

From: Matt Pemberton
Sent: 1 Dec 2022 15:49:30 +1300
To: MDC
Cc: Sue Bulfield-Johnston-5141;Geoff Deavoll
Subject: FW: Appeal of resource consent APP-U190438 by NZKS - North of Te Uku/Cape Lambert
Attachments: NOA - NZKS - Blue Endeavour Decision - DOC-7211365 FINAL.pdf, New Zealand King Salmon - North of Cape Lambert - U190438 - Submission - DOC-6128572.pdf

Kia ora koutou

Please see **attached**, by way of service, the relevant appeal documents in relation to the above matter.

Ngā mihi

Matt

Matt Pemberton

Senior Solicitor | Rōia Matua
Whakatū Nelson Office
Phone: 027 359 9183

www.doc.govt.nz



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From: Matt Pemberton
Sent: Thursday, 1 December 2022 3:17 pm
To: McKee, Christine <Christine.McKee@justice.govt.nz>; Imboden, Daliah <Daliah.Imboden@justice.govt.nz>
Cc: Geoff Deavoll <gdeavoll@doc.govt.nz>
Subject: Appeal of resource consent APP-U190438 by NZKS - North of Te Uku/Cape Lambert

Kia ora korua Chrissie and Daliah

Please find **attached** the relevant documents for an appeal under s 120 of the Resource Management Act 1991 against a decision of Marlborough District Council on Resource Consent application U190438 by New Zealand King Salmon Company Limited North of Te Uku/Cape Lambert, North Marlborough.

I will forward the decision document by way of separate email because of size constraints. The filing fee will be paid by Mr Deavoll (cc'd) tomorrow.

The deadline for filing is tomorrow but if you could please confirm receipt today that would be much appreciated.

Ngā mihi

Matt

Matt Pemberton

Senior Solicitor | Rōia Matua
Whakatū Nelson Office
Phone: 027 359 9183

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BEFORE THE ENVIRONMENT COURT

ENV – 2022 - CHC

CHRISTCHURCH REGISTRY

I MUA I TE KOOTI TAIAO

IN THE MATTER

of an appeal under Section
120 of the Resource
Management Act 1991

BETWEEN

**Director-General of
Conservation**

Appellant

AND

**Marlborough District
Council**

Respondent

**NOTICE OF APPEAL BY THE DIRECTOR-GENERAL OF CONSERVATION
1 DECEMBER 2022**

Department of Conservation
Counsel acting: Matt Pemberton
Telephone: 027 359 9183
Email: mpemberton@doc.govt.nz

To: The Registrar
Environment Court
CHRISTCHURCH

Appeal

1. I, Penny Nelson, Director-General of Conservation appeal the decision (**Decision**) in relation to an application for resource consent (**Application**) from the New Zealand King Salmon Company Limited (**NZKS**) for:

New coastal permit to establish and operate two salmon farms within a 1,000 hectares site, on the site coordinates shown as points 5-8 (the south farm) and points 9-11 (the north farm) and to install and maintain cardinal marks shown as points 1-4 on the as detailed on the OCEL drawing SK-051103-521, Rev 5, dated 3 August 2021 attached as Appendix 1 of the Decision.

2. I made a submission on the Application.

Decision

3. I received notice of the Decision on 11 November 2022.
4. The Decision was made on behalf of Marlborough District Council (**Council**) by independent hearing commissioners Craig Welsh, Liz Burge and Rob Enright acting under delegated authority.

Right to appeal

5. I have the right to appeal the Decision under section 120 RMA.
6. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
7. The Decision to which this appeal relates is not excluded by operation of sections 120(1A) or 120(1B) RMA.
8. I appeal the Decision to grant the Application.

Reasons for my Appeal

9. The reasons for my appeal are that:

- a. Some conditions, notably the conditions relating to benthic effects and plan certification, do not represent sound resource management practice. In particular:
 - i. The conditions place significant reliance on the development and implementation of monitoring plans to achieve the benthic compliance limits. The use of monitoring plans is not opposed. However, the conditions relating to the initial Benthic Monitoring Plan (iBMP) and the Benthic Monitoring Plan (BMP) do not provide clear quality standards or criteria to ensure the plans will be fit for purpose for monitoring the compliance limits set out in condition 54. In particular, the conditions are deficient because they:
 - A. do not identify the benthic quality standards, or in their absence, establish clear criteria for identifying and setting the benthic quality standards;
 - B. do not provide that the iBMP and BMP must be prepared in a manner consistent with the Ministry for Primary Industries Benthic and Water Quality Monitoring Open Ocean Aquaculture Best Practice Guidelines 2021 or replacement Guidelines; and
 - C. do not provide a requirement to use best practice scientific methodologies and analyses that are fit-for-purpose, including ensuring the benthic habitat compliance limits set out in condition 54 are able to be practically, effectively, and scientifically monitored and assessed.
 - ii. The consent conditions contain wide discretion for NZKS to create their own iBMP and BMP which will be used to assess compliance with benthic compliance limits. In the absence of clear quality standards or criteria (for ensuring the iBMP and BMP will be fit-for-purpose for monitoring the compliance limits set out in condition 54), the certification process has no clear quality standards or criteria for certifying or not certifying the monitoring plans. At present, the certification process outlined in conditions 108(d), (e)

and (f) only refers to achieving *“the requirements of the relevant condition(s)”* and confirming *“that the requirements of the applicable condition(s) have been satisfied.”* This wording, and the wording of the applicable conditions for the iBMP and BMP, leaves little discretion for the Compliance Manager to assess the quality of the iBMP or BMP, whether they are fit-for-purpose, and whether the benthic habitat compliance limits set out in condition 54 are able to be practically, effectively and scientifically monitored and assessed.

- iii. conditions relating to the “certification” processes are also deficient. In particular:
 - A. Conditions 1(b) and 108 only refer to the requirement that management plans are certified. These conditions should also refer to monitoring plans (as they are also to be certified), specifically the iBMP and the BMP. The definition of ‘certification’ or ‘certify’ also only refers to management plans but should also refer specifically to monitoring plans. The definition also refers to condition 78, which is an error and should refer to the certification process in condition 108;
 - B. The certification process detailed in condition 108 does not explicitly apply to monitoring plans generally or to the iBMP or BMP specifically;
 - C. There is no condition preventing the activity from being undertaken until management plans are certified; the conditions provide that if no confirmation is provided by the Council, the Management Plan is “deemed to be certified”; and
 - D. Condition 108(g) is ambiguous and should be reworded to ensure written confirmation applies to either approving or declining certification.
- b. Unless the matters outlined above are addressed in my view the Decision:
 - i. fails to address the concerns raised in my submission;

- ii. does not promote sustainable management of natural and physical resources, as required by section 5 RMA;
- iii. does not recognise and provide for matters of national importance identified in section 6 RMA, such as protecting significant habitat of indigenous fauna; and
- iv. is inconsistent with the New Zealand Coastal Policy Statement 2010, the Marlborough Sounds Resource Management Plan and the proposed Marlborough Environment Plan.

Mediation

10. I seek mediation of this matter with NZKS, the Respondent and any other interested parties in the first instance.

Relief

11. I seek the following relief:
- a. Amend the conditions of the consent to address the issues identified in paragraph 9(a) of this Notice of Appeal.

Alternative Relief

- b. If the relief sought in paragraph 11(a) is not achieved, I seek by way of alternative relief that the Decision to grant the Application be overturned and consent be refused.

General Relief

- c. Such further or other relief to like effect, that the Court considers fit to address my concerns.
12. I **attach** the following documents to this notice:
- a. a copy of my submission;
 - b. a copy of the Decision; and
 - c. a list of names and addresses of persons to be served with a copy of this notice.

Dated 1 December 2022



Steve Taylor
Director – Office of Regulatory Services
Department of Conservation

Acting pursuant to delegated authority on behalf of the Director-General of
Conservation

Address for service of appellant

Director-General of Conservation
c / Matt Pemberton
Department of Conservation
Private Bag 5
Nelson 7042

Contact Persons

Matt Pemberton
Email: mpemberton@doc.govt.nz
Telephone: 027 359 9183

And

Geoff Deavoll
Email: gdeavoll@doc.govt.nz
Telephone: 027 536 7020

Attachments

A copy of my submission has been forwarded to the Environment Court with this notice of appeal.

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if:

- a. within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- b. within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Environment Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Appendix 1 - List of names and addresses of persons to be served with a copy of this notice

Name	Address for Service
New Zealand King Salmon Company Limited	sally@sallygepp.co.nz qdavies@gwlaw.co.nz
Marlborough District Council	Sue.Bulfield-Johnston@marlborough.govt.nz
Hugh Cowan Angus	angusfamily51@xtra.co.nz
Owen Fisher	king_fisher88@hotmail.com
Barbara Jane Gordon	gordonbarbara538@gmail.com
Warren Tocker	warren.tocker@gmail.com
Seafood New Zealand Limited	karen.olver@seafood.org.nz
Jose & John Reyden	jareyden@gmail.com
Tony Downing	shelley@downing.nz
Carl Patrick Carrington	carlc0205@icloud.com
Karl Jamie Perrott	perrottkarl@hotmail.com
Chris Bowater	chris@bowatermotors.co.nz
Stuart Douglas Barnes	stuart.barnes@kingsalmon.co.nz
Warren & Carol Tilley	zigzag.com@xtra.co.nz
Andrew Desmond Stoneham	andrew.stoneham@yahoo.com
Ryan Thomas Goode	95rgoode@gmail.com
Meseret Hassan	meseret.olsen@kingsalmon.co.nz

Glenda Vera Robb	info@soundsreflection.co.nz
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Gabrielle Margaret Russell Hervey	gayhervey@gmail.com
William John Joy	billjoy111@gmail.com
Robert Schmuke	rschmuke@gmail.com
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Grant Lovell	grant_jodie@hotmail.com
Ai Makino	makino-a@kohyoj.co.jp
Philip David Kennard	philk23@hotmail.com
Hannah Eileen Ellis	hannahellis456@gmail.com
Natural Pet Food Group	nhinton@k9natural.co.nz
Neil Ellis	suxess@xtra.co.nz
Boss Net Cleaning Limited	robwhite@bossaqua.com
The Marine Farming Association Incorporated	ned@marinefarming.co.nz
Friends of Nelson Haven & Tasman Bay (Inc)	rschckrd@xtra.co.nz
Bruce Hearn	apexhearn@xtra.co.nz
Ngati Kuia	tariwairau@ngatikuia.iwi.nz
Guardians of the Sounds Group	clarepinder@gmail.com
The Marlborough Chamber of Commerce Incorporated	pete@marlboroughchamber.nz
Allan & Jacob Bartrom	aab7aab@hotmail.com

John Reuhman	john@ecoworldnz.co.nz
The Global Aquaculture Alliance	kent.inglis@bapcertification.org
Andrej Kopusar	Kopusar.A@gmail.com
Marlborough Environment Centre Incorporated	timnewsham@xtra.co.nz bev.doole@icloud.com
New Zealand Trade and Enterprise	peter.chrisp@nzte.govt.nz Julie.Jackson@nzte.govt.nz
Kenepuru & Central Sounds Residents Association	president@kcsra.org.nz
Environmental Defence Society Incorporated	shay@eds.org.nz
Ministry for Primary Industries	Hamish.Wilson@mpi.govt.nz Michael.Nielsen@mpi.govt.nz
East Bay Conservation Society Incorporated	arapawa.denize@gmail.com
Sanford Limited	AUndorf-Lay@sanford.co.nz
Gibsons Limited	bluewave@mshop.co.nz
New Zealand Sport Fishing Council	secretary@nzsportfishing.org.nz
Clifford E Marchant	cliff.marchant@gmail.com
Sea Shepherd New Zealand	michael@seashepherd.org.nz
Royal Forest & Bird Protection Society of New Zealand Incorporated	w.jennings@forestandbird.org.nz
Tony & Susan Cooper	supercoop@xtra.co.nz
Aquaculture New Zealand	Steph.hopkins@aquaculture.org.nz
Southern Inshore Fisheries Management Company Ltd & Challenger Scallop Enhancement Company Ltd	cscott@southerninshore.co.nz
McGuinness Institute	josie.mcguinness@gmail.com

	morgan.slyfield@stoutstreet.co.nz
Nelson Tasman Chamber of Commerce	ali@commerce.org.nz
Te Ohu Kai Moana Trustee Limited	ika@teohu.maori.nz bianca.hampton@teohu.maori.nz

5 December 2019

DOCDM-6128572

Marlborough District Council
15 Seymour Street
PO Box 443
Blenheim 7240

Attention: Peter Johnson

Dear Peter,

The New Zealand King Salmon Co Limited – North of Cape Lambert, North Marlborough – U190438

I refer to the application by The New Zealand King Salmon Co Limited for coastal permits to establish and operate new salmon farms within a 1791 hectare site located between 5 kilometres and 12 kilometres due north of Cape Lambert.

Please find enclosed a submission by the Director-General of Conservation in respect of this application. The Director-General acknowledges that there may be benefits in 'open ocean' aquaculture and that potentially the adverse effects of open ocean salmon farms may be less than those of similar farms within the enclosed waters of the Marlborough Sounds. However, the Director-General considers that:

- i. The application (if granted in its current form) would provide the consent holder with significant flexibility to modify and expand the activity beyond the scope of what has been evaluated in the Assessment of Environmental Effects; and the application does not adequately describe or assess the full extent of the activity sought to be consented;
- ii. The application as notified does not adequately model or address the adverse effects associated with the proposed activity;
- iii. The activity, if carried out in accordance with the application, has potential to cause significant adverse effects on the marine environment; and
- iv. Measures proposed in the application to monitor and adaptively manage adverse effects are currently inadequate.

The submission further identifies the Director-General's concerns.

I understand that the applicant has commissioned additional modelling of the effects of the proposal on the benthic environment and water column and is preparing drafts of the management plans referenced in the application. It will be important that the modelling is appropriately peer reviewed in accordance with accepted standards. I also anticipate that the applicant will further refine and amend the volunteered conditions of consent.

These areas of work may go some way to address the Director-General's concerns. However, I do not know when the additional information will be made available.

In light of the above, parties to this process should be given sufficient time to review any additional information that may be provided by the applicant, before a hearing is scheduled. Given the technical nature of much of the material, a period of not less than 20 working days would be appropriate.

I can also confirm that the Director-General is willing to participate in a pre-hearing meeting and/or expert caucusing, with the proviso that these are scheduled after the additional information referred to above has been provided, and with adequate lead-in time.

Please contact Lionel Solly in the first instance if you wish to discuss any of the matters raised in this submission, at 027 405 4459 or lsolly@doc.govt.nz.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Hayes', is positioned above the typed name.

David Hayes
Operations Manager
Waitohi / Picton Office

cc. Mr Q Davies, Gascoigne Wicks Lawyers, PO Box 2, Blenheim 7240

Form 13: Submission on publicly notified application concerning resource consent

Resource Management Act 1991

To: Marlborough District Council

Name of submitter: Lou Sanson, Director-General of Conservation

Applicant: The New Zealand King Salmon Co Limited

Locations: North of Cape Lambert, North Marlborough

Description of activity: To establish and operate new salmon farms within a 1791 hectare site located between 5 kilometres and 12 kilometres due north of Cape Lambert¹.

Application number: U190438

My submission relates to: The whole application.

My submission is: I oppose the application as notified.

The reasons for my submission are that:

1. This would be the first 'open ocean' salmon farm/s in New Zealand and would be significantly larger in scale (spatial area, potential feed inputs and potential productivity) than the existing salmon farms in the Marlborough Sounds (individually and cumulatively).
2. I acknowledge that there may be benefits in open ocean aquaculture and that potentially the adverse effects of open ocean salmon farms may be less than those of equivalent farms within the enclosed waters of the Marlborough Sounds.
3. However, the effects of the proposed activity require careful evaluation and management, noting any limitations or uncertainties associated with (inter alia):
 - a. baseline knowledge of the existing environment;
 - b. modelling methodologies used to predict impacts, including model inputs, assumptions, validation, calibration and outputs;

¹ The description and area are as described in the notice posted on Marlborough District Council's website. These differ slightly from the information provided in the application itself.

- c. knowledge of how different parts of the receiving environment are likely to respond at each stage of farm development;
 - d. the ability to define and set thresholds to trigger farm management and/or remedial actions before the adverse effects become overly damaging, and against which the performance of the farms can be assessed;
 - e. the ability to monitor and measure actual changes in the receiving environment at an appropriate spatial and temporal scale using appropriate indicators and thresholds;
 - f. the ability to determine whether the activity is the cause of, or a contributor to, any changes that are detected; and
 - g. the ability to remedy adverse effects that exceed acceptable/agreed thresholds, within acceptable timescales.
4. With respect to the current application the matters in which I have a particular interest are:
- a. effects on benthic ecosystems, habitats and species;
 - b. effects on water quality;
 - c. interactions with, and potential adverse effects on, marine mammals, sharks and seabirds;
 - d. effects on natural character;
 - e. the applicant's approach to monitoring, adaptive management, environmental standards and conditions; and
 - f. consistency with the New Zealand Coastal Policy Statement 2010.
5. I submit that:
- a. The application does not meet the requirements in s 88(2) of the Resource Management Act 1991, as the description of the activity and the assessment of effects are inadequate, and do not satisfy the purpose for which it is required. In particular:
 - i. The application as notified does not describe or adequately model or address the adverse effects associated with the proposed activity, including the full (or potential) extent of the activity sought to be consented.
 - ii. The application (if granted in its current form) would provide the consent holder with significant flexibility to modify and expand the activity beyond the scope of what has been evaluated in the Assessment of Environmental Effects, particularly given the flexibility proposed with respect to the siting and layout of structures and the ability for the consent holder to significantly increase the amount of feed that may be discharged during the term of the consent.
 - b. In relation to water quality, the assessment is insufficient to appropriately quantify and evaluate the risks to the water column environment from the proposal:

- i. The water column assessment has not been completed for the full scale of the proposed activity;
 - ii. The water quality assessment is based upon a simplified dilution approach, without regard for spatial/geographic differences caused by wind, tidal and wave effects. Spatially explicit 3-dimensional modelling of the water column would be more appropriate for a proposal of this nature and scale.
 - iii. The assessment of potential nutrient exchange connections between the proposed activity and the Pelorus and Queen Charlotte Sounds is incomplete; and there is inadequate consideration of potential cumulative effects including in relation to the s360 A-C Resource Management Act 1991 salmon farm relocation process being considered by the Minister of Aquaculture.
- c. There are significant indigenous ecosystems, habitats and species within and adjacent to the 1791 ha application site, including some which are rare, at risk, vulnerable, or threatened, or which are important during the vulnerable life stages of indigenous species or for recreational, commercial, traditional or cultural purposes.
- d. In relation to the benthic environment:
 - i. Further depositional modelling of farm waste is required to properly assess the effects of the proposed activity, including as a result of farm location, layout, feed and production levels, the biophysical conditions of the site, and the influence of resuspension and seabed rugosity;
 - ii. The model applied to predict benthic effects has not been tested/calibrated against actual monitoring data and therefore the ability of the model to appropriately predict effects has not been established;
 - iii. The proposed activity may cause adverse effects on horse mussel and brachiopod beds which are an indigenous habitat and ecosystem threatened in the coastal environment.
- e. In relation to natural character, the assessment of effects has not fully assessed the impact of the proposed activity on all elements of natural character, including the naturalness of the seabed and the water column, or given appropriate weight to them.
- f. The activity, if carried out in accordance with the application, has potential to cause significant adverse effects on the marine environment, including significant adverse effects on indigenous ecosystems, habitats and species (including sharks, marine mammals and seabirds), and natural character; and
- g. Measures proposed to monitor, assess and manage adverse effects – including the proposed approach to ‘adaptive management’ – are currently inadequate and do not meet legal requirements; cannot remedy the insufficient description of the activity

and assessment of effects; and cannot adequately avoid, remedy or mitigate the adverse effects of the activity (including on marine mammals, seabirds, the benthic environment, water quality and natural character) or meet minimum requirements of adaptive management.

- h. The draft conditions are insufficient to prescribe the activity sought to be consented and to set minimum standards to manage effects, including limits on feed, location of structures, benthic and water quality impacts, and limits on sediment zinc and copper concentrations.
- i. The application places significant reliance on the development and implementation of management plans after the grant of consent. However, draft management plans for this activity/site have not been included in the application; their objectives are not always clearly stated in the volunteered conditions and therefore are not enforceable; and some matters that should be addressed in the consent authority's determination of the application (including changes in location and substantial increases in feed quantities) would be unlawfully delegated to the management plan process.

6. Consequently, the application is contrary to the provisions of the:

- a. Marlborough Sounds Resource Management Plan, including Chapters 2, 4 and 9;
- b. Proposed Marlborough Environment Plan, including Chapters 6 and 8;
- c. Marlborough Regional Policy Statement, including Objective 5.3.1.0 and Policy 5.3.11;
- d. New Zealand Coastal Policy Statement 2010, including Policies 3, 11, 13 and 23; and
- e. The Resource Management Act 1991, particularly sections 5, 6(a) and 6(c).

Decision sought:

That the application is declined.

I do wish to be heard in support of my submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.



David Hayes

Operations Manager

Waitohi / Picton Office

Acting pursuant to delegated authority

Date: 5 December 2019

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Address for service:

Department of Conservation

Whakatū / Nelson Office

Private Bag 5

Nelson 7042

Attn: Lionel Solly