

IN THE MATTER: Sections 104 and 127 of the
Resource Management Act 1991

RESOURCE CONSENT: U190357
U140294

Applicant: The New Zealand King Salmon Company Limited

Location: Waitata Reach, Pelorus Sound/Te Hoiere

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

To increase the maximum area of net pen surface structures at the existing Waitata salmon farm (site 8632) from 1.5 hectares to 2.25 hectares, by installing four additional net pens, 10 additional anchors and 10 additional surface floats, and changing the associated consent conditions 2 and 14 on existing resource consent U140294.

DECISION: **Declined**

Proposal

This is the report and decision of hearings Commissioner John Mills. I was appointed by the Marlborough District Council (**MDC**) and delegated powers and functions under Section 34A(1) of then Resource Management Act 1991 (**RMA**) to hear and decide the application by New Zealand King Salmon described below.

1. The New Zealand King Salmon Company Limited (**NZKS**) seeks resource consent to expand its existing farming operation at the Waitata salmon farm in Pelorus Sound/Te Hoiere.
2. The key elements of the proposal can be summarised as follows:¹
 - a. four additional net pens each having surface dimensions of approximately 40 metres x 40 metres;
 - b. the farming of king salmon (*Onchorynchus tshawytscha*) within the additional net pens, including all associated discharges;
 - c. 10 additional anchor warps and screw anchors to secure the additional net pens;

¹ Section 42A Report, paragraph 7.

- d. 10 additional surface floats (taking the total to 100) to support the anchoring system;
 - e. operation of the additional net pens is proposed to accord with all existing conditions of resource consent U140294 for the existing farm; and
 - f. an expiry date of 12 December 2049, to align with the consent expiry date of the existing farm at the site.
3. As part of the proposal, NZKS seeks to change two consent conditions of the existing resource consent U140294 for the farm. These two conditions are numbered 2 and 14, and concern the approved layout of the farm and the maximum area of net pen surface structures, respectively.
 4. NZKS does not presently seek consent to increase the quantity of feed able to be discharged at the existing or proposed extended farm.

Activity status

5. The proposed extension to the salmon farm constitutes a non-complying activity in terms of the relevant definitions and rules of the Marlborough Sounds Resource Management Plan. Both the Marlborough District Council (**MDC**) and the applicant agree that this proposal should be assessed as a non-complying activity because the proposed net pen area of 2.25 hectares exceeds the standard maximum salmon farm cages area of 1.5 hectares (Rule 35.4.2.10.1(d)).

Site Visit

6. I conducted a site visit on 25 November 2019. I was accompanied by the following MDC officers.
 - Mr Alex Moore - Maritime Officer and vessel skipper
 - Ms Sue Bulfield-Johnson - RMA Hearings Facilitator
 - Ms Sharan Mavi - Regulatory advisor
7. The weather was fine and visibility good for the duration of the site visit.

The hearing and appearances

8. The hearing was held in Blenheim on Tuesday and Wednesday, 26 and 27 November 2019.
9. Mr Quentin Davies, who presented the applicant's case with Mr Joshua Marshall, provided detailed submissions. He described the increase in sea level temperatures, both historic and the increases that could be expected in the future. It was his submission that the application represents NZKS's response to climate change. In particular that response involves the change to single year-class farming. Mr Davies explained single year-class farming and the resulting reduction in risk of disease transfer between generations of fish that are on site under a multiyear-class farming system.

10. Mr Davies submitted that in this case (a non-complying activity application) the correct approach is to assess the effects of the difference between the current scenario and the four proposed additional pens.
11. Mr Davies summarised the evidence of the witnesses he was calling - Ms Strachan on landscape and natural character; Dr Newcombe - benthic; Dr McClellan on king shag; and Mr Lovell - NZKS's Production Manager.
12. Mr Davies addressed many of the issues raised by submitters and paid particular attention to the matter of whether NZKS had complied with its conditions of consent.

Dr Emma Newcombe

13. A coastal ecologist from Cawthron Institute, Dr Newcombe provided an assessment of the environmental effects associated with the proposal. She considered both the effects on the soft sediment seabed and on the water column, and any implications for the monitoring program - in particular whether the changes to farm layout would devalue the usefulness of the monitoring program to date.
14. In response to the Section 42A Report she considered the effects of farm-derived waste on rocky reef communities, the monitoring of those communities, and the effects of submerged underwater lighting.
15. Dr Newcombe expects that the extension of salmon pens would cause some increase in the total footprint of the farm. However, she did not expect this to be a large increase relative to the area already affected.
16. In the absence of feed increases, Dr Newcombe did not expect the pen expansions to have a measurable effect on reef communities. Her evidence was that the current reef monitoring program would not be compromised by the changes in pen configuration.

Water column effects

17. Dr Newcombe stated that there have been no breaches of water quality standards. Nutrient concentrations show little relationship to proximity to the farm, likely due to a high degree of mixing by relatively strong currents. She noted some occasional reduction in dissolved oxygen concentration downstream.
18. She expects water column effects within and very near the farm to be diluted if fish are farmed at a lower density. It was Dr Newcombe's evidence that neither the water column monitoring programme nor the objectives of the monitoring would be compromised by the proposed extensions, and no changes to the current monitoring protocols would be required to account for the change in water column effects from the proposed extensions.
19. Effects of submerged lighting are small, highly localised, and there is low risk of ecological effects as a result of the pen extensions.

20. Dr Newcombe's evidence discussed whether or not the farm is compliant with regard to seabed organic enrichment. She was clear that it is not the role of Cawthron to make decisions as to compliance or otherwise, but to provide independent information on which decisions on compliance can be made. These decisions require interpretation of the data - this interpretation differed between the parties to this hearing, particularly whether the ES is taken as the only parameter.²
21. Dr Newcombe (and Cawthron) expressed uncertainty regarding farm compliance at 600 metres - not at pen stations or 150 metre stations. She questioned the suitability of the 600 metre monitoring stations for assessing compliance.

Dr Rachel McClellan

22. An avifauna ecologist from Wildland Consultants Limited (**Wildlands**), Dr McClellan was engaged by NZKS to assess the effects of the proposed increase in the number of pens on king shag (*Leucocarbo carunculatus*). Her evidence summarised what is known about king shag ecology and population trends.
23. Dr McClellan described some recent surveys of foraging habitats of king shag.

Sophie Elizabeth Strachan

24. Ms Strachan recognised that Waitata Reach has high amenity values with minimal terrestrial modifications and relatively unmodified terrestrial coastal environment. Overall, she found the existing level of visual amenity to be high.
25. Her evidence was that the adverse effects on natural character values will be negligible, and because the elements which form the natural character of the site will remain the same, she concluded that the proposal will have low adverse effects on the existing natural character and landscape values of the site.
26. She also assessed the effects on visual amenity arising from the proposal as low due to the relatively small scale of the development.
27. Likewise, the proposal will have very low potential cumulative adverse landscape effects and that a very high level of perceived naturalness will be maintained because the proposal will be seen simultaneously with the existing salmon farm and difficult to visually separate from existing components. The proposal is likely to have negligible potential adverse visual effects.
28. Attached to Ms Strachan's evidence was a set of graphic attachments as follows:
 - a location map showing the context and location of various viewpoints from where photographs had been taken;
 - a coastal permits map which, in particular, shows the site in relation to other marine farms, subdivisions and water permits in the vicinity;

² ES Enrichment Score 1-7 where 1 is the lowest is calculated from a range of variables including sediment chemistry variables, sediment macrofauna composition variables, and organic content. ES is calculated as a weighted average of these variables.

- marine farms in the vicinity;
- environmental overlay showing natural character rating and landscape ratings;
- detailed plan of the existing farm and proposed extensions; (which is appended as Appendix 1 to this decision).
- a series of photographs from a range of locations and varied distances from the farm.

Grant Lovell

29. Mr Lovell is the Seawater and Aquaculture Production Manager for NZKS. His evidence explained that the purpose of the extension was to spread its fish stock over a wider area. The resulting reduction in fish density would allow *the usage of the consented feed discharge in a sensible manner with appropriate fish welfare considerations.*³
30. Mr Lovell explained that fish mortalities had been higher than anticipated over recent summers which he attributed to higher than usual seawater temperatures.
31. Mr Lovell's evidence was that while the farm at Waitata Reach was viable and productive at present, with a permanent 2 degree increase in water temperature, farming using present technologies and farming methodologies is likely to become more difficult. He explained that an increase in pen numbers would facilitate a shift to single year-class farming. All pens would be stocked with smolt at the same time and these would be grown through to harvest. The farm would be then fallowed for one month when nets would be removed, repaired (or replaced), and disinfected before the cycle would start again.
32. Mr Lovell concluded the proposal will result in a reduction in fish stocking density on the farm over the crucial summer period. This should improve fish health, biosecurity and farm management.

The submitters

Mr Julian Ironside

33. Mr Julian Ironside, counsel for Friends of Nelson Haven and Tasman Bay Inc ('Friends') presented submissions (initial observations dated 26 November 2019).
34. The thrust of these submissions was that the applicant had not complied with resource consent conditions, specifically the depositional footprint is greater than predicted and exceeds the maximum compliance zone area for zones 1, 2 and 3 of the site.
35. Mr Ironside submitted that before any further extensions of the Waitata salmon farm can be authorised, the existing non-compliance (with condition 39) should be addressed.

³ Lovell, Evidence in Chief, paragraph 21.

Mr Schuckard

36. Mr Schuckard is an ornithologist and gave evidence on behalf of Friends. His evidence lists the feed levels discharged at the farm for the 2016-17, 2017-18 and 2018-19 years and noted a significant reduction (28%) in feed discharged for the 2018-19 year, which he attributes to significant fish mortality.
37. Mr Schuckard's submission also detailed the depositional footprint non-compliance. He noted a 58% increase of area of impact from the default values of the modelling. He finds this surprising. He noted that similar differences between modelled and observed depositional footprints were seen at Clay Point in Tory Channel which has similar water current to Waitata Reach. Mr Schuckard concluded:

This comparison between the two farms shows the uncertainty of the modelling at dispersive farms and the association between current flow, sediment resuspension, and ecological impact is more complex than presently encapsulated within DEPOMOD.⁴ This uncertainty supports a multi-metric approach for the analysis of compliance instead of a single ES calculation.⁵

38. Mr Schuckard suggests a recalibration of DEPOMOD modelling for fast flow sites is likely required. He also suggested that the initial feed levels of this consent under adaptive management may have been set too high.

Condition 37 requires that before increase to Predicted Sustainable Feed Levels ('PSFL') can be considered, the marine farm should have operated at or near (plus or minus 15%) of its current maximum feed discharge level for at least three years. A need for such a period of at least three years is highlighted by the discrepancies in the model and observed depositional footprint.⁶

39. Mr Schuckard questioned whether it is good practice to locate salmon farms in high flow exposed sites: *Consequently, impacts will be more significant in areas with inherently high diversity and the assumption that developing farms in more exposed locations thereby reducing the environmental impact of organic enrichment by spreading the effects, may in fact be unfounded.⁷*

King shag

40. Mr Schuckard's evidence also addressed the issue of king shag. He disagreed with the applicant's evidence suggesting that, based on the depth of the farm in Waitata Reach, the farm and footprint is unlikely to be of importance for foraging king shag. Mr Schuckard states that this is incorrect and *Waitata Reach is the most important feeding area for the biggest colony of the species.⁸*

⁴ DEPOMOD - the model used to predict the depositional footprint expected at a new marine farm

⁵ Schuckard, Evidence in Chief, paragraph 23.

⁶ Ibid, paragraph 26.

⁷ Ibid, paragraph 28.

⁸ Ibid, paragraph 34.

41. Mr Schuckard stated that king shag are one of the rarest seabirds in the world.

The criteria for the IUCN for threatened species have identified king shag with 32 other New Zealand birds as VULNERABLE where the species is facing a high risk of extinction in the wild in the medium term future. The status of this bird is based on the latest 2000 criteria of IUCN: Area of occupancy estimated to be less than 2000 square kilometres. In New Zealand the conservation status of king shags is Nationally Endangered based on its small population of between 250 and 1000 individuals.⁹

42. Mr Schuckard explained that the implications of slow creep from marine farm development, including salmon farms, on the quality of king shag feeding area has only been indirectly and marginally studied.

All prey of king shags are benthic species and these may well be affected by small but significant cumulative changes in the marine farmed areas. To accommodate this uncertainty the Board of Inquiry allowed two more salmon farms in the Waitata Reach to be established through adaptive management with a defined surface and footprint area.¹⁰

43. Mr Schuckard states that an expansion of the Waitata farm will create a wider depositional footprint with unknown boundaries. This was not anticipated when the Board of Inquiry granted two farms in this prime feeding habitat of king shag. He says:

Certain monitoring parameters indicate that the initial farm feed levels of about 3000 tonnes are already close or beyond consent constraints on benthic parameters and footprint area. The farm is technically non-compliant during the regime of initial feed levels. In my view, expansions of pens is not a solution for the problems associated with the increased depositional footprint. It will add to the existing uncertainties concerning impact on an important feeding habitat of the king shag.¹¹

Claire Pinder - Guardians of the Sounds

44. Ms Pinder spoke to her submission in which she referred to the Cawthron report (3323) which shows an emerging picture of the cumulative effects from the operation of NZKS even though feed levels were reduced by 30%.
45. Her submission also referred to a 'Jarden' report. Ms Pinder talked of a 25 June market update - however, the Jarden report she provided was dated 30 August. The report discussed the high mortality of fish in increased water temperatures, particularly at low flow sites. The submission suggests this application for an increase in pens on Waitata Reach is to make up for the White Horse Rock farm application being declined. It is the Guardians' submission that NZKS should manage fish health within the parameters set down by the Board of Inquiry (BOI) and upheld by the Supreme Court.

⁹ Ibid, paragraph 37.

¹⁰ Ibid, paragraph 58.

¹¹ Ibid, paragraph 68.

46. In respect of the depositional footprint, the Guardians say:

The extent and impact of this breach needs to be understood and monitored for the environmental impact on the ecosystem before any expansion can be considered.

47. The Guardians state that even when using 30% less feed, NZKS were on the threshold of triggering an amber alert on dissolved oxygen.

48. The Guardians believe an increase in pen size would lead to an increase in overall productivity. This would not align with the adaptive management approach consented by the Board of Inquiry.

Marlborough Environment Centre

49. Ms Bev Doole submitted on behalf of Marlborough Environment Centre (MEC). She listed four reasons why MEC is opposed to this application:

- lack of evidence for an informed decision;
- uncertainty around the relocation of farms proposal;
- lack of consideration of alternatives;
- Board of Inquiry decision limiting number of farms in Waitata Reach and declining White Horse Rock farm.

50. Her submission focused on two of these: (1) the lack of evidence for an informed decision; and (2) the Board of Inquiry decision to limit the number of farms in Waitata Reach and decline White Horse Rock.

51. MEC questioned the lack of evidence on the number of fish dying and why, when NZKS is using that as a reason to exceed its current resource consent conditions.

52. MEC submits that NZKS should reduce fish stock numbers, not increase water space.

53. MEC stated that the Board of Inquiry and the Supreme Court very deliberately declined the White Horse Rock farm application because of their concern over cumulative effects and the impact on Marlborough's tangata whenua iwi. The current application is for an additional 0.75 hectares which is 50% more than the White Horse Rock proposal that sought 0.5 hectares and was rejected by the Board of Inquiry.

54. MEC concluded that the limit for salmon farming in Waitata Reach was set by the Board of Inquiry and Supreme Court, and they specifically declined the White Horse Rock farm - a smaller site than the expansion proposed by this current application - because of concerns about the impact on natural character.

Kenepuru and Central Sounds Residents Association (KCSRA)

55. Mr Andrew Caddie submitted on behalf of KCSRA. Mr Caddie makes the point that until 2019 the Waitata Reach farm was using only four or five pens of the eight that were consented, and that NZKS has not disclosed, or does not have the data, as to how the increase to eight pens has affected fish health and stress and fish mortality.
56. Linked to this, Mr Caddie further noted that the biosecurity risks associated with stressed fish - two hitherto unknown to New Zealand pathogens discovered in dead fish - go back to 2012.
57. KCSRA has calculated a 40% mortality rate last monitoring year at the Waitata Reach farm, and submit that this is not sustainable management.
58. Further, it noted that the adverse environmental results (ES) are occurring and accumulating at historically low feed levels. It says that should feed levels increase, then these benthic and monitoring indicators will get worse.
59. Relying on the evidence of Dr Giles, KCSRA said there is a lack of information and uncertainty in many areas, and for that reason this application should be declined.
60. The submission describes how the ES scoring of the seabed - the 'overall ES' - for a location is given by a weighted average of three groups of variables: organic loading, sediment chemistry, and aquafauna composition.
61. This submission notes that both Dr Giles and Mr Schuckard submitted that the individual variables (that make up the ES score) should be looked at individually when the ES scores become 'borderline'.
62. A further area of concern for KCSRA is the structural integrity of the proposed expanded structures. It quotes the Harbourmaster's report attached to the MDC Section 42A Report.
63. KCSRA appended two documents to its submission and referred to them during the hearing: (1) MPI Intelligence Report Fish Mortality and the Presence of Bacteria; (2) Report on Technical Advisory Group meeting of 30 November through to 2 December 2015 which discusses the two bacterial diseases associated with the high mortality of the caged salmon.

McGuinness Institute

64. Ms Wendy McGuinness submitted on behalf of the McGuinness Institute.
65. The thrust of the submission was that the farm has only been operating at full capacity for less than a year which is insufficient time to establish the impacts of this operation, at full capacity, on the environment.

66. Ms McGuinness stated the proposed increase in scale and nature of operation at Waitata Reach is significant and should not be treated as minor.¹² Ms McGuinness discussed fish mortality and suggested that salmon farming at Waitata Reach may not be sustainable, and further, it is her opinion that the high mortality rate cannot be explained by high water temperature alone. She cites poor farm management and in particular *overcrowding of pens*. She states that these mortality rates also illustrate that the farm has not been managed using the adaptive management approach to protect fish health and prevent biosecurity and environmental hazards.

67. Ms McGuinness stated:

*Rather than following the adaptive management approach prescribed in the BOI process, this application seeks to improve salmon farming operations with a significant increase in the scale of farm operations. By increasing the scale of net pens by 50% with no restrictions on stocking density, and with a further 1000 tonnes of feed allowed under their consent variation, NZKS will have the ability to significantly increase the quantity of salmon farmed. It is important to note that not only is this fast growth the antithesis of the adaptive management approach, it is also unsustainable in the long term.*¹³

68. Ms McGuinness also listed the following as reasons why this application should be declined:

- lack of economic benefit;
- failure to consult Ngati Koata;
- reduction of public access;
- lack of detailed information on the ecological impacts of an increase in the scale of farming operation at Waitata;
- potential effects on the king shag;
- potential effects on marine mammals - the application fails to address how an expansion of this size and scale will impact marine mammals such as dolphins and seals;
- structural safety and navigation issues;
- natural character and landscape and visual amenity.¹⁴

69. The McGuinness Institute disagreed with the applicant's landscape expert particularly when she said the application will not significantly increase the impacts on natural character, landscape and visual amenity.

¹² McGuinness Institute submission, page 10, paragraph 3.2.

¹³ Ibid, page 11.

¹⁴ Ibid, pages 14-19.

MDC

70. Mr Peter Johnson, Senior Resource Management Officer at MDC, provided a detailed Section 42A Report. This report:

- described the proposal;
- determined the proposal should be assessed as a non-complying activity;
- provides a summary of submissions;
- listed the relevant assessment criteria from the Marlborough Sounds Resource Management Plan (**Sounds plan**) and assesses the proposal against them;
- assessed the proposal against the relevant planning provisions.

71. In his report, Mr Johnson concluded he had insufficient information to make a recommendation on the proposal. In particular, the information he required concerned the ecological effects of the proposal, the structural safety of the proposal, and the raft of appropriate consent conditions which would take into account the knowledge gained about the site, the consent conditions and the effects of salmon farming at the site since the Board of Inquiry decision in 2014.¹⁵

72. Mr Johnson also provided an update to his report which he named *Concluding Comments of Peter Johnson - 27 November 2019*. In this he listed the additional material he had received from the various experts and submitters since he wrote his Section 42A Report. He stated that having reviewed his [Section 42A] report, in the light of the new material, he is comfortable that he has properly identified the relevant assessment criteria of the Sounds plan and the relevant objectives and policies of the applicable planning documents. He concluded that while he is satisfied many of the minor matters he identified have been adequately addressed, such as underwater lighting, odour discharges and use of coastal water, he is still uncertain regarding the important areas of structural safety, ecological effects and appropriate consent conditions.¹⁶

73. He describes as a recurring failure in the application the over reliance on evidence given and conclusions reached at the Board of Inquiry process between 2011 and 2014.

Mr Johnson described another recurring failure of the application that the applicant seeks to operate the proposed new net pens in accordance with the consent conditions for the existing farm. He states that this approach is "inappropriate" when it comes to managing the effects of the proposed discharge on the marine ecology of the area.

¹⁵ Section 42A Report, paragraph 54.

¹⁶ *Concluding Comments of Peter Johnson - 27 November 2019*, paragraph 1.

74. Mr Johnson concluded:

Where all of this leads me to is the same fundamental conclusion expressed in my report of 4 November - that the consent authority has inadequate information to determine the proposal. It might well turn out that the effects of the proposal are entirely acceptable, but we presently don't know. Conceivably, resource consent can be granted where there is insufficient information, but such a consent would need to be accompanied by an appropriately comprehensive adaptive management regime which has been informed by the currently best available information. Such a regime has not been proposed by the applicant. Nor have I proposed one because the necessary scientific work outlined by Drs Newcombe and Giles has yet to be done.¹⁷

Dr Hilke Giles

75. Dr Giles of Pisces Consulting prepared a comprehensive report for MDC on the ecological effects of the proposal. She concluded that the information provided did not enable her to assess the level of [benthic] effects and so she could not agree that these effects are less than minor.
76. Dr Giles states that there is current non-compliance relating to depositional footprint and she believes that this needs to be addressed before consideration can be given to transferring the established EQS to this proposal. Equally, in her opinion, uncertainties relating to the current adaptive management and monitoring processes need to be addressed before consideration can be given to transferring it to this proposal.¹⁸

Ms Liz Gavin - Canopy

77. MDC engaged Canopy Landscape Architects to undertake a technical review of the Rough and Milne Landscape Architects report on behalf of the applicant. The author, Liz Gavin, disagrees with Rough and Milne that marine farms are a feature within Waitata Reach. Ms Gavin refers to Figure 4 of her graphic attachments to illustrate that Waitata Reach is relatively free of marine farms in comparison to the bays north and south of the reach (excluding Richmond and Ketu Bays).
78. Overall, Ms Gavin considered the level of adverse effects of the proposed extension to be higher than described in the Rough and Milne report. She stated that the proposal is a 50% increase in site coverage and a 30% increase in overall length, and will extend an unnatural pattern of textures and materials into an otherwise natural environment. She assesses the visual effects of this to be dominant within 50 metres of the farm, and most noticeable within 250 metres of the farm.
79. Ms Gavin assessed the visual effects from within 250 metres as moderate-high, extending to moderate between 250 and 500 metres. She assessed the natural character effects as moderate-low. However, she said the full extent of the effects is hard to determine due to the lack of certainty over feed levels, fish stocks, and the depositional footprint resulting from these two variables.

¹⁷ Ibid, paragraph 8.

¹⁸ Pisces Consultancy report, page 23, paragraph 8.

Harbourmaster report

80. Captain Luke Grogan prepared a report that was part of the MDC bundle, and also a summary of comments document dated 27 November 2019.
81. In his initial report Captain Grogan outlined his concerns in relation to the potential for cage structures and associated farm equipment to break free and become a navigational hazard. He stated that the cage structures experienced significant structural failure in April 2016. Following this incident, the cage manufacturer suggested a revised mooring arrangement. To date, this revised mooring arrangement has not been fully implemented. Only one of the recommended two buoys per anchor warp has been installed. Captain Grogan is unsure if the cage manufacturer supports this reduction, or whether a chartered professional engineer has signed off on the mooring arrangement.
82. Captain Grogan has been seeking assurances from NZKS since 2017 as to the security of the moorings at the Waitata farm. Such assurance relates to two main requirements, specifically:
- that the farm structures are moored as per a mooring plan approved by a suitably qualified engineer;
 - that the farm moorings are maintained as per the Mooring Monitoring and Maintenance Policy and the Navigational Risk Reduction and Management Plan.
83. It is clear from Captain Grogan's report that neither of these requirements have been complied with, and as a consequence Captain Grogan concluded:

*Given the above, I am not satisfied that the present cage and mooring arrangements at the Waitata site are safe and secure, and this creates navigational safety concern with regard to the proposed expansion.*¹⁹

Principal Issues of Contention

84. These are:
- Ecological effects - depositional footprint
 - Landscape and visual amenity
 - Natural character
 - Effects on king shag
 - Navigational safety
 - Fish mortality
 - Effects on Marlborough's tangata whenua iwi

¹⁹ MDC, U190357 Harbourmaster Summary Comments, page 1.

Activity Status

85. The proposed extension is a non-complying activity.
86. The proposal was publicly notified and attracted seven submissions. I have summarised these submissions at paragraphs 33 to 69 above.

Ecological effects

87. The thrust of all the submissions and the evidence for Council on ecological effects is that NZKS has not contained its depositional footprint within the anticipated area which was written into the conditions of resource consent. In fact, despite occupying only five pens in a single row (and at 72% of the maximum initial feed discharge), the overall area experiencing minor to moderate enrichment at Waitata Reach is at least 14 hectares greater than the consented depositional footprint.
88. Dr Giles stated that granting consent for this application is expected to further enlarge the spatial extent of the farm footprint. She went on to say:

We do not have a good understanding of the size and shape of the current depositional footprint of the Waitata farm nor of the farm footprint predicted under this application.²⁰

89. I find it troubling that not only has the applicant failed to satisfactorily explain and address the reasons for the existing non-compliance, but has also applied to farm additional cages that are expected to further extend the depositional footprint.
90. I find that the existing depositional footprint of the Waitata farm already exceeds (in area) its conditions of consent and if this application were to be granted, this area of non-compliance would likely increase.
91. The Cawthron report²¹ details the elevated and total free sulphides, increased macrofaunal abundance, and community compositional changes, by comparison with relevant reference stations. I acknowledge the applicant's stated position²² that conditions of resource consent refer to footprint to mean zones 1, 2 and 3, and because the presence of the farm is measurable outside, the footprint has not resulted in a breach of consent.
92. Although I make no finding on whether or not (as a matter of law) NZKS has breached its consent conditions, I do accept the evidence contained in the Cawthron report (monitoring farming 2019) and that of Dr Giles (quoted above).
93. It would be imprudent in the extreme to grant consent to any proposal that would further enlarge the spatial depositional footprint - already 14 hectares beyond consented limits - when neither the reasons for the existing exceedance nor the composition and likely area (of the new depositional footprint) arising from the proposal have been addressed.

²⁰ Pisces Consulting report, Summary of Key Points in response to evidence and submissions, paragraph 23, first bullet point.

²¹ Cawthron Institute Report No 3323.

²² Applicant's response to Commissioner's minute 11 February 2020, paragraphs 8-10.

Navigational safety

94. I find the evidence of Captain Grogan, that MDC has been seeking (but has yet to receive) assurances from the applicant (since mid - 2017), as to the security of the moorings at the Waitata farm, equally troubling. As noted above such assurances relate to two main requirements:
- that the farm structures are moored as per a mooring plan approved by a suitably qualified engineer;
 - that the farm moorings are maintained as per the Mooring Monitoring and Maintenance Policy and the Navigational Risk Reduction and Management Plan.
95. The witness (Captain Grogan) also lists a number of improvements/additions to the farm prior to any expansion.
96. Given the time MDC has been seeking (but has yet to receive) *verified* assurances concerning the navigational safety of the farm, it is my opinion that these improvements (listed below) should have been in place prior to the application for further pens:
- signoff by a qualified engineer;
 - data loggers deployed;
 - Navigational Risk Reduction and Management Plan revised in conjunction with the Harbourmaster.
97. Given the strong tidal flows, strong winds and rough seas often experienced at this site, the fact that the Waitata Reach is well utilised by a range of vessels, and that there has already been (April 2016) a significant structural failure of the cage structures at the farm, it is essential to ensure that the cage structures are fit to be deployed in the environment and properly moored so as to mitigate the risk of a breakaway.
98. Captain Grogan concluded:
- Given the above, I am not satisfied that the present cage and mooring arrangements at the Waitata site are safe and secure, and this creates navigation safety concern with regard to the proposed expansion.*²³
99. I find it would be imprudent to grant consent to any expansion of this farm while these navigational concerns remain.

²³ MDC, U190357 Harbourmaster Summary Comments, page 1.

Landscape and natural character

100. I accept (broadly) the evidence of Ms Gavin that the adverse visual amenity and landscape effects would be greater than those assessed in the Rough and Milne report. However, the major adverse effects of the farm are already in place, and despite a 50% increase in site coverage and a 30% increase in the length of the farm, I expect, as does Ms Gavin, that the most severe adverse effects would be experienced close to the farm.
101. As one moves further away from the farm, the adverse visual effects associated with the new structures would become more difficult to differentiate from those associated with the existing structures.
102. The natural character effects associated with the proposal are more difficult to quantify as they are closely associated with the quantity of feed that is discharged. Some of the natural character effects are included in my discussion on ecological effects (above).
103. Overall, I find the landscape and visual amenity effects of the proposal are moderate. Taken on their own, and provided the application can pass through the "statutory gateway" I do not consider them fatal to the application.

Tangata whenua issues

104. Te Rūnanga a Rangitāne o Wairau submitted in opposition to the proposal. They cited a lack of opportunity to thoroughly engage in discussion with the applicant regarding the application. Rangitāne did not speak to the submission at the hearing.
105. Te Rūnanga o Ngāti Kuia Trust also submitted in opposition to the proposal for the following reasons:
 - exclusion of tangata whenua iwi from traditional fishing grounds;
 - increased distribution of waste products and adverse effects on the seabed.
106. The Section 42A Report also notes the uncertainty of the depositional footprint and the consequential effect on the king shag habitat. All these matters are covered under different headings. I find any further exclusion resulting from the proposed new pens of tangata whenua iwi from their traditional fishing grounds would be minor. They are effectively excluded from the farm area as a result of the existing farm pens.

Fish mortality

107. One of the reasons given²⁴ for the additional pen space was to enable the applicant to reduce the higher than predicted fish mortality. KCSRA submissions and attached documents discuss fish density and sea level temperature as factors associated with higher than expected fish mortality.
108. By its calculation, mortality at Waitata Reach in the last monitoring year was 40%.

²⁴ NZKS application, page 1, paragraph 2.

109. The applicant does not offer a figure.
110. A high mortality of fish (whatever the actual number) is of concern from an animal (fish) welfare perspective but that is not an RMA issue. However high fish mortality is certainly not "efficient" in RMA terms. Evidence of pathogens (new to New Zealand) contributing to mortality is of further concern to the wider ecosystem.
111. The applicant's response is to achieve a lower stocking rate by adding pen capacity.
112. This is not a response that furthers the philosophy of adaptive management - a cornerstone of the conditions of the parent consent and also the set of conditions the applicant wishes to attach to this application, should it be granted.
113. A response that aligns with both adaptive management and sustainable development of resources would be for the applicant to reduce the stock on the present farm to achieve a stocking rate that results in a more acceptable mortality rate.

Effects on king shag

114. I accept Mr Schuckard's evidence that Waitata Reach is the most important feeding area for the biggest colony of the species. King shag is under severe threat - this is recognised nationally and internationally. Little is known about the effects of marine farming (including salmon farming) on the quality of the king shag feeding areas. Partly because of that uncertainty the Board of Inquiry took a very conservative approach to allowing salmon farms in the Waitata Reach.
115. The work described in the evidence of Dr McClellan fitting GPS loggers to king shags is going to add greatly to the knowledge of where king shags feed and how, and how often they move between feeding grounds.
116. The depositional footprint from the salmon farms may result in a reduction in the benthic species on which king shags feed. This proposal will result in a larger depositional footprint with unknown boundaries. Allowing this expansion and enlarged depositional footprint to occur is not a precautionary or conservative approach. Nor does it adhere to the adaptive management approach embodied in the conditions.

Relevant Statutory Provisions

117. Section 104(1)(b) RMA requires me to have regard to any relevant provisions of the New Zealand Coastal Policy Statement (NZCPS), Marlborough Regional Policy Statement (MRPS), the Marlborough Sounds Resource Management Plan (MSRMP), and the Proposed Marlborough Environmental Plan (PMEP).
118. Mr Johnson and the applicant set out the relevant policy considerations. There is general agreement on what the provisions of relevance are. However, there is not the same level of agreement on the conclusions reached on the assessment of the proposal against individual provisions.

119. I intend to focus only on the provisions that I consider are relevant to the determination of this application. These relate to the lists of principal issues noted in paragraph 84 of this decision.
120. For completeness, I list as Appendix 2 to this decision all the provisions identified by the parties.

Zoning

121. The application site falls within the Coastal Marine Zone 3 (CMZ 3) as defined by Map 19 of Volume 3 of the Sounds plan. The privately owned land backing nearby White Horse Rock is zoned Rural 1 with a 20 metre band of paper road abutting the shoreline zoned Conservation. The nearest area of outstanding landscape value as defined by the Sounds plan is located approximately 2 kilometres to the southwest, at Yellow Cliffs.
122. There are several nearby areas having ecology overlays denoting feeding, breeding and/or roosting habitat of New Zealand king shag; the nearest such overlay being at the southwest corner of the farm site.²⁵
123. Mr Johnson in his Section 42A Report notes that chapter 35 of the Sounds plan sets out at 35.4. 2.10.2 assessment criteria for marine farming within CMZ 3. He states that these criteria were inserted into the Sounds plan on 11 September 2014 following approval of Plan Change 24 by the Board of Inquiry decision which also created the subject Waitata Reach farm.

35.4.2.10.2 Assessment Criteria

- a) Consideration of the social, cultural, economic and environmental benefits from the development and operation of the marine farm and marine farming;*
- b) Assessment of effects on values in the coastal environment that are of significance to Tangata Whenua;*
- c) Consideration of the layout and positioning of the marine farm structures to ensure continued reasonable public access (including recreational access) in the vicinity of the marine farm;*
- d) Consideration of the specific location, extent and nature of disturbance to the foreshore and seabed from the anchoring systems, and the management of the effects of that disturbance;*
- e) Consideration of the structural safety and security of the proposed structures and anchoring systems;*

²⁵ Section 42A Report, page 4, paragraph 17.

- f) *Assessment of any adverse effects from the proposed structures, nets, vessels, anchoring systems and lighting systems on the following:*
- *navigational safety, including the layout and positioning of the marine farm structures and the provision of navigation warning devices and signs;*
 - *natural character, landscape and visual amenity values, including the colour, reflectivity and external finish of buildings and structures, and the size, design and location of the buildings;*
 - *marine mammals, pelagic fish and seabirds.*
- g) *Assessment of any adverse effects from the discharges to coastal water, including:*
- *The effects from seabed deposition and changes to water quality;*
 - *Ecological effects, including cumulative effects, relating to the proximity of ecologically important marine habitats;*
 - *Environmental standards against which the ecological, water quality and bed deposition effects of the discharges are monitored and evaluated;*
 - *Provision for staged increases in the scale of feed discharges and for monitoring of the effects of each stage against environmental standards;*
 - *Adaptive management approaches to the management of effects from seabed deposition and changes to water quality;*
- h) *Assessment of biosecurity and disease risks;*
- i) *Assessment of any adverse effects from the use of submerged artificial lighting within the marine farm;*
- j) *Consideration of best management practices in relation to:*
- *Shark, marine mammal and seabird interactions with the marine farm and surrounding area;*
 - *waste materials and debris from the marine farm;*
 - *the storage and use of fuels and oils on the marine farm;*
- k) *Consideration of the management of the emission of noise from the marine farm in order to ensure that the noise limits are achieved;*
- l) *Consideration of the management of any adverse effects from discharges to air from diesel- and petrol-powered generators and equipment;*

- m) *Consideration of the management of any adverse effects of odour discharges from marine farming.*
- n) *Consideration of the management of any adverse effects from the taking, use and discharge of coastal water necessary for undertaking the marine farming activity.*

Positive effects

- NZCPS Policy 6(2)(a) and Policy 8

124. The applicant is not claiming significant positive economic effects for the community. However the proposal would (if it goes ahead) contribute to some degree to the economic well being of people and communities.

Effects on natural character

- NZCPS Policy 13(1)(b)
- MRPS Policy 8.1.6
- Sounds plan Objective 2.2.1
- PMEP Policy 6.2.2

125. I have found that the increase in area of the depositional footprint generated by the increased pens would cause an adverse effect on natural character. The degree of this adverse effect is uncertain because it is not clear what the increase in footprint would be.

Effects of the proposal on notable habitats and related species

- NZCPS Policy 11
- MRPS Policy 5.3.11
- Sounds plan Policy 4.3.1.2 and 9.3.2.1.1
- PMEP Policy 8.2.9

126. I accept that there will be a potential adverse effect on the quality and area of king shag habitat. As above, because the increase in depositional footprint is unknown, the scale of potential adverse effects caused by the increase in footprint is unknown.

Adverse visual effects

- NZCPS Policy 6(1)(h) and 15(b)
- Sounds plan Objective 5.3.1

127. I have found there will be an adverse visual effect from the proposal when viewed close up (less than 250 metres). Beyond that distance it will be difficult to differentiate between the existing visual effects and those related to the increase in pen area.

Navigational safety

- MSRMP Policy 19.3.1.1

128. I have found navigational safety to be a major area of concern.

Precautionary approach

- NZCPS Policy 3(1)
- Sounds plan Policy 2.2.1.7

129. I have found with respect to king shag and the effects of the unknown increase in depositional footprint that a precautionary approach has not been taken. Further the uncertainties related to the structural integrity of the existing farm and that of the proposed extensions and the consequential implications for navigational safety do not demonstrate a precautionary approach.

Amenity values

- MRPS Policy 7.1.7
- PMP Objective 7.2

130. I have found that there will be some adverse effects on amenity values - particularly visual amenity when viewed close to the farm.

131. Section 104D RMA requires me to apply the *gateway* test to the proposal.

132. Consent can only be granted to a non-complying activity if:

- a. the adverse effects of the activity on the environment will be minor; or
- b. the application is for an activity that will not be contrary to the relevant objectives and policies of the relevant planning documents.

133. With respect to (a) I find that the benthic effects cannot be said to be minor, nor are the potential adverse effects on navigational safety minor.

134. With respect to (b), the proposal is consistent with some of the relevant planning provisions, and inconsistent with others. Overall, I cannot determine that the proposal is contrary to the relevant provisions, so the proposal passes the s 104D test and falls to be considered under s 104.

Part 2 RMA

135. Following the Court of Appeal in Davidson²⁶ I am only required to undertake a Part 2 assessment in the event I consider the operative plans contain invalidity, incomplete coverage or uncertainty of meaning. I find no such deficiency. However, in case I am incorrect in this finding I provide a brief Part 2 assessment.

²⁶ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

Section 5 RMA

136. I find the proposal to be inconsistent with sustainable management. There are some adverse effects (such as depositional footprint) which are unable to be quantified, and navigational safety issues that have not been addressed to my satisfaction.

Section 6(a) RMA

137. Preservation of the natural character of the coastal environment is a matter of national importance which must be recognised and provided for. The increase in depositional footprint will adversely affect natural character and there is a 50% increase in pen area which cannot be considered as minor.

Section 6(c) RMA

138. There will be a potential adverse effect on the feeding habit of king shag as a result of an increase in depositional footprint.

Section 6(d) RMA

139. Access to the shore will not be affected. Public access to the new pens will be restricted. I consider this effect to be minor.

Section 6(e) RMA

140. As noted, two iwi groups have submitted in opposition to this proposal. However, my understanding is the matters raised in these submissions are:

- a lack of consultation;
- exclusion of tangata whenua iwi from traditional fishing grounds;
- an increased distribution of waste products from the farm.

141. I consider the adverse effects on tangata whenua iwi by a reduction of access to their traditional fishing grounds created by the proposed new pens to be minor - the existing pens already restrict access to the immediate - - the additional effect created by the new pens will be minor. The increase in waste (depositional footprint) has been discussed elsewhere in this decision and has been found to be a major obstacle for the applicant. The existing footprint is 14 hectares greater than that allowed by consent conditions, and this proposal will increase that by an unknown amount.


Section 7 RMA

142. There are a number of *other matters* that this proposal conflicts with, or potentially conflicts with, namely:

- 7(c) the maintenance and enhancement of amenity values - 50% increase in pen size and 30% increase in length of the farm will not maintain or enhance the amenity of any persons navigating in Waitata Reach when they are within 250 metres of the farm;
- 7(f) the maintenance and enhancement of the quality of the environment.

Conclusion

143. I have considered all the evidence presented to the hearing and the submissions that I have received since. I conclude that the applicant has failed to show that this proposal meets the purpose of the RMA: in particular, the failure to address the existing depositional footprint already covering 14 hectares beyond consented maximum and the applicant's failure to profile the expected footprint from the increase in pen area.
144. Further, the applicant has failed to satisfy me that the existing farm is *safe* in navigational terms, or that the increase in pen size will result in a farm which is safe in terms of navigation.
145. These two matters alone leave me no option but to decline the application.
146. Because I have declined the s 88 application, I have no need to consider the application under s 127 to amend the conditions of resource consent.

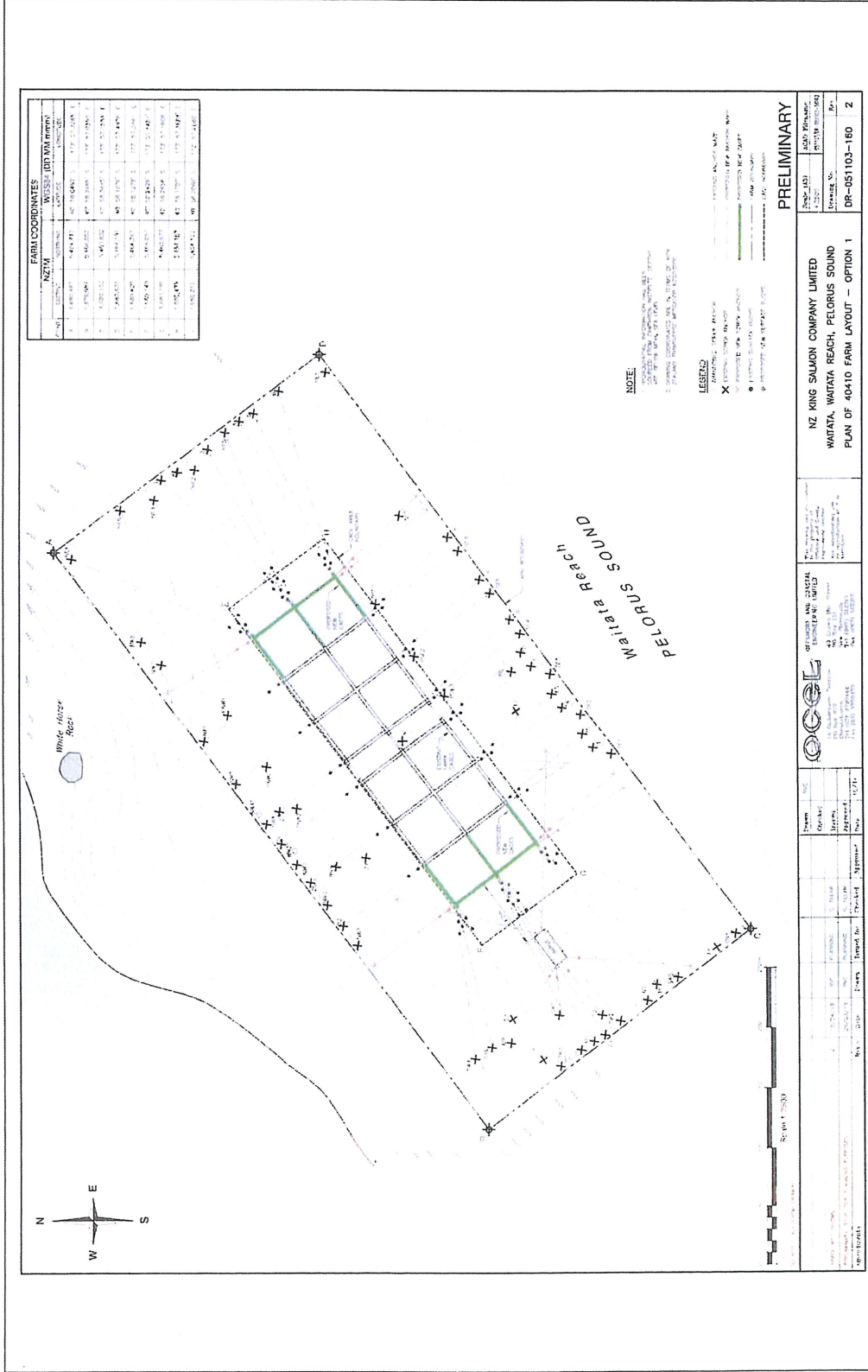


.....
Hearing Commissioner

13 March 2020

.....
Date

Appendix 1 Detailed plan of the existing farm and proposed extensions



Appendix 2 List of Relevant Policy Provisions

New Zealand Coastal Policy Statement 2010	
Policy 3(1)	Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
Policy 6(1)h)	In relation to the coastal environment: consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects.
Policy 6(2)(a)	Recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area.
Policy 6(2)(b)	Recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area.
Policy 6(2)(c)	Recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places.
Policy 6(2)(e)(ii)	Promote the efficient use of occupied space, including by requiring the removal of any abandoned or redundant structure that has no heritage, amenity or reuse value.
Policy 8	Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by: (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.
Policy 11	To protect indigenous biological diversity in the coastal environment: (a) avoid adverse effects of activities on: (i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists (iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare; (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on: (iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh.
Policy 12	(1) Provide in regional policy statements and in plans, as far as practicable, for the control of activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread, and include conditions in resource consents,

	<p>where relevant, to assist with managing the risk of such effects occurring.</p> <p>(2) Recognise that activities relevant to (1) include:</p> <ul style="list-style-type: none"> a. the introduction of structures likely to be contaminated with harmful aquatic organisms; b. the discharge or disposal of organic material from dredging, or from vessels and structures, whether during maintenance, cleaning or otherwise; and whether in the coastal marine area or on land; c. the provision and ongoing maintenance of moorings, marina berths, jetties and wharves; and d. the establishment and relocation of equipment and stock required for or associated with aquaculture.
Policy 13(1)	<p>To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development:</p> <ul style="list-style-type: none"> (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; ...
Policy 15	<p>To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use and development:</p> <ul style="list-style-type: none"> (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;...
Policy 23(1)	<p>In managing discharges to water in the coastal environment, have particular regard to:</p> <ul style="list-style-type: none"> a. the sensitivity of the receiving environment; b. the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and c. the capacity of the receiving environment to assimilate the contaminants; and: d. avoid significant adverse effects on ecosystems and habitats after reasonable mixing; e. use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and f. minimise adverse effects on the life-supporting capacity of water within a mixing zone.

Marlborough Regional Policy Statement

Objective 5.3.10	The natural species diversity and integrity of marine habitats be maintained or enhanced.
Policy 5.3.11	Avoid, remedy or mitigate habitat disruption arising from activities occurring within the coastal marine area.
Objective 7.1.2	To maintain and enhance the quality of life of people of Marlborough while ensuring that activities do not adversely affect the environment.
Policy 7.1.7	Promote the enhancement of the amenity values provided by the unique character of Marlborough settlements and locations.
Objective 7.1.9	To enable present and future generations to provide for their wellbeing by allowing use, development and protection of resources provided any adverse effects of activities are avoided, remedied or mitigated.
Policy 7.1.10	To enable appropriate type, scale and location of activities by: clustering activities with similar effects; ensuring activities reflect the character and facilities available in the communities in which they are located; promoting the creation and maintenance of buffer zones (such as stream banks or greenbelts); locating activities with noxious elements in areas where adverse environmental effects can be avoided, remedied or mitigated.
Objective 7.2.7	The subdivision, use and development of the coastal environment in a sustainable way.
Policy 7.2.8	Ensure the appropriate subdivision, use and development of the coastal environment.
Policy 7.2.10	<p>(b) Public access and recreational use will be considered when assessing all proposals for development of the coastal marine area.</p> <p>(c) Access to or along the coastal marine area will only be restricted for reasons of public safety, defence purposes, security, or matters of national importance including the protection of natural values and Maori cultural values.</p> <p>(d) Developments proposed in the coastal marine area may be allowed where they provide for public use/benefit.</p> <p>(e) Allocation of space for aquaculture in the coastal marine area will be based on marine habitat sustainability, habitat protection, landscape protection, navigation and safety, and compatibility with other adjoining activities.</p>
Objective 8.1.2	The maintenance and enhancement of the visual character of indigenous, working and built landscapes.
Policy 8.1.5	Promote enhancement of the nature and character of indigenous, working and built landscapes by all activities which use land and water.
Policy 8.1.6	Preserve the natural character of the coastal environment.

Marlborough Sounds Resource Management Plan

Chapter 2 - Natural Character

Part 2.2	
Objective 1	The preservation of the natural character of the coastal environment, wetlands, lakes and rivers and their margins and the protection of them from inappropriate subdivision, use and development.
Policy 1.1	Avoid the adverse effects of subdivision, use or development within those areas of the coastal environment and fresh-water bodies which are predominantly in their natural state and have natural character which has not been compromised.
Policy 1.2	Appropriate use and development will be encouraged in areas where the natural character of the coastal environment has already been compromised, and where the adverse effects of such activities can be avoided, remedied or mitigated.
Policy 1.6	In assessing the appropriateness of subdivision, use or development in coastal and freshwater environments regard shall be had to the ability to restore or rehabilitate natural character in the area subject to the proposal.
Policy 1.7	To adopt a precautionary approach in making decisions where the effects on the natural character of the coastal environment, wetlands, lakes and rivers (and their margins) are unknown.

Chapter 4 - Indigenous Vegetation and Habitats of Indigenous Fauna

Part 4.3	
Objective 1	The protection of significant indigenous flora and fauna (and trout and salmon) and their habitats from the adverse effects of use and development.
Policy 1.2	Avoid, remedy or mitigate the adverse effects of land and water use on areas of significant ecological value.

Chapter 5 - Landscape

Part 5.3	
Objective 1	Management of the visual quality of the Sounds and protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.

Chapter 6 - Tangata Whenua and Heritage

Part 6.1.2	
Objective 1	Recognition and provision for the relationship of Marlborough's Maori to their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga.
Policy 1.2	Recognise values important to tangata whenua, including the concepts of mauri, effects on the mana of iwi or hapu, and the ability of tangata whenua to provide manaakitanga.

Chapter 8 - Public Access

Part 8.3	
Objective 1	That public access to and along the coastal marine area be maintained and enhanced.

Policy 1.2	Adverse effects on public access caused by the erection of structures, marine farms, works or activities in or along the coastal marine area should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable.
Chapter 9 - Coastal Marine	
Part 9.2.1	
Objective 1	The accommodation of appropriate activities in the coastal marine area whilst avoiding, remedying or mitigating the adverse effects of those activities.
Policy 1.1	Avoid, remedy and mitigate the adverse effects of use and development of resources in the coastal marine area on any of the following: a) Conservation and ecological values; b) Cultural and iwi values; c) Heritage and amenity values; d) Landscape, seascape and aesthetic values; e) Marine habitats and sustainability; f) Natural character of the coastal environment; g) Navigational safety; h) Other activities, including those on land; i) Public access to and along the coast; j) Public health and safety; k) Recreation values; and l) Water quality.
Policy 1.2	Adverse effects of use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects to the extent practicable.
Part 9.3.2	
Objective 1	Management of the effects of activities so that water quality in the coastal marine area is at a level which enables the gathering or cultivating of shellfish for human consumption (Class SG).
Policy 1.1	Avoid the discharge of contaminants into the coastal marine area where it will modify, damage or destroy any significant ecological value.
Policy 1.2	Avoid the discharge of contaminants into the coastal marine area where it will adversely affect: a) Areas identified by iwi as being of special spiritual, cultural or historical significance; or b) Areas identified as outstanding landscape.
Policy 1.3	No discharge, after reasonable mixing, (either by itself or in combination with other discharges) should limit the consumption of seafood from the coastal marine area.
Policy 1.4	Recognise and provide for the need to: a) Preserve the natural character of the coastal environment; b) Protect public health; c) Protect the visual aesthetics of the area; d) Protect the olfactory aesthetics of the area; e) Protect sites of spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori, including waahi

	<p>tapu, tauranga waka, maataitai and taonga raranga;</p> <p>f) Avoid, remedy or mitigate adverse effects on ecological systems including natural movement and productivity of biota, natural biodiversity and adverse effects on:</p> <ul style="list-style-type: none"> • shellfish areas; • fish spawning and nursery areas; • bird-breeding and nursery areas; • fish and bird migration through estuaries; • feeding patterns; • habitats important to the continued survival of any indigenous species; • wildlife and marine biota; and • the intrinsic value of ecosystems. <p>g) Avoid, remedy or mitigate adverse effects on existing lawful activities, particularly marine farming, fishing, recreation and tourism activities when assessing a permit to discharge water or contaminants into the coastal marine area.</p>
Policy 1.6	Ensure that every coastal permit to discharge contaminants into the coastal marine area contains conditions requiring the discharger to monitor the effects of the discharge and compliance with the water quality classification (SG).
Part 9.4.1	
Objective 1	Protection of the coastal environment by avoiding, remedying or mitigating any adverse effects of activities that alter the foreshore or seabed.
Policy 1.1	<p>Avoid, remedy and mitigate the adverse effects of activities that disturb or alter the foreshore and/or seabed on any of the following:</p> <ol style="list-style-type: none"> a) Conservation and ecological values; b) Cultural and iwi values; c) Heritage and amenity values; d) Landscape, seascape and aesthetic values; e) Marine habitats and sustainability; f) Natural character of the coastal environment; g) Navigational safety; h) Other activities, including those on land; i) Public access to and along the coast; j) Public health and safety; k) Recreation values; and l) Water quality
Policy 1.9	Enable the adverse visual or ecological effects of particular farms to be addressed when the rules expressly provide for that.
Policy 1.11	Recognising (by way of discretionary activity status in the Coastal Marine Zone 3) provision for salmon farming at three appropriate sites.
Chapter 19 - Water Transportation	
Part 19.3	
Objective 1	Safe, efficient and sustainably managed water transport systems in a manner that avoids, remedies and mitigates adverse effects.
Policy 1.1	Avoid, remedy or mitigate the adverse effects of activities and structures on navigation and safety, within the coastal marine area.

Proposed Marlborough Environment Plan	
Chapter 3 - Marlborough's Tangata Whenua Iwi	
Objective 3.2	Natural and physical resources are managed in a manner that takes into account the spiritual and cultural values of Marlborough's tangata whenua iwi and respects and accommodates tikanga Māori.
Objective 3.3	The cultural and traditional relationship of Marlborough's tangata whenua iwi with their ancestral lands, water, air, coastal environment, waahi tapu and other sites and taonga are recognised and provided for.
Policy 3.1.3	Where an application for resource consent or plan change is likely to affect the relationship of Marlborough's tangata whenua iwi and their culture and traditions, decision makers shall ensure: <ul style="list-style-type: none"> (a) the ability for tangata whenua to exercise kaitiakitanga is maintained; (b) mauri is maintained or improved where degraded, particularly in relation to fresh and coastal waters, land and air; (c) mahinga kai and natural resources used for customary purposes are maintained or enhanced and that these resources are healthy and accessible to tangata whenua; (d) for waterbodies, the elements of physical health to be assessed are: <ul style="list-style-type: none"> i. aesthetic and sensory qualities, e.g. clarity, colour, natural character, smell and sustenance for indigenous flora and fauna; ii. life-supporting capacity, ecosystem robustness and habitat richness; iii. depth and velocity of flow (reflecting the life force of the river through its changing character, flows and fluctuations); iv. continuity of flow from the sources of a river to its mouth at the sea; v. wilderness and natural character; vi. productive capacity; and vii. fitness to support human use, including cultural uses. (e) how traditional Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakāinga and taonga raranga are to be recognised and provided for.
Policy 3.1.5	Ensure iwi management plans are taken into account in resource management decision making processes.
Chapter 5 - Allocation of Public Resources	
Objective 5.10	Equitable and sustainable allocation of public space within Marlborough's coastal marine area.
Policy 5.10.3	Where a right to occupy the coastal marine area is sought, the area of exclusive occupation should be minimised to that necessary and reasonable to undertake the activity, having regard to the public interest.
Chapter 6 - Natural Character	
Objective 6.2	Preserve the natural character of the coastal environment, and lakes and rivers and their margins, and protect them from inappropriate subdivision, use and development.

Policy 6.2.2	Avoid significant adverse effects of subdivision, use or development on coastal natural character, having regard to the significance criteria in Appendix 4.
Policy 6.2.7	In assessing the cumulative effects of activities on the natural character of the coastal environment, or in or near lakes or rivers, consideration shall be given to: (a) the effect of allowing more of the same or similar activity; (b) the result of allowing more of a particular effect, whether from the same activity or from other activities causing the same or similar effect; and (c) the combined effects from all activities in the coastal or freshwater environment in the locality.
Chapter 7 - Landscape	
Objective 7.2	Protect outstanding natural features and landscapes from inappropriate subdivision, use and development and maintain and enhance landscapes with high amenity value.
Policy 7.2.4	Where resource consent is required to undertake an activity within an outstanding natural feature and landscape or a landscape with high amenity value, regard will be had to the potential adverse effects of the proposal on the values that contribute to the landscape.
Policy 7.2.7	Protect the values of outstanding natural features and landscapes and the high amenity values of the Wairau Dry Hills and the Marlborough Sounds Coastal Landscapes by: (a) In respect of structures: (i) avoiding visual intrusion on skylines, particularly when viewed from public places; (ii) avoiding new dwellings in close proximity to the foreshore; (iii) using reflectivity levels and building materials that complement the colours in the surrounding landscape; (iv) limiting the scale, height and placement of structures to minimise intrusion of built form into the landscape;...
Chapter 8 - Indigenous Biodiversity	
Objective 8.1	Marlborough's remaining indigenous biodiversity in terrestrial, freshwater and coastal environments is protected.
Policy 8.2.9	Maintain, enhance or restore ecosystems, habitats and areas of indigenous biodiversity even where these are not identified as significant in terms of the criteria in Policy 8.1.1, but are important for: (a) the continued functioning of ecological processes; (b) providing connections within or corridors between habitats of indigenous flora and fauna; (c) cultural purposes; (d) providing buffers or filters between land uses and wetlands, lakes or rivers and the coastal marine area; (e) botanical, wildlife, fishery and amenity values; (f) biological and genetic diversity; and (g) water quality, levels and flows.
Policy 8.3.1	Manage the effects of subdivision, use or development in the coastal environment by: (a) avoiding adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(a) of the New Zealand Coastal Policy Statement 2010;...

	(c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(b) of the New Zealand Coastal Policy Statement 2010 or are not identified as significant in terms of Policy 8.1.1 of the Marlborough Environment Plan.
Policy 8.3.2	Where subdivision, use or development requires resource consent, the adverse effects on areas, habitats or ecosystems with indigenous biodiversity value shall be: (a) avoided remedied or mitigated where indigenous biodiversity values have not been assessed as being significant in terms of Policy 8.1.1.
Policy 8.3.5	In the context of Policy 8.3.1 and Policy 8.3.2, adverse effects to be avoided or otherwise remedied or mitigated may include: (a) fragmentation of or a reduction in the size and extent of indigenous ecosystems and habitats; (b) fragmentation or disruption of connections or buffer zones between and around ecosystems or habitats; (c) changes that result in increased threats from pests (both plant and animal) on indigenous biodiversity and ecosystems; (d) the loss of a rare or threatened species or its habitat; (e) loss or degradation of wetlands, dune systems or coastal forests; (f) loss of mauri or taonga species; (g) impacts on habitats important as breeding, nursery or feeding areas, including for birds; (h) impacts on habitats for fish spawning or the obstruction of the migration of fish species; (i) impacts on any marine mammal sanctuary, marine mammal migration route or breeding, feeding or haul out area; (j) a reduction in the abundance or natural diversity of indigenous vegetation and habitats of indigenous fauna; (k) loss of ecosystem services; (l) effects that contribute to a cumulative loss or degradation of habitats and ecosystems; (m) loss of or damage to ecological mosaics, sequences, processes or integrity; (n) effects on the functioning of estuaries, coastal wetlands and their margins; (o) downstream effects on significant wetlands, rivers, streams and lakes from hydrological changes higher up the catchment; (p) natural flows altered to such an extent that it affects the life supporting capacity of waterbodies; (q) a modification of the viability or value of indigenous vegetation and habitats of indigenous fauna as a result of the use or development of other land, freshwater or coastal resources; (r) a reduction in the value of the historical, cultural and spiritual association with significant indigenous biodiversity held by Marlborough's tangata whenua iwi; (s) a reduction in the value of the historical, cultural and spiritual association with significant indigenous biodiversity held by the wider community; and (t) the destruction of or significant reduction in educational, scientific, amenity, historical, cultural, landscape or natural character values.

Chapter 9 - Public Access and Open Space	
Objective 9.1	The public are able to enjoy the amenity and recreational opportunities of Marlborough's coastal environment, rivers, lakes, high country and areas of historic interest.
Policy 9.1.1	The following areas are identified as having a high degree of importance for public access and the Marlborough District Council will as a priority focus on enhancing access to and within these areas:... (b) coastal marine area,...
Policy 9.1.13	When considering resource consent applications for activities, subdivision or structures in or adjacent to the coastal marine area, lakes or rivers, the impact on public access shall be assessed against the following: (a) whether the application is in an area identified as having a high degree of importance for public access, as set out in Policy 9.1.1; (b) the need for the activity/structure to be located in the coastal marine area and why it cannot be located elsewhere; (c) the need for the activity/structure to be located in a river bed and why it cannot be located elsewhere; (d) the extent to which the activity/subdivision/structure would benefit or adversely affect public access, customary access and recreational use, irrespective of its intended purpose; (e) in the coastal marine area, whether exclusive rights of occupation are being sought as part of the application; (f) for the Marlborough Sounds, whether there is practical road access to the site of the application; (g) how public access around or over any structure sought as part of an application is to be provided for; (h) whether the impact on public access is temporary or permanent and whether there is any alternative public access available; and (i) whether public access is able to be restricted in accordance with Policies 9.2.1 and 9.2.2.
Chapter 15 - Resource Quality	
Objective 15.1a	Maintain and where necessary enhance water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters, so that: (a) the mauri of wai is protected; (b) water quality at beaches is suitable for contact recreation; (c) people can use the coast, rivers, lakes and wetlands for food gathering, cultural, commercial and other purposes; (d) groundwater quality is suitable for drinking; (e) the quality of surface water utilised for community drinking water supply remains suitable for drinking after existing treatment; and (f) coastal waters support healthy ecosystems.
Policy 15.1.1	As a minimum, the quality of freshwater and coastal waters will be managed so that they are suitable for the following purposes: (a) Coastal waters: protection of marine ecosystems; potential for contact recreation and food gathering/marine farming; and for cultural and aesthetic purposes;...

	<p>Enable point source discharge of contaminants or water to water where the discharge will not result:</p> <p>(a) in any of the following adverse effects beyond the zone of reasonable mixing:</p> <ul style="list-style-type: none">i. the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;ii. any conspicuous Policy 15.1.9 change in the colour or significant decrease in the clarity of the receiving waters;iii. the rendering of freshwater unsuitable for consumption by farm animals;iv. any significant adverse effect on the growth, reproduction or movement of aquatic life; or...
--	--

