



ARBITRATION

This information sheet outlines the arbitration and compensation process established under the 2011 aquaculture legislative reforms.

The Ministry assesses the effects of coastal permits for new aquaculture space on commercial, customary and recreational fishing through the undue adverse effects test (UAE test). Where there is an undue adverse effect (a reservation) on commercial fishing for a quota management system (QMS) stock, a proposed marine farm cannot proceed without compensation to the relevant quota owners through one of the following:

A negotiated aquaculture agreement

- » A voluntary agreement made after the UAE test if there is a reservation on commercial fishing for a QMS stock.

Arbitration

- » An independent determination on compensation if there is a reservation on commercial fishing for a QMS stock. The arbitration process can be used if a coastal permit holder decides not to seek a negotiated aquaculture agreement with quota owners, or if a negotiated aquaculture agreement cannot be reached.

For information on aquaculture agreements see the Aquaculture pages on the Ministry for Primary Industries website www.mpi.govt.nz.

THE ARBITRATION PROCESS

The coastal permit holder may request that an arbitrator determine the amount of compensation to be paid to quota owners. However, an arbitrator can only determine compensation if the proposed marine farm would provide more economic value to New Zealand than the affected fishing.

If compensation is required, the arbitrator uses the method specified in regulations to determine how much the coastal permit holder must pay to affected quota owners for QMS stocks covered by the reservation.

The arbitrator will not be able to review the findings of the UAE test (that is, the aquaculture decision). The arbitrator's role will be limited to determining the amount of compensation to be paid for any undue adverse effect that was determined by the aquaculture decision.

A compensation declaration must be lodged within six months of the aquaculture decision (unless an extension of time is granted by the Ministry) if the marine farming in question is to proceed. The six months is paused during any judicial reviews, applications to the High Court, and/or arbitration processes.

For the purposes of the arbitration, an arbitrator is appointed:

- a. by agreement between the coastal permit holder and all the relevant quota owners; but
- b. if they cannot agree, then by the President of the Arbitrators and Mediators Institute of New Zealand Incorporated or a person authorised by the President.

FISHERIES (AQUACULTURE COMPENSATION METHODOLOGY) REGULATIONS 2012

Methodologies in the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 provide guidance to all parties on how the arbitrator should determine economic value and compensation to quota owners for the loss in value of affected quota. The parties to the arbitration must supply the data and analysis that the arbitrator is to use to make the decisions.

In summary, to determine the economic value of the proposed aquaculture and the affected fishing the arbitrator must:

- » determine the earnings from commercial fishing unable to proceed using the average annual catch loss (as determined by the UAE test) of all fish stocks in the affected area, multiplied by the export price (expressed as \$ per greenweight kilogram) of each relevant species associated with each fish stock;
- » determine the earnings from the proposed aquaculture using production (greenweight) per hectare for each relevant aquaculture species, multiplied by the number of productive hectares of the aquaculture space, multiplied by the export prices (expressed as \$ per greenweight kilogram) for those species;
- » use a ratio of 5:1 as the threshold level above which the value of aquaculture is deemed to have materially exceeded the value of fishing lost in the affected area.

In summary, if compensation is required, the arbitrator must determine compensation payable to quota owners by:

- » for each stock subject to a reservation, multiplying the percentage impact on the average annual commercial catch above the UAE threshold (the output of the UAE test) by the quota value for each stock;
- » calculating the value owed to each quota owner based on the size of their quota holding for each stock subject to a reservation;
- » taking into account of submissions and adjusting the level of compensation to take account of any complementary use agreements reached between the consent holder and quota owners;
- » applying a 1.2 multiplier to the figure for loss of quota value for any consequential disruption costs (ie, from adjustments required), including an additional solatium payment.

FEES

The fee for lodging a compensation declaration as of 1 October 2011 is \$276 for one stock plus \$24.15 for each additional stock.

How do I lodge an aquaculture agreement?

FishServe, on behalf of the Ministry, receives compensation declarations and the accompanying fees, and registers compensation declarations. See FishServe's website (www.fishserve.co.nz) to obtain compensation declaration forms and request aquaculture agreement registers.

For more information on the arbitration regulations

See the Aquaculture pages on the Ministry for Primary Industries website (www.mpi.govt.nz), or contact the Ministry's Aquaculture Unit (**phone 03 548 1069**).

Also see the aquaculture agreement and compensation provisions under Part 9A, subpart 4 of the Fisheries Act 1996, regulations 10 and 11 of the Fisheries (Registers) Regulations 2001 for information to be included in the aquaculture agreement and compensation declaration registers, and the Fisheries (Aquaculture Compensation Methodology) Regulations 2012.

See Part 4 of Schedule 2 of Fisheries (Commercial Fishing) Regulations 2001 for fee information.

This document is intended to give general technical guidance on aspects of marine-based aquaculture under the 2011 aquaculture legislative reforms. It is not legal advice. For legal advice on any aspect of the legislation you should consult your lawyer.

The **general disclaimer on the Ministry for Primary Industries** website also applies to this document and should be read in conjunction with it.



www.mpi.govt.nz

November 2012