plans, it is possible that not all applications will be required to be notified. Such cases are likely to be few, and would involve initiatives for which there are clear performance standards and conditions of approval.

Recommended change: 5

- Amend clause 5 section **150B Moratorium** as above, but replace proposed subsection (4) (as proposed in option one) with:

(4) This section does not apply to an application made to a regional council before the moratorium, and which, in accordance with the relevant regional coastal plan:

(i) Has been notified

(ii) Is not required to be notified

- Amend clause 5, **subsection 150D** to reflect this change.
- Amend clause 5, **subsection 150E, (1) (c)** to reflect this change.

7.4 Ensure that MFish and regional councils work together during the transition

Until the new reforms are in place, MFish will retain its role in assessing the effects of marine farming applications on fishing. Te Ohu Kai Moana recommends that during the transition period, MFish and regional councils co-operate in the review of environmental assessments provided by marine farming applicants. In addition, we recommend that MFish identify the effects of applications on fishing at the same time as councils consider those applications.

8.0 Conclusions

Te Ohu Kai Moana's concerns with the Bill are:

- It has a disproportionate effect on Maori as it stifles major aquaculture initiatives involving Maori interests. These initiatives provide development opportunities for Iwi/Maori in disadvantaged areas of the country, and a way for Maori to exercise their customary rights in the coastal marine environment.
- It is inconsistent with the principles of natural justice, in that those affected have made their applications in good faith that they will be processed
- It will put back new aquaculture developments for about 7 years – and consequently cause the New Zealand industry to lose market share to overseas competitors.

Our experience with moratoria has not been a positive one, for reasons outlined earlier. We believe that by implementing options we have put forward in this submission, the adverse effects of the current Bill will be mitigated to some degree, while allowing the main aquaculture reforms to be implemented.

Appendix One

Total and notified applications before councils

Council	No of applications	Hectares	Number notified	Hectares	Area in applications with Maori interests	
					notified	Not notified
Northland Regional Council	18	222	6	33	12	
Auckland	27	6393	2	1226	1227	8
Environment Waikato	3	1044	1	4		600
Bay of Plenty	2	8759	2	8759	8759	
Gisborne	1	3880	none			3880
Hawkes Bay Regional Council	1	2806	1	2806	2806	
Marlborough District	141	6990	130	3072	1725	
Environment Canterbury	13	11271	7	319		
Southland	5	15	1	10		
West Coast	None					
Otago	1	1050	1	1050		
TOTAL	**212**	**42,430**	**151**	**17,279**	**14,529**	**4488**

NOTE: Figures for Tasman District are not included here. Te Ohu Kai Moana understands that the status of applications in Tasman District is subject to legal debate given the interim decision of the Environment Court.

Appendix Two

Iwi/Maori interests as at 28 November 2001

Applicant	Location	Area (ha)	Type of marine farm	Comments
Te Aupouri Fishing Company Ltd	Houhora Bay (Northland Region)	11	Mussel farming	Notified. Was to be heard in mid-November but postponed until January. Company considering other developments but has not yet made application
Haku Tamure Sea Farms Ltd (JV)	Bream Bay	1.5	Fin fish	Notified
Te Runanga o Ngati Whatua	Kaipara (Auckland Region)	1: 102.20 2: 124.70 3: 8.5	1 and 2: mussels 3: oysters	1 and 2: notified 3: lodged by not notified
Ahu Ahu	Coromandel (Waikato Region)	Approx 600	Spat catching and marine farming	Lodged but not notified.
Hauraki Marine Development Trust (JV)	Firth of Thames (Auckland Region)	1: 1000 2: 41.25	1: inshore spat catching 2: relocation of license to permitted area	1: notified. Joint venture 2: not required to be notified
Te Arawa (Arawa Fishing Ltd) (potential JV)	Bay of Plenty	4009	Off-shore subsurface	Notified.
Whakatohea (JV)	Bay of Plenty	4750	Off-shore subsurface	Notified; hearing date set
Ngai Tamanuhiri (potential JV)	Gisborne	3880?	Off-shore subsurface	Lodged but not yet notified
Ngati Kahungunu (JV)	Hawke's Bay	2806	Off-shore subsurface	Notified, hearing date set
Te Atiawa Manawhenua Ki Te Tau Ihu Trust	1: East Bay 2: East Bay 3: Snapper Point 4: Oyster Bay (Marlborough)	1: 54.27 2: 29.04 3: 3.90 4: 3.70		Hearing dates are set for these applications 2: Includes a whanau farm concept and is adjacent to ancestral lands 3: an extension to an existing farm
Wakatu Incorporation	Northeastern Tasman Bay. Southern end of D'Urville island	1595		Notified in May 2000
Rangitoto Mussels Ltd	Catherine Cove D'Urville Island (Marlborough)	40		Notified 7 Feb 2001. Council requested delay in setting any hearing dates and wanted to set dates bay by bay

Appendix Three

Local Government Act 1974

Special Consultative Procedure and Special Orders

716A Special consultative procedure

(1) Where this Act or any other Act requires a local authority to adopt the special consultative procedure in relation to any proposal (being an intention to act or a draft plan or policy), that local authority—

- (a) Shall place notice of that proposal before a meeting of the local authority; and
- (b) Shall give public notice, and such specific notice as the local authority considers appropriate, of the proposal; and
- (c) Shall, in every notice given under paragraph (b) of this subsection, specify a period within which persons interested in the proposal may make submissions on the proposal to—
  - (i) The local authority; or
  - (ii) A community board; or
  - (iii) A committee of the local authority or community board; and
- (d) Shall ensure that any person who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this subsection is given a reasonable opportunity to be heard by the body to which the submissions are made; and
- (e) Shall ensure that, except as otherwise provided by Part 7 of the Local Government Official Information and Meetings Act 1987, every meeting at which the submissions are heard or at which the local authority, community board, or committee deliberates on the proposal is open to the public; and
- (f) Shall make all written submissions on the proposal available to the public unless there is in law some good reason why it should not do so; and
- (g) Shall ensure that the final decision in relation to the proposal is made at a meeting of the local authority.

(2) The period specified pursuant to subsection (1)(c) of this section—

- (a) Shall be not less than one month; and
- (b) Unless the local authority otherwise directs, shall not be more than 3 months.

716B Special orders

(1) The power given by this Act or any other Act to do anything by special order shall be exercised by a local authority only in accordance with subsections (2) to (7) of this section.

(2) The resolution to do anything by special order shall be passed—

- (a) At a special meeting; or

(b) At any ordinary meeting, if—
    (i) Notice of intention to consider the subject-matter of the resolution has been given to all the members of the local authority before the meeting in accordance with this Act and the standing orders of the local authority; or
    (ii) All the members of the local authority are present at the meeting and unanimously agree to discuss the subject-matter of the resolution.

(3) The resolution shall be confirmed at a subsequent meeting (either ordinary or special) held not later than the 70th day after the day of the meeting at which the resolution was passed.

(4) A copy of the resolution to be confirmed shall be deposited at the offices and libraries of the local authority and shall be open for inspection by the public during office hours at those offices and libraries.

(5) Public notice of—
    (a) The place, date, and time fixed for the subsequent meeting; and
    (b) The purport of the resolution and of the times when and the places where a copy of the resolution may be inspected,—

shall be given twice before the date of the subsequent meeting, the first such notice being given not less than 21 days before that date and the second being given not more than 14 nor less than 7 days before that date.

(6) The notice to the members of the subsequent meeting or the agenda for that meeting shall specify the resolution to be confirmed, and that resolution shall be confirmed by way of separate resolution and not as part of the approval of the minutes of the meeting at which the resolution was first passed.

(7) The notice directed to be given by subsection (6) of this section or, as the case may be, the inclusion in the agenda of the resolution to be confirmed or a statement containing its purport, shall be sufficient even though the subsequent meeting may be a special meeting.

(8) Notwithstanding anything in subsections (1) to (7) of this section, a confirming resolution may modify the resolution to make the special order to such extent as the local authority considers necessary by reason of any representations made to it before the date of the meeting at which the resolution to make that order is confirmed.