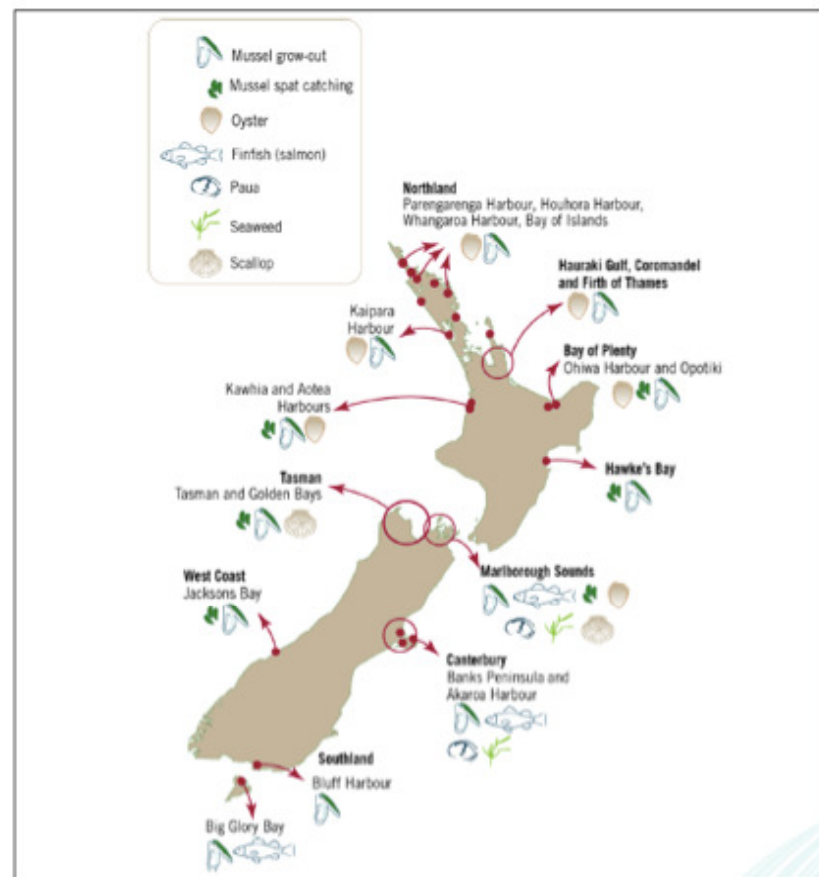


New Zealand's Aquaculture Law and Policy Framework

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Aquaculture and New Zealand

- In New Zealand aquaculture comprised 68 million tonnes of farmed fish in 2012 generating NZ\$400 million for the economy.
- Of the approximately 310 species farmed world-wide, New Zealand's aquaculture industry comprises primarily greenshell™ mussels, king salmon, Pacific oyster and paua (abalone).
- The NZ government supports an industry target of growing aquaculture into a \$1billion by 2025.

GREENSHELL™
MUSSELS



KING SALMON



PACIFIC OYSTERS



Clean Green New Zealand




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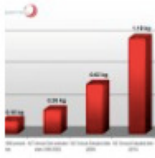
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Environment

The quality of our waters affects the quality of our products, our futures and our lives.

SUSTAINABILITY 

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<http://aquaculture.org.nz/environment/>

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Ocean Health Index

http://www.oceanhealthindex.org/Countries/New_Zealand

Environmental Impacts of Aquaculture in New Zealand

- A 2013 study of the impacts of aquaculture in New Zealand concluded that overall the negative impacts were low. The study noted that nutrient enrichment associated with salmon farming was generally well managed, there have been no recorded major algal blooms (which can lead to eutrophication, reduction in water quality and changes on phytoplankton species composition and minimal interaction with marine mammals and seabirds. There is currently minimal use of antibiotics, antibacterials and therapeutic additives, and the use of transgenics is not currently practiced.

See *Literature Review of Ecological Effects of Aquaculture* available at: <http://www.fish.govt.nz/en-nz/Commercial/Aquaculture/Marine-based+Aquaculture/Aquaculture+Ecological+Guidance.htm>. See also MPI, *Overview of Ecological Effects of Aquaculture* (MPI 2013) available at: <http://www.fish.govt.nz/en-nz/Commercial/Aquaculture/Marine-based+Aquaculture/Aquaculture+Ecological+Guidance.htm>.

Environmental Impacts of Aquaculture in New Zealand

- But...
 - The study noted that in a number of areas information was incomplete.
 - Importantly, the study noted that the low or minimal impacts thus far result from the small size of the industry in New Zealand.
 - The study also noted that the cumulative impacts of activities, including agriculture, were not fully understood.



Mussel Farm, Marlborough Sounds

Social and Other Impacts of Aquaculture in New Zealand

- Opposition to aquaculture in New Zealand primarily has a social origin arising from a “race for space” (McGinnis and Collins 2013) in competition with other activities and the occupation of commons space for commercial gain. Aquaculture in New Zealand typically is located in areas of outstanding natural beauty.



Salmon farm, Marlborough Sounds

Aquaculture Regulation – A Decade of Reform

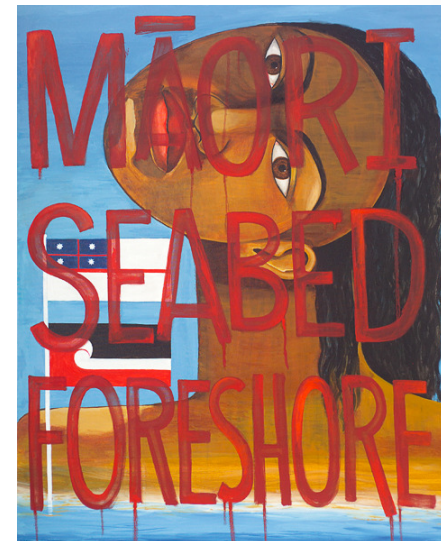
Back to the Future?

- **Permit – first come, first served**
 - Prior to 2004 aquaculture was authorised by permits under the RMA and the Fisheries Act. Few coastal plans set out conditions and there was little consideration of cumulative impacts or other activities.
- **Moratorium**
 - Introduced in respect of new applications from 2002 – 2004.
- **Creation of Designated Aquaculture Management Areas**
 - AMAs created in 2004. Aquaculture outside of AMAs was prohibited and Minister for Fisheries approved AMAs. Permits for aquaculture within AMAs were required under RMA.
- **Permit**
 - From 2011 AMAs were abolished (existing AMAs were gazetted) and permits are issued under the RMA and Fisheries Act.

Background to Aquaculture Reform

Status of the Foreshore and Seabed

- *Attorney General v. Ngati Apa* [2003] 3 NZLR 643 (CA)
- 2004 Foreshore and Seabed Act
- 2004 Māori Commercial Aquaculture Claims Settlement Act
 - 20 percent of all existing space allocated to aquaculture between 1992 and 2002 and 20 percent of all space so-allocated post 2004 would be allocated to iwi.
- 2011 Marine and Coastal Area (Tukutai Moana) Act
 - Neither the Crown nor any other person owns the common marine and coastal area (CMCA).



Aquaculture Regulation in New Zealand

The 1991 Resource Management Act

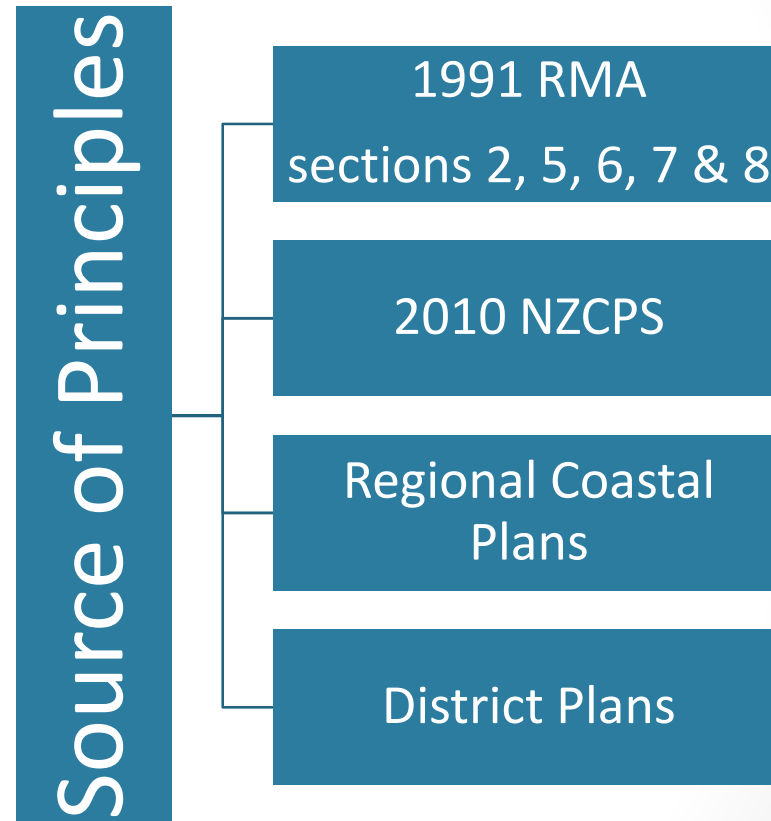
- For the purposes of regulation in New Zealand aquaculture is defined as any activity “for the purpose of breeding, hatching, cultivating, rearing, or on-growing of fish, aquatic life, seaweed for harvest”, including the taking of harvestable spat, involving the occupation of the coastal marine area (CMA). Activities must be under the exclusive and continuous possession or control of persons engaged in aquaculture, and fish farming must be distinguishable from naturally occurring fish, aquatic life or seaweed.
- The RMA was (and to an extent, still is) a revolution in its approach to environmental management. It is designed to provide for the **integrated and sustainable management** of all New Zealand’s natural resources. It revoked 167 statutes, modified a further 50 statutes and regulations and reduced the number of local authorities from over 700 to 86.
- The RMA seeks to manage the **effects** of activities rather than regulating the activities themselves.

1991 Resource Management Act,
section 2.

Aquaculture Regulation in New Zealand: The Principles

- The purpose of the RMA is to “promote the sustainable management of natural resources”, which is defined enabling communities to provide for their social, economic and cultural well-being, whilst protecting the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water, soil and ecosystems.

1991 Resource Management Act, s 5.



Aquaculture Regulation in New Zealand: The Principles – Section 6 RMA

- Section 6 of the Act sets out matters of national importance including but not limited to, the preservation of the natural character of the coastal environment, the protection of outstanding natural features and landscapes from inappropriate use and development, the protection of indigenous fauna and flora, the maintenance of public access to the CMA and the protection of protected customary rights. These matters of national importance have greater weight than regional or district goals and must actually be provided for in national, regional and local plans.
- The term ‘coastal environment’ is not defined in the RMA although by implication it covers a broader area than the CMA and it has been held to apply extend to the dominant ridge behind the coast.

Aquaculture Regulation in New Zealand: The Principles – Section 7 RMA

7 **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.

Aquaculture Regulation in New Zealand: The Principles – NZCPS 2010

- The principles set out in sections 6 and 7 of the RMA are developed in the context of the coastal environment by the **2010 New Zealand Coastal Policy Statement (NZCPS)**, which provides for 7 national objectives and 29 policy statements. The NZCPS must be given effect to in regional plans and coastal policy statements.
- The objectives include safeguarding the integrity, form, functioning and resilience of the coastal environment, preserving the natural character of the coastal environment and its natural features and landscape values, maintaining public access, enabling peoples and communities to provide for their social economic and cultural well-being and permitting New Zealand to meet its obligations under international law.
- The NZCPS places a strong emphasis on precautionary, strategic and integrated management of activities taking place in the CMA.

29 Policies in the 2010 NZCPS

- Policy 1 Extent and characteristics of the coastal environment
- Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage
- Policy 3 Precautionary approach
- Policy 4 Integration
- Policy 5 Land or waters managed or held under other Acts
- Policy 6 Activities in the coastal environment
- Policy 7 Strategic planning
- Policy 8 Aquaculture
- Policy 9 Ports
- Policy 10 Reclamation and de-reclamation
- Policy 11 Indigenous biological diversity (biodiversity)
- Policy 12 Harmful aquatic organisms
- Policy 13 Preservation of natural character
- Policy 14 Restoration of natural character
- Policy 15 Natural features and natural landscapes
- Policy 16 Surf breaks of national significance
- Policy 17 Historic heritage identification and protection
- Policy 18 Public open space
- Policy 19 Walking access
- Policy 20 Vehicle access
- Policy 21 Enhancement of water quality
- Policy 22 Sedimentation
- Policy 23 Discharge of contaminants
- Policy 24 Identification of coastal hazards
- Policy 25 Subdivision, use, and development in areas of coastal hazard risk
- Policy 26 Natural defences against coastal hazards
- Policy 27 Strategies for protecting significant existing development from coastal hazard risk
- Policy 28 Monitoring and reviewing the effectiveness of the NZCPS
- Policy 29 Restricted Coastal Activities

Aquaculture Regulation in New Zealand: The Principles – NZCPS 2010

Policy 8 Aquaculture

Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:

- (a) including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:
 - (i) the need for high water quality for aquaculture activities; and
 - (ii) the need for land-based facilities associated with marine farming;
- (b) taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and
- (c) ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose.

Aquaculture Regulation in New Zealand: The Principles – NZCPS 2010

- The NZCPS requires decision-makers to avoid “adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character” (Policy 13(1)(a)) and to avoid “adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment” (Policy 15(1)(a)).
- In *EDS v. The New Zealand Salmon Co Ltd* [2014] NZSC 38 the SC held that Policies 13(1)(a) and 15(1)(a) effectively operated as ‘environmental bottom lines’ and could not be ‘balanced’ against other factors such as economic and social benefits. The BOI concluded that the proposed private plan change to permit salmon farming would have had an adverse effect on an outstanding natural landscape. The application should therefore be rejected.

Aquaculture Regulation in New Zealand: The Process

- The 1991 RMA establishes a presumption against development of the CMA except where that development is expressly provided for in a regional coastal plan or where it is permitted by a coastal permit. Activities associated with aquaculture including but not limited to the erection of structures in the CMA, depositing or discharging substances into the CMA or occupying areas of the CMA are specifically identified in section 12 of the RMA as prohibited unless authorised in a regional coastal plan or permitted by a coastal permit.

Aquaculture Regulation in New Zealand: The Process – Part I – The RMA

- New coastal permits – outside of *Gazetted* AMAs
 - May be made subject to conditions (in accordance with relevant coastal plan);
 - Normally are issued for between 20 and 35 years;
 - Where a coastal plan designates aquaculture a ‘prohibited’ activity in any area, an individual can apply for a private change plan in order to re-designate it as a controlled/ restricted discretionary/ discretionary activity. The application may be accepted or rejected by the regional authority and any change must be approved by Minister of Conservation.
 - Applications of ‘national significance’ may be called in by Minister of Conservation and referred to a BOI or the Environment Court.
 - Multiple applications may be considered and there is a process for suspending consideration of applications in order to adapt the regional plan.
 - Provision is made for public consultation, review and appeals.
 - Coastal permits are neither real nor personal property.

Aquaculture Regulation in New Zealand:

The Process – Part II – 1996 Fisheries Act

- New coastal permits – outside of *Gazetted* AMAs
 - Applications must be forwarded by relevant regional authority to Chief Executive of the Ministry of Fisheries in order for the Chief Executive to make an assessment on whether the application will have an undue adverse effect on commercial, customary or recreational fishing (1996 Fisheries Act).
 - Chief Executive may issue a determination that there will be no undue adverse effect or a reservation indicating that there will be an undue adverse effect. Where a reservation is issued the matter may be resolved by the payment of compensation for the affected parties.
 - Regional authorities must not issue coastal permits where a reservation has been issued in respect of the area of application (unless and appropriate compensation agreement has been entered into).

And after a decade of reform...

- In terms of process we are largely back to where we started with would-be fish farmers having to apply for a coastal permit under the RMA and for that permit to be signed off by the Chief Executive of the Ministry of Fisheries.
- The experiment in spatial management (through AMAs) was deemed to have failed largely before it got started and represents a missed opportunity, compounded by the broader failure to develop an oceans policy (over the same period).
- Moreover, there is an evidence complacency about the environmental and (to a lesser extent) sociological impacts of aquaculture owing to the limited nature of the industry which is arguably unsuited to ambitious to almost quadruple its size.
- However, recent judicial decisions have supported a robust environmental bottom line approach to permit applications providing an important line of defence against inappropriate expansion.

Thank You!

- Many thanks to the organisers of the International Conference on Aquaculture and Fisheries (Brisbane, July 20 – 22 2015).
- Thanks also to the KG Jebson Centre for supporting the comparative aquaculture regulation project.
- Thanks also to the New Zealand Law Foundation for supporting this research.



King Salmon, Nelson