

## Fisheries Amendment Act 1993 067

Commenced: 7 July 1993

### ANALYSIS

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An Act to amend the Fisheries Act 1983

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement---(1) This Act may be cited as the Fisheries Amendment Act 1993, and shall be read together with and deemed part of the Fisheries Act 1983 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day on which it receives the Royal assent.

2. Interpretation---(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term "management plan", the following definitions:

" `Marine farming' means the activity of breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest; but does not include---

"(a) Any such activity undertaken pursuant to regulations made under section 91 of this Act; or

"(b) Any such activity where fish, aquatic life, or seaweed are not within the exclusive and continuous possession or control of the holder of a marine farming permit; or

"(c) Any such activity where the fish, aquatic life, or seaweed being farmed cannot be distinguished, or be kept separate, from naturally occurring fish, aquatic life, or seaweed--- and `to farm' has a corresponding meaning which includes any operation in support of, or in preparation for, any marine farming:

" `Marine farming permit' means a permit issued under section 67J of this Act:".

(2) The said section 2 (1) is hereby amended by inserting, after the definition of the term "southern scallop season", the following definitions:

" `Spat' means any lifecycle stage or size-range of any fish, aquatic life, or seaweed that is declared by the Director-General by notice in the Gazette to be spat for the purposes of this Act:

" `Spat catching permit' means a permit to take spat issued under section 67Q of this Act:".

3. Scallop spat---Section 28ZZC of the principal Act (as inserted by section 13 of the Fisheries Amendment Act (No. 2) 1992) is hereby amended by omitting the words "granted by the Director-General", and substituting the words "issued under section 67Q of this Act".

4. Records and returns---Section 66 (1) of the principal Act (as substituted by section 33 of the Fisheries Amendment Act 1990) is hereby amended by inserting, after paragraph (d), the following paragraph:

"(da) Holders of spat catching permits and holders of marine farming permits:".

5. Restrictions on purchase or acquisition of fish by certain persons---(1) Section 67A (1) of the principal Act (as inserted by section 13 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the word "fisherman", the words ", or the holder of a permit issued under section 67J of this Act, or the holder of a lease or licence under the Marine Farming Act 1971, or the holder of a licence issued under the Freshwater Fish Farming Regulations 1983,".

(2) Section 67A (2) of the principal Act (as substituted by section 35 of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the word "fisherman" where it first occurs, the words ", or the holder of a permit issued under section 67J of this Act, or the holder of a lease or licence under the Marine Farming Act 1971, or the holder of a licence issued under the Freshwater Fish Farming Regulations 1983, or a person licensed".

(3) The said section 67A (2) (as so substituted) is hereby amended by inserting, after paragraph (b), the following paragraph:

"(ba) The holder of a permit under section 67J of this Act, or the holder of a lease or licence under the Marine Farming Act 1971, or the holder of a licence issued under the Freshwater Fish Farming Regulations 1983; or".

6. New Part IVA inserted---The principal Act is hereby amended by inserting, after Part IV, the following Part:

"PART IVA  
"MARINE FARMING

"67I. Interpretation---In this Part of this Act, unless the context otherwise requires,---

" `Certificate of compliance' means a certificate granted under section 139 of the Resource Management Act 1991 for a marine farming or spat catching activity:

" `Coastal permit' means a coastal permit granted under the Resource Management Act 1991 for a marine farming or spat catching activity:

" `Consent authority' has the same meaning as in section 2 (1) of the Resource Management Act 1991:

" `Marine farming lease or licence' means a lease or licence issued under the Marine Farming Act 1971:

" `Proposed plan' has the same meaning as in section 2 (1) of the Resource Management Act 1991:

" `Regional coastal plan' has the same meaning as in section 2 (1) of the Resource Management Act 1991:

" `Resource consent' has the same meaning as in section 2 (1) of the Resource Management Act 1991.

"67J. Marine farming permit---(1) No person shall farm any fish, aquatic life, or seaweed except under the authority of---

"(a) A marine farming lease or licence; or

"(b) A marine farming permit; or

"(c) A licence issued under the Freshwater Fish Farming Regulations 1983.

"(2) A marine farming permit shall only be issued---

"(a) To a person who holds a coastal permit for the area applied for; or

"(b) To a person who holds a certificate of compliance in respect of the area applied for.

"(3) A marine farming permit shall not be issued for an area greater than the area to which the coastal permit or certificate of compliance relates.

"(4) Every application for a marine farming permit shall be made to the Director-General in writing in the prescribed form (if any) and shall be accompanied by---

"(a) A copy of the coastal permit, or application for a coastal permit, or certificate of compliance; and

"(b) The fee prescribed under section 89 (1) (ic) of this Act.

"(5) An application for a marine farming permit may be made at any time, whether or not a coastal permit has been granted, but a marine farming permit shall only be issued after the relevant coastal permit has been granted.

"(6) For the avoidance of doubt, where no coastal permit is required for the marine farming activity, an application for a marine farming permit shall not be made until the certificate of compliance has been granted.

"(7) The Director-General may require the applicant to supply, within such time as the Director-General may specify, such additional information as the Director-General thinks fit, and the Director-General may postpone the processing of the application until the information is received.

"(8) The Director-General may not issue a marine farming permit unless he or she is satisfied that the activities contemplated by the application would not have an undue adverse effect on fishing or the sustainability of any fisheries resource.

"(9) A marine farming permit shall---

"(a) Specify the area in which the permit may be exercised; and

"(b) Specify the fish, aquatic life, or seaweed that may be farmed in that area.

"(10) A marine farming permit may be issued on conditions---

"(a) That require the keeping of specified records and the return of specified information to the Director-General:

"(b) That provide for the temporary transfer of the marine farm to sites other than the area specified in the permit in circumstances---

"(i) Where such transfer is permitted by a rule in a regional coastal plan or a resource consent; and

"(ii) Where serious damage is caused or likely to be caused to the marine farm or the wellbeing of the farmed fish, aquatic life, or seaweed is likely to be threatened; and

"(iii) Where the transfer will not increase adverse effects on fishing or the sustainability of any fisheries resource:

"(c) That the Director-General considers necessary or desirable to avoid, remedy, or mitigate adverse effects on fishing or the sustainability of any fisheries resource:

"(d) That provide for the review of the conditions of the permit at specified periods during the term of the permit.

"(11) Where a condition is included in a marine farming permit under subsection (10) (b) of this section, that condition shall also specify that any resource consents required for the transfer of the marine farm to another site are obtained and kept in full force and effect.

"(12) The Director-General shall cause to be kept a register of all marine farming permits. The register shall be a public document and shall, during the ordinary hours of business, be open to inspection by the public at approved offices. A copy of all or part of the register shall, on payment of the prescribed fee, be given to any person requesting it. Consent authorities and the Ministry for the Environment shall be entitled to copies of all or part of the register free of charge.

"(13) Notwithstanding subsection (1) of this section, where, before the date of commencement of this Part of this Act, a person was the holder of a permit issued under section 64 (1) (c) of this Act, authorising that person to take fish from a marine farm, that person may continue to take fish from the marine farm pursuant to that permit until it expires.

"67K. Change or cancellation of conditions of marine farming permits---(1) The holder of a marine farming permit may apply to the Director-General to change or cancel any of the conditions of the permit or to add new conditions to the permit.

"(2) On receipt of an application under subsection (1) of this section, the Director-General may, at any time during the term of a marine farming permit, with the express agreement of the holder of the permit, change or cancel any conditions of the permit, or add new conditions.

"(3) Any application under subsection (1) of this section shall contain such information as may be necessary to satisfy the Director-General that any resource consents required to undertake the new activity are in force or have been applied for.

"(4) Any application under subsection (1) of this section to change the species of fish, aquatic life, seaweed, or area to be farmed under the marine farming permit shall be determined as if it were an application under section 67J of this Act.

"(5) Every applicant under subsection (1) of this section shall send a copy of their application to the consent authority that granted the coastal permit (if any) to which the marine farming permit relates.

"67L. Effect of marine farming permit---(1) Notwithstanding anything to the contrary in this Act, a marine farming permit shall authorise the holder of the permit---

"(a) To farm within the permit area; and

"(b) To possess, take, and sell the farmed fish, aquatic life, or seaweed---

"(i) That have been lawfully acquired; and

"(ii) That are specified in the marine farming permit---

subject only to the terms and conditions of the permit and to the provisions of this Part of this Act.

"(2) A marine farming permit shall give the person named in that permit as holder of the permit the exclusive right to take the farmed fish, aquatic life, or seaweed in the area to which the permit relates.

"(3) A marine farming permit shall not authorise the holder of the permit to take naturally occurring fish, aquatic life, or seaweed.

"67M. Transfer of permits---(1) Any marine farming permit may be transferred with the coastal permit or certificate of compliance to which it relates when the coastal permit or certificate of compliance is transferred pursuant to section 135 of the Resource Management Act 1991.

"(2) The transfer of the holder's interest in a marine farming permit under subsection (1) of this section has no effect until written notice of the transfer is given to the Director-General.

"67N. Duration of permit---(1) The term for which any marine farming permit is issued shall be the same as that for the coastal permit to which it relates and a marine farming permit shall expire on the same date as the coastal permit to which it relates expires.

"(2) Where marine farming is a permitted activity by a rule in a regional coastal plan, the term for which any marine farming permit is issued shall be for a term not exceeding 35 years, which term shall be specified in the permit, or until a regional coastal plan provides that a resource consent is required for the activity, whichever first occurs.

"(3) Where---

"(a) The holder of a marine farming permit that is due to expire applies for a new permit in respect of the same area no later than 3 months before the expiry of the original permit; and

"(b) The holder of a marine farming permit continues to operate under the coastal permit pursuant to section 124 of the Resource Management Act 1991---

the holder of the permit may continue to operate under the original permit until the application for a new coastal permit and any appeal under the Resource Management Act 1991 and the application for a new marine farming permit have been determined.

"67O. Lapse, cancellation, and surrender of permit---(1) Any marine farming permit shall be deemed to have lapsed when the coastal permit to which it relates lapses pursuant to section 125 of the Resource Management Act 1991.

"(2) Any marine farming permit shall be deemed to be cancelled when the coastal permit to which it relates is cancelled pursuant to section 126 of the Resource Management Act 1991 or by the Planning Tribunal pursuant to its powers under Part XII of the Resource Management Act 1991.

"(3) Any marine farming permit shall be deemed to be surrendered if the coastal permit to which it relates is surrendered pursuant to section 138 of the Resource Management Act 1991.

"(4) Notwithstanding subsection (3) of this section, the holder of a marine farming permit may at any time surrender the permit by forwarding notice in writing to that effect, together with the permit to the Director-General. The Director-General shall endorse on the notice and the register the date on which the notice was received, and the permit shall cease to have effect from that date.

"(5) The surrender of a permit under this section shall not affect the permit holder's liability---

"(a) To pay any fees or other money payable by the permit holder in accordance with the provisions of this Act; or

"(b) To perform any obligation required to be performed by the permit holder by or under any provision of this Act; or

"(c) For any act or omission---

where such liability arose before the date on which the permit ceased to have effect.

"(6) Where the Director-General has registered the surrender of a marine farming permit under subsection (4) of this section, the Director-General shall notify the consent authority that granted the coastal permit to which the marine farming permit relates.

"67P. Review of marine farming permit conditions---(1) The Director-General may review the conditions of a marine farming permit---

"(a) At any time or times specified for that purpose in the marine farming permit for any of the following purposes:

"(i) To deal with any adverse effects on fishing or the sustainability of any fisheries which may arise from the exercise of the marine farming permit and which it is appropriate to deal with at a later stage; or

"(ii) For any other purpose specified in the marine farming permit; or

"(b) If the information made available to the Director-General by the applicant for the marine farming permit, for the purposes of the application, contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the marine farming permit are such that it is necessary to apply more appropriate conditions.

"(2) Before reviewing the marine farming permit, the Director-General shall serve notice on the marine farming permit holder of his or her intention to review the conditions of the permit, along with any request for information from the permit holder, within such period as may be specified in the notice.

"(3) When reviewing the conditions of a marine farming permit, the Director-General---

"(a) Shall have regard to the matters set out in section 67J of this Act and in this section, and to whether the activity allowed by the marine farming permit will continue to be viable after the change; and

"(b) May have regard to the manner in which the marine farming permit has been used; and

"(c) Shall have regard to any adverse effects on fishing or the sustainability of any fisheries.

"(4) The Director-General may change or cancel any of the conditions of the marine farming permit, or add new conditions, and shall---

"(a) Notify the marine farming permit holder; and

"(b) Notify the consent authority that granted the coastal permit (if any) to which the marine farming permit relates; and

"(c) Make such amendments to the register kept under section 67J (12) of this Act as may be necessary to accurately record any decision made under this section.

"67Q. Authority to catch spat---(1) No person shall take spat except under the authority of a spat catching permit issued under this section or under the authority of the Marine Farming Act 1971.

"(2) A spat catching permit shall only be granted---

"(a) Where exclusive occupation of space is required---

"(i) To the holder of a coastal permit relating to the spat catching activity; or

"(ii) To the holder of a certificate of compliance relating to the spat catching activity; or

"(iii) To the holder of a marine farming licence or lease for that site; or

"(b) Where exclusive occupation of space is not required, to any other person.

"(3) Every application for a spat catching permit shall be made in writing in the prescribed form (if any) to the Director-General and shall be accompanied by---

"(a) A copy of the coastal permit or application for a coastal permit (if any), a copy of the certificate of compliance (if any), or written evidence that a coastal permit is not required; and

"(b) A description of the area in which the spat catching activity is to take place; and

"(c) The fee prescribed under section 89 (1) (ic) of this Act.

"(4) Section 67J (5), (6), (7), (8), (9), and (10) (a), (c), and (d) of this Act apply, with all necessary modifications, in respect of an application made under subsection (3) of this section, and section 67J (12) applies, with all necessary modifications, to spat catching permits, as if every reference in those provisions to a marine farming permit were a reference to a spat catching permit.

"(5) Notwithstanding subsection (1) of this section, where, before the date of commencement of this Part of this Act, a person was the holder of a permit issued under section 63 or section 64 (1) (c) of this Act, or under section 14E of the Marine Farming Act 1971, authorising that person to take spat, that person may continue to take spat pursuant to that permit until it expires.

"67R. Effect of spat catching permit---(1) Notwithstanding anything to the contrary in this Act, a spat catching permit authorises the holder of that permit---

"(a) To take and possess spat of fish, aquatic life, or seaweed; and

"(b) To sell, transfer, or dispose of spat of the fish, aquatic life, or seaweed---

specified in the permit.

"(2) Spat shall only be sold, transferred, or disposed of---

"(a) To the Crown; or

"(b) To a person who holds a marine farming permit; or

"(c) To a person who holds a marine farming lease or licence; or

"(d) To a person who holds a licence issued under the Freshwater Fish Farming Regulations 1983; or

"(e) To any other approved person.

"67S. Duration of spat catching permit---(1) The period for which any spat catching permit is issued is such period, not exceeding 5 years, as is specified in the permit, and if no such period is specified, is 5 years from the date the permit was issued.

"(2) Sections 67K and 67O of this Act apply, with all necessary modifications, in respect of a spat catching permit, as if every reference in those sections to a marine farming permit were a reference to a spat catching permit.

"(3) A spat catching permit shall not be transferred."

7. Regulations---Section 89 (1) of the principal Act is hereby amended by inserting, after paragraph (ib), the following paragraph:

"(ic) Prescribing fees payable for applications for marine farming and spat catching permits under Part IVA of this Act, including different fees for different species of fish, aquatic life, or seaweed, and different fees for spat based on the area in which the spat is to be caught:".

8. New sections inserted---The principal Act is hereby amended by inserting, after section 101, the following sections:

"101A. Injury or damage to marine farm or spat catching area---(1) Every person (unless authorised under this Act) commits an offence, and is liable to a fine not exceeding \$5,000, who takes, removes, disturbs, or interferes with any fish, aquatic life, or seaweed being farmed in an area in respect of which a marine farming permit has been issued under section 67J of this Act.

"(2) Every person (unless authorised under this Act) commits an offence, and is liable to a fine not exceeding \$5,000, who takes, removes, disturbs, or interferes with the spat of any fish, aquatic life, or seaweed specified in a spat catching permit issued under section 67Q of this Act, and which is in the exclusive and continuous possession or control of the holder of the permit within the area to which the permit relates.

"101B. Obstructing holder of marine farming or spat catching permit---(1) Every person commits an offence, and is liable to a fine not exceeding \$5,000, who obstructs, hinders, or prevents any person---

"(a) Who holds a marine farming permit issued under section 67J of this Act; or

"(b) Who is employed by or acting under the authority of a person who holds a marine farming permit issued under section 67J of this Act---

from farming or lawfully taking farmed fish, aquatic life, or seaweed from the area to which the permit relates.

"(2) Every person commits an offence, and is liable to a fine not exceeding \$5,000, who obstructs, hinders, or prevents any person---

"(a) Who holds a spat catching permit issued under section 67Q of this Act; or

"(b) Who is employed by or acting under the authority of a person who holds a spat catching permit issued under section 67Q of this Act---

from catching or holding spat of the species catching permit from the area to which the permit relates."

9. Further defences added---The principal Act is hereby amended by inserting, after section 105A, the following sections:

"105AA. Defence available to person injuring or damaging marine farm or spat catching area---It shall be a defence in any proceedings against a person for an offence under section 101A of this Act, if the defendant proves that the offence occurred as an inevitable consequence of saving human life or saving any ship or boat.

"105AB. Defences available to person operating marine farm---Section 105A (1) of this Act applies, with all necessary modifications, to a person who is the holder of a marine farming permit as if every reference in that subsection to a commercial fisherman were a reference to a person who is the holder of a marine farming permit."

10. Provision for payment of compensation---The principal Act is hereby amended by inserting, after section 107A, the following section:

"107AA. (1) Where any person is convicted of an offence against section 101A of this Act, then, whether or not the Court imposes any penalty in respect of the offence, the Court shall order the defendant to pay to the holder of the marine farming permit such sum as it thinks fit by way of compensation for any loss of property suffered by that person as a consequence of the offence.

"(2) Any order made under subsection (1) of this section shall be recoverable as if it were a fine and shall not affect the right of any person to recover any sum, in excess of the amount ordered, in civil proceedings."

11. Disqualification from holding marine farming or spat catching permit---The principal Act is hereby amended by inserting, after section 107D, the following section:

"107DA. On the conviction of any person for an offence against this Act or any regulations made under this Act in relation to a marine farming permit or a spat catching permit, in addition to any other penalty which may be imposed, the Court may order the defendant to be disqualified from holding or applying for a marine farming permit or a spat catching permit for such period and on such conditions as the Court thinks fit."