Office of the Minister of Finance
Office of the Minister of Maori Affairs
Office of the Minister of Fisheries

Chair
CABINET BUSINESS COMMITTEE

REVIEW OF THE OVERSEAS INVESTMENT ACT – INCLUSION OF AQUACULTURE IN THE OVERSEAS INVESTMENT REGIME

PROPOSAL

1. On 30 August 2004 Cabinet invited the Minister of Finance, the Minister of Maori Affairs, and the Minister of Fisheries to give further consideration to whether the overseas investment regime should apply to aquaculture. [CAB Min (04) 28/3 refers].

2. Our preferred option is that the overseas investment regime should **not** apply to aquaculture, because doing so would not deliver any key benefits that cannot be achieved in other ways. The aquaculture management consents process will provide screening to protect public interest in the use of coastal marine space. Further, there are disadvantages in extending the overseas investment regime to cover aquaculture. It would ***[Withheld under sections 6(a) and 9(2)(h) of the Official Information Act]*** and open up the potential for conflict with local government jurisdiction. These issues are explained further in the paper.

3. If the Committee considers that the overseas investment regime **should** apply to aquaculture, we recommend that the criteria that should be applied be the same criteria as those applied to non-land assets (the "investor test"). This will minimise the potential for conflict between local council conditions and those imposed under the Overseas Investment Act.

EXECUTIVE SUMMARY

4. This paper sets out the relative merits of extending the overseas investment regime to cover aquaculture.

5. Arguments for including aquaculture in the overseas investment regime are:

   a **Sensitivity of the coastal marine environment -** Aquaculture that takes place in the coastal marine environment may be considered sensitive for cultural and historic reasons. In that sense it is similar to the sensitivity around land.

b **Scarcity of the resource -** Another argument for screening overseas ownership is that unrestricted ownership may increase demand for aquaculture areas. This could possibly lead to a greater area being put aside for aquaculture, hence restricting availability of the coastal marine environment for other competing uses. Also, there may be a concern from potential domestic investors in aquaculture that they will face competition from better-resourced overseas interests in tenders for a finite resource.

6. Arguments against including aquaculture in the overseas investment regime are:

a ***[Withheld under sections 6(a) and 9(2)(h) of the Official Information Act]***

b **There are other mechanisms to address sensitivity of the coastal environment -** While the coastal marine environment is sensitive, there will be significant protections around it put in place by Regional Councils.

c **What about other coastal marine activities? -** Extending the overseas investment regime to include aquaculture could signal to international investors that all activities in the coastal marine environment may be sensitive and could be added to the screening regime, now or in the future.

d **The aquaculture management consents process will provide screening to protect public interest in the use of coastal marine space, regardless of whether the investor is overseas or local** – there would rarely, if ever, be an equivalent to the concern for land about overseas investors changing the use of the area, or the degree of exclusion of the public. This is because the consent only allows aquaculture and only in the terms specified, so any change would need a new consent.

7. Our preferred option is that the overseas investment regime not be extended to aquaculture.

BACKGROUND

8. On 28 June 2004 Cabinet agreed to a number of reforms of the Overseas Investment Act (CAB Min (04) 22/6 refers). Cabinet directed officials to report back on a number of outstanding issues. Cabinet considered a subsequent report on 30 August 2004 (CAB Min (04) 28/3 refers). One of these issues was the treatment of aquaculture under the proposed overseas investment regime.

9. On 30 August 2004, Cabinet commenced consideration of the treatment of aquaculture, and invited the Minister of Finance, the Minister of Maori Affairs, and the Minister of Fisheries to give further consideration to whether the overseas investment regime should apply to aquaculture [CAB Min (04) 28/3 refers]. This paper responds to that request.

ARGUMENTS FOR INCLUDING AQUACULTURE IN THE REGIME

Sensitivity of the environment

10. Aquaculture that takes place in the coastal marine environment may be considered sensitive for cultural and historic reasons. In that sense it is similar to the sensitivity around land. The coastal marine environment is an important source of both food and recreation to the New Zealand people. Māori are likely to share many of the same concerns as other New Zealanders about access to coastal marine areas, and have particularly strong concerns around their ability to undertake traditional activities, and respect for culturally sensitive areas, and Māori relationships with their taonga.

Competition for scarce resources

11. Another argument for screening overseas ownership is that unrestricted ownership may increase demand for aquaculture areas. This could possibly lead to a greater area being put aside for aquaculture, hence restricting availability of the coastal marine environment for other competing uses.

12. There may be a concern from potential domestic investors in aquaculture that they will face competition from better-resourced overseas interests in tenders for a finite resource. This concern could be more acute for Māori due to the difficulties that can be faced by Māori organisations in raising development capital. However, this problem will be mitigated by the allocation to Iwi of 20 percent of new space allocated by Regional Councils for aquaculture marine areas.

… but there may be disadvantages in including aquaculture in the regime

13. The coverage of the proposed overseas investment regime should be consistent with its objective of acknowledging that it is a privilege for overseas persons to own sensitive land, and to impose conditions on such ownership. However, it also needs to take account of the costs of including additional specified assets in the regime. Costs can arise through conflict with other regulatory regimes that deal with the use of resources, especially the Resource Management Act (RMA). There can also be costs from conflicts with some of the Government's other policy objectives, e.g. in relation to bilateral agreements on trade and investment.

ARGUMENTS AGAINST INCLUDING AQUACULTURE IN THE REGIME

There are other mechanisms to address sensitivity of the coastal environment

14. Aquaculture as a business is not significantly different to other businesses – be it biotechnology, or manufacturing. While the coastal marine environment is sensitive, there will be significant protections around it put in place by Regional Councils. There are no unambiguous, and important, benefits that will be achieved through adding nationality-based screening, in addition to the existing protections already in place for the coastal marine environment.

Only aquaculture or all coastal marine activities ?

15. Extending the overseas investment regime to include aquaculture could signal to international investors that all activities in the coastal marine environment may be sensitive and could be added to the screening regime, now or in the future. This uncertainty may extend to other coastal occupation authorised by the RMA for activities as disparate as harbours and loading buoys, wind farms, moorings, communications cables, and power lines.

16. Investors could interpret an extension to aquaculture as a signal that the overseas investment regime may also be expanded to other types of consents under the RMA.

17. ***[Withheld under sections 6(a) and 9(2)(h) of the Official Information Act]***

Implications for the settlement of post-1992 Māori commercial marine farming claims

18. An authority to apply for a consent for aquaculture settlement space is fully alienable (subject to agreement from iwi members), so any restrictions on prospective purchasers of, or the market for, aquaculture permits may reduce the value of the aquaculture settlement to Māori.

19. Extending the overseas investment regime to aquaculture may make it more difficult, costly or time-consuming for Māori to engage in joint ventures with overseas companies in order to develop their aquaculture settlement space (or other marine farming ventures which Māori may wish to develop beyond their settlement entitlements). This could further delay the development of such space and the delivery of the economic benefits of the aquaculture settlement to iwi, and Māori.

Perceived or Actual Conflict with Local Government Jurisdiction

20. In some cases, decision-making Ministers would risk being seen as interfering in local government decisions, e.g. if LINZ declined an application that was strongly supported by the local community, regional councils or local iwi.

Delegating Overseas Investment Consent to Regional Councils

21. One option for the administration of overseas investment consent in aquaculture would be to delegate consent powers to Regional Councils. There would be significant risks in such an approach. It could raise the prospect of Councils applying lower levels of environmental controls on consents for locals than are applied to overseas owners. It may then be necessary to apply screening processes for the subsequent transfer of consents between local ad overseas investors.

The aquaculture management consents process will provide screening to protect public interest in the use of coastal marine apace, regardless of whether the investor is overseas or local

22. All marine farms require a consent (also referred to as a coastal permit) to occupy coastal space. Consents are for a specified term (up to 35 years). Investors require a consent for the structure and any discharges for the site.

23. In deciding a consent a Council must consider:

    a Part 2 of the RMA – matters of importance and the promotion of sustainable management;

    b the environmental effects of the activity;

    c any provisions of the coastal policy statement, plans or policy statements under the Act; and

    d any other matter "relevant and reasonably necessary to determine the application".

24. Activities approved by a consent must operate within any conditions attached to the consent and the rules in the plan.

25. Significant activities are "restricted coastal activities". Consents for these are determined by the Minister for Conservation (using the same criteria as would otherwise be applied by the Council). The larger aquaculture applications (over 10 ha of cage or 50 ha of mussels) are restricted coastal activities.

26. Consents can be transferred and Councils can decline such transfers if they are likely to compromise environmental performance.

27. The aquaculture reform currently being enacted will modify this regime to:

    a provide that consents for marine farming can only be issued in aquaculture management areas that are defined in regional coastal plans (these are prepared by Regional Councils, although others may promote private plan changes);

    b make tendering of coastal space the default allocation method for marine farming; and

    c for existing farms, increase the certainty provided to an existing farmer where the farmer seeks a new consent to continue an operation.

HOW THE COVERAGE OF THE OVERSEAS INVESTMENT REGIME COULD BE EXTENDED TO AQUACULTURE

28. This section sets out how coastal aquaculture consents could be included within the overseas investment screening regime, should the Committee decided to pursue that course.

Coverage

29. An overseas person would require approval from the overseas investment regulator to acquire a coastal aquaculture permit/consent or an interest in such a permit. An interest in such a permit would include operation of aquaculture activities under a consent, even where the person undertaking the activities is not the consent holder. An overseas person has the definition under the Overseas Investment Act, that is:

    a not ordinarily resident; and
    b a company with 25% or more of its shareholders not ordinarily resident.

Criteria

30. There are three options for applying criteria to potential investors in aquaculture under the overseas investment regime.

    a **Investor test only** – as applied for *non-land business assets*;

    OR

    b **Investor test and economic development test** – as applied for *fishing quota*;

    OR

    c **Investor test, economic development, natural heritage, historic heritage, walking access** - as applied for *land*.

31. It would be important to avoid confusion with conditions imposed by consent issuing Regional Councils. Regional Councils are expected to take account of economic and conservation benefits. The economic development benefits from aquaculture are likely to be captured regardless of screening. This is because the nature of aquaculture is that processing onshore is most economic (using current and foreseeable technology).

32. Conditions to protect the environment are included in any consent where these are needed. These may be, for example, requirements to control waste discharge, noise or other aspects impacting on the environment.

33. Historic heritage and walking access are considered when applications for coastal occupation are considered under the RMA and conditions may be imposed to protect these.

34. Limiting the relevant criteria to the *Investor Test* would minimise the opportunity for conflict between Regional Council conditions and those imposed under the Overseas Investment Act.

35. While it would be technically possible to extend the coverage of the overseas investment regime to aquaculture, we do not recommend that the Committee adopt this option, for the reasons outlined earlier in this paper.

Monitoring and enforcement

36. The proposed monitoring and enforcement provisions in the revised Act would be sufficient to cover aquaculture activities. Monitoring and enforcement would be undertaken by the overseas investment regulator, as for other assets. There is the potential for some overlap and at least perceived confusion with regional council monitoring and enforcement of RMA consents.

Consultation by the overseas investment regulator

37. The overseas investment regulator would need to consult with consent issuing Regional Councils to cross-check information provided by applicants.

38. A majority of aquaculture consent users are currently, and are expected to continue to be, holders of fishing quota. If the applicant investor holds quota, the way this is managed, and the economic benefit that is derived, could be useful information for the regulator. This will require consultation with the Ministry of Fisheries.

CONSULTATION

39. Land Information New Zealand, Ministry of Fisheries, Te Puni Kokiri, Department of Conservation, Department of Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade and Ministry for the Environment.

RECOMMENDATIONS

40. It is recommended that the Committee:

EITHER

a. **agree** that the overseas investment regime should not apply to aquaculture;

OR

b. **agree** that the overseas investment regime should apply to aquaculture, and that the criteria to be applied to potential investors should be the **investor test** only, as applied for non-land business assets;

OR

c. **agree** that the overseas investment regime should apply to aquaculture, and that the criteria to be applied to potential investors should be the **investor test and economic development test**, as applied *for fishing quota*;

OR

d. **agree** that the overseas investment regime should apply to aquaculture, and that the criteria to be applied to potential investors should be the **investor test, economic development, natural heritage, historic heritage, and walking access**, as applied for land.

Hon Dr Michael Cullen Minister of Finance	Hon Parekura Horomia Minister of Maori Affairs	Hon David Benson-Pope Minister of Fisheries

CAB 100/2002/1

Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department

Departments consulted: The attached submission has implications for the following departments whose views have been sought and are accurately reflected in the submission: Land Information New Zealand, Ministry of Fisheries, Te Puni Kokiri, Department of Prime Minister and Cabinet, Department of Conservation, Ministry for the Environment, and Ministry of Foreign Affairs and Trade. . **Departments informed:** In addition, the following departments have an interest in the submission and have been informed: ..... **Others consulted:** Other interested groups have been consulted as follows: Overseas Investment Commission		
Signature	***Name, Title, Department*** Steve Rylands, Principal Advisor, Treasury	***Date*** **/ /**

CERTIFICATION BY MINISTER

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee. The attached submission:		
Consultation at Ministerial level	☐ did not need consultation with other Ministers ☐ has been the subject of consultation with the Minister of Finance *[required for all submissions seeking new funding]* ☐ has been the subject of consultation with the following Minister(s)	
Consultation with Government MPs	☐ does not need consultation with the government caucuses ☐ **has been** or **will be** *[specify which]* the subject of consultation with the following government caucuses: ☐ Labour caucus ☐ Progressive Coalition caucus	
Consultation at Parliamentary level	☐ does not need consultation at parliamentary level ☐ **has been** or **will be** *[specify which]* the subject of consultation with the following other parties represented in Parliament:	
Signature	***Portfolio***	**Date** **/ /**