

FACT SHEET

Marine Farming Planning Amendment Bill 2016

On 6 June 2016 the Minister for Primary Industries and Water announced a range of reforms to ensure the regulation of the salmon industry keeps pace with industry expansion and ensure that community and market confidence is maintained. Three measures were announced to achieve these reforms: (1) the Environment Protection Authority taking over responsibility of environmental regulation and day to day environmental management of the industry; (2) amending the penalty regime for breaches of the *Marine Farming Planning Act 1995* to better reflect the scale of the industry; and (3) introduction of a new industry levy that will directly contribute to funding work undertaken by DPIPWE supporting expanding industry production.

The purpose of the *Marine Farming Planning Amendment Bill 2016* is to amend the *Marine Farming Planning Act 1995* (MFP Act) in order to strengthen the enforcement mechanisms relating to breaches of the Act to better reflect the scale of the industry.

The *Marine Farming Planning Amendment Bill 2016* will introduce the head of power for the regulations to prescribe special penalties for offences under section 91 of the MFP Act relating to the obstruction of the execution of a marine farming development plan. The Bill will also provide for demerit points to be tied to infringement notices issued in relation to an offence under section 91 of the MFP Act.

The *Marine Farming Planning Amendment Bill 2016* introduces the concept of special penalties that would apply to specific, serious breaches of management controls where prosecution may occur. The Bill proposes that for an offence under section 91(1) of the MFP Act, where a person is found guilty, in addition to a penalty under subsection (1) or the payment of costs under subsection (2), the court must impose a special penalty of an amount that is either prescribed by regulations or calculated in accordance with a method prescribed by the regulations.

The intention is that special penalties are prescribed in the *Marine Farming Planning Regulations 2006* and will target specific marine farming activities such as exceeding the total permissible dissolved nitrogen output which is a critical environmental control in salmonid marine farming development plans. It is envisaged that a special penalty formula for such an offence will take into account the scale of the breach and the value of the fish produced as a result of the breach. It is not proposed to cap the level of the proposed special penalty, because by their very nature special penalties are designed to be based on a consistent formula that can be applied to an individual situation that imposes a penalty proportionate to the financial advantage obtained from the breach, thus acting as a deterrent.

In 2007 the MFP Act was amended so that the penalties imposed by infringement notices ceased to accrue demerit points. This Bill reinstates the application of demerit points for infringement notices under section 91 of the MFP Act. As is currently the case, once a person has accrued 200 demerit points they will be disqualified from holding or obtaining a lease (under section 124 of the MFP Act) and disqualified for five years from holding a marine farming licence (under section 246A of the *Living Marine Resources Management Act 1995*). One demerit point is accrued for each penalty unit imposed by a court or infringement notice.

Attaching demerit points to infringement notices will provide flexibility to the regulator to manage instances of ongoing breaches.

Given the severity of offences under section 91, the ability to impose a sanction that may involve the disqualification of a person from holding or obtaining a lease and the five year disqualification from holding a marine farming licence is considered an appropriate deterrent to impose. It should be noted that the *Marine Farming Planning Amendment Bill 2016* specifies that special penalties will not accrue demerit points in the way that fisheries offences do.

The amendments to the MFP Act will impact both the finfish and shellfish sectors. Given that the shellfish sector is much smaller than the finfish industry, in total and in terms of the scale of its individual operators, it will be important to ensure that the impacts are not unintentionally onerous. The *Marine Farming Planning Amendment Bill 2016* has been drafted to enable any special penalties in the regulations to be prescribed for specific circumstances or specific offences rather than being applied across all marine farming operations.