

THE RESOURCE MANAGEMENT ACT 1991

APPLICANT: NEW ZEALAND KING SALMON COMPANY LIMITED

LOCAL AUTHORITY: MARLBOROUGH DISTRICT COUNCIL

SUBJECT MATTER: (i) an application pursuant to s127 to vary the conditions of existing resource consent U090660; and
(ii) an application pursuant to s88 to permit a moored service barge on an existing salmon farm in Crail Bay.

SITE DESCRIPTION: MFL area 048; Crail Bay, Pelorus Sound: adjacent to Part Section 2 Block VI, Oriieri SD

REFERENCES: U090660, U130743 and U130781

HEARING DATE: 5 & 6 March 2014

Appearances:

- Quentin Davies and Peta Brunell for the Applicants,
- **Graeme Clarke** for himself and for **Elizabeth Clarke**
- **Kristen Gerard** for herself and for **Michael Gerard**, and for the **Kenepuru and Central Sounds Residents Association Inc.**

- Raymond Smith for **Te Runanga o Ngati Kuia Trust**
- Rob Schuckard for **Friends of Nelson Haven and Tasman Bay** and **Sustain Our Sounds Inc.**

Bruno Brosnan to present a s42A report

Summary of decision: Each application is granted subject to conditions

DECISION OF THE COMMISSIONERS

PRELIMINARY¹

On 5 December 2013 the applicant made two applications in relation to an existing marine farm in Crail Bay, Pelorus Sound. The form of application used departs somewhat from that envisaged by Regulations made under the Act, but in the introduction of what is intended (at least in part) as the Applicant's assessment of effects on the environment the proposals are described as:

- (a) An application under section 127 of the Resource Management Act 1991 to change the existing conditions of coastal permit (U090660) allowing the activity of salmon farming granted by the Marlborough district Council on the 9th of July 2010; and
- (b) An application under section 88 of the Resource Management Act 1991 for a coastal permit for a barge to support salmon farming activities on the farm site.

These descriptions are fleshed out in other parts of the accompanying documentation, and it is the detail there contained which led to an (administrative) division of the overall proposal in to three parts, summarised in Mr Brosnan's s42A report as:

To change the conditions of U090660 with respect to structures, rotation of structures and the Environmental Quality Standards for seabed bio-deposition with new EQS conditions that formally recognise the most recent scientific methodology used to monitor compliance,

New coastal permit (U130743) to occupy coastal water with a 30.0 by 10.0 metre barge, disturb the seabed with 4 mooring blocks and discharge greywater up to 10,000 litres per day in Crail Bay ...

New coastal permit (U130781) to occupy the coastal marine area with a variety of cage designs ... and to allow for the movement of the sea cages within the area defined for site #8513²

It is not clear to us that all elements of these descriptions are to be found in the applications or in the documents attached to them. In particular, there appears to be little reference within that documentation to 'occupation', either in its ordinary meaning or in the statutorily defined sense. We will return to this point later.

These descriptions were adopted in the (limited) notification that the present applications were afforded, a process that produced submissions from:

- K and M Gerard, to all;
- G & E Clark, to U130743 and U130781;
- The Kenepuru and Central Sounds Residents Association, to all;
- Te Runanga o Ngati Kuia, to all; and
- Friends of Nelson Haven and Tasman Bay, and Sustain Our Sounds Incorporated, to all.

We (Cr D Oddie, Cr J Arbuckle and J Milligan) have been appointed as commissioners to hear and determine the present applications.

¹ In this section and in those to follow, quoted passages are either shown within quotation marks or shown in-set and in a font smaller than the rest of the text

² As we understand it, 'site #8513' comes from a register of sites used by the Marlborough DC. The intent of this appears merely to be that of distinguishing one operation from another.

Section 113(1) of the Act identifies matters that must be set out in a decision, amongst them being:

- (ac) the principal issues that were in contention; and
- (ad) a summary of the evidence heard; and
- (ae) the main findings on the principal issues that were in contention;

A summary of evidence will be found attached to this decision as Attachment C. Where greater detail is required it will be found within the body of this decision, as will the other matters required by s113.

BACKGROUND

As is the case with many aquaculture ventures within the coastal marine area of the Marlborough Sounds, the present farm has a complex consent history detailed in 3 folders of material supplied to us as part of Mr Brosnan's s42A report. In March 1976 M F Bull applied to the Director General, Ministry of Agriculture and Fisheries, for "the lease or licence of an area of 11 acres (4.5 hectares) ... [t]o farm Blue mussel and Green Lipped mussel" using the 'long line' method. In the result, a licence was granted (to M F and J A Bull) on 27 June 1978, to expire on 1 September 1992. That licence, subsequently identified as MFL48 was later assigned, varied (to enable the farming of additional shellfish species) and extended. By 1996 the farming operation had come to involve 10 long-lines "using a concrete block or Danforth anchor system with an anchor warp length of at least three times the depth of water." By then also the operational area had expanded (by means of resource consent U960385, subsequently renewed by coastal permit U060533) to include a further 1.09ha, adjacent to the north.

By 2006 it had been discovered that many marine farms were not (or not wholly) in their consented positions. Accordingly, and in July of that year, the then licence / consent holder sought a 're-validation' of the boundaries of MFL048 (as it was by then identified), an exercise that produced an overlap with U960385. 'Re-validation' was achieved in August 2006 through the use of a review process authorised by the Aquaculture Reform (Repeals and Transitional Provision Act 2004, section 10(3) of which provided that a "deemed coastal permit [as MFL048 had by then become] is subject to the same conditions as applied to the lease or licence immediately before the [specified] date ..."

The re-validation process does not appear to have been given a separate MDC reference; it bears only the 'file reference' MFL048. The full text of the 2006 decision is:

The authorised space of MFL048 is hereby amended to reflect the actual space identified by the co-ordinates specified on the plan attached, date stamped 10 August 2006.

That plan shows the overlap with the U960385 area, the original boundaries of which appear never to have been altered or re-validated.

It is not clear whether or to what extent, permit U960385 / U060533 survived this exercise. The first, granted in 1996, is clearly a 'tack-on' to Licence 48 in its originally established position, as the site co-ordinates establish. The second, originally granted in 2006, was amended in May 2008 via a s128 review of conditions. As to the 2006 renewal³, Mr Brosnan's report says:

U060533, on face value, was a replacement consent for the expiring U960385 but the papers do indicate that the boundaries sought were a replacement of not only U960385 but of MFL048 as well.

³ The application is expressed to be for "Coastal permit (occupancy) to replace existing permit U960385", the decision describes itself as for a "New Coastal permit to continue operating an existing 1.09ha marine farm (replacing U960385) ..."

It is true that some of the material accompanying the application reads as *if* this was the case and the s42A report is somewhat ambivalent on this point. However there is no uncertainty or ambiguity in the consent itself that would justify us seeking extrinsic aids to interpretation.

Further, and in 2008, U060533 underwent a s128 review for the principal purpose of ensuring that "the current conditions are consistent with current practice". This, while given a 'site reference' of 8513, is clearly limited to the 'extension area' of 1.09ha.⁴

It is likely that the decision-maker was aware that re-validation had not altered the boundaries of the extension authorised by U960385 and that "in reality the validation [of MFL048] makes the extension redundant."⁵ Perhaps for that reason the formal 'review' decision of 12 May 2008 applies only to the 'extension' area of 1.09ha which, in virtue of its foundational consent, authorised the farming of wider range of species.

At the same time as this was going on, and by what appears to have been a separate process determined by the same decision-maker, the Marlborough District Council embarked on a s128 review of the "conditions of the *deemed* coastal permit" (our emphasis), described as for *site* 8513 but (confusingly) given the *file reference* U060533. A report and recommendation prepared for *that* exercise, although referring to the "1.09ha extension to the north"⁶, seems clearly to be focused on the re-validated authorisation⁷, as does the subsequent decision, accompanying 'Annotation History' and attached plan.

Notably (i) the list of species referred to in the heading of *this* decision is confined to green mussels, scallops, dredge oysters and pacific oysters – a much smaller list of species than that with which the other review was concerned – and (ii) the following were included in the suite of new conditions:

That without restricting the consent holder from reasonably undertaking the activities authorised by this resource consent, the consent holder shall not undertake the activities in such a way as would effectively exclude the public from the permit area [Condition 2]

That the occupancy be limited to the 4.5 hectare area ... illustrated on the plan attached ... [Condition 4; the plan locates the 'old' area in its 'new' position]

We conclude, therefore, that by the end of 2008 there had come into existence, in relation to the whole of the area of present relevance:

- **A deemed Coastal Permit identified as MFL048,**
- **in respect of an area of 4.5ha,**
- **defined by co-ordinates established through the re-validation process**
- **for the farming of green mussels, scallops, dredge oysters and pacific oysters,**
- **by the long-line method (a maximum of 10 lines),**
- **expiring on 31 December 2024, and**
- **having conditions inserted through the 'review' decision of 12 May 2008.⁸**

⁴ See note 1 above

⁵ Para 7, report of D G Hoskins for consideration by the decision-maker, 7 April 2008

⁶ By way of an *actual* coastal permit rather than a deemed one

⁷ The only *deemed* coastal permit of present relevance.

⁸ One of a number of similar decisions made on that day.

There remains the possibility that U060533 (with its larger list of consented species and the conditions inserted following a s128 review) continues to have some effect with regard to the north-western corner of the subject site. The applicant's position is that we are to treat this consent as irrelevant to the present application, and we are content to do so.

In September 2009 Island Aquafarms Ltd⁹ sought discharge and coastal permits to:

Add Pacific King Salmon (...) to [the] list of species to be farmed on MFL048/ site 8513 and variation to structures and discharge consent on the site to enable farming of fin fish;

To allow for 9 polar circle fish cages to be placed onsite and to allow disturbance of the seabed with anchoring devices. Provide for the discharge of feed supplies to water, for the feeding of finfish some of which may not be ingested, and for the discharge of waste from fish to the water column and seabed.

Despite the references to species *addition* and the variation of permitted structures the form of the application is more in line with s88 than s127. It appears to have been notified on a s88 basis and submissions approach it in that way.

The site plan attached to and forming part of this application shows dimensions consistent with MFL048 (both as originally consented and as varied through the April 2008 review). An expanded description of the proposal (contained in the attached AEE) says that the site "is licensed for 8 longlines", indicating that two of these would be displaced by the "installation of Polar Circle Fish Cages" themselves having a total area of 3912m². In initial intent, the line of fish cages was to move over time. As to this, the AEE says:

Six longlines of variable length will continue to be utilised for growing mussels and other species. It is expected that a rotation of the cages onto other lines will occur on an irregular basis dependent on enrichment of the seabed beneath the cages and the need to fallow zones which are occupied by the cages.

This rotational approach was largely rejected by the decision-maker.

In its decision of 9 July 2010 the MDC gave consent to:

Coastal Permits for the farming of Pacific King Salmon ... within marine farm license [sic] MFL048 including the placement of up to 9 circular fish cages, the disturbance of the seabed with anchoring devices and the discharge of up to 1770 tonnes of fish feed to water and associated discharge of fouling and waste from fish, nets and other structures. (Marine farm site 8513)

Conditions attached to this consent confine the consented cages to the seaward side of the site¹⁰, impose monitoring and compliance conditions of a kind then thought to be appropriate, have nothing to say about mussel farming on the balance of the site and include (as condition 2):

The occupancy shall be limited to the site area illustrated on the plan attached to this consent, and confined to the area specified within the schedule of New Zealand map grid co-ordinates.

⁹ Which we assume to be the then consent-holder; permits were ultimately issued to Pacifica Salmon Limited under reference U090660.

¹⁰ Condition 16 provides for movement in circumstances that give rise to a need to do so, but the condition itself appears unlawful, at least in part.

The question which remains is whether consent U090660 is to be understood as 'free-standing' (in the sense that its implementation is independent of MFL048) or whether it operates further to vary that original (deemed) resource consent. On balance we think the first to be correct view.¹¹ We proceed, therefore, on the basis that the deemed coastal permit is irrelevant to the present applications, although the activities that it authorises have at least the potential to occur on those parts of the subject site that, from time to time, are *not* being used for the cage-farming of salmon – that is, deemed resource consent MFL048 survives to the extent that the activities authorised by it is not inconsistent with those conducted under the authority of U090660.

On that basis, and on the assumption that the present applications are granted, the authorisations available to the consent holder will, *so far as salmon farming activities are concerned*, be confined to those contained in U090660 as varied, together with such further consents as are now sought.

THE PROBLEM OF 'OCCUPANCY'

It seems obvious that, at least when words are used in their ordinary meaning, the applicant's proposals will involve an 'occupation' of part of the coastal marine area. Section 12(2) provides (in part) that:

No person may, unless expressly allowed by a national environmental standard, a rule in a regional coastal plan or in any proposed regional coastal plan for the same region, or a resource consent,—

- (a) occupy any part of the common marine and coastal area

In this context 'occupy' is a defined term (s2) and bears a meaning somewhat different from that commonly understood.¹² Two questions therefore emerge:

- (i) Does what the applicant proposes to do amount to 'occupation' *in the defined sense*? and
- (ii) Will the provisions of U090660 as it is now proposed to be varied, together with those of the further consents now sought, *expressly allow* occupation of that kind?

As we have already noted, U090660 approaches this issue in a somewhat back-handed way: Condition 2 *limits* the "area of occupation". Conditions having this form are commonly to be found in coastal permits issued by the MDC, both for cage farm and long-line proposals. In the first case it seems that the "exclusion of ... persons" (a necessary condition of occupation in the defined sense) is seen as essential; in the second that desire is often disavowed. For those reasons a convention appears to have developed in which the same form of words is given different meanings, depending on the factual circumstances to which it is applied. That this is so was made clear in the evidence of Mr Clarke. One of us (JM) doubts that such a convention can create an express allowance.

¹¹ This appears to be the Applicant's position – Mr Davies' closing submissions, paragraphs 4 – 7.

¹² **occupy** means the activity of occupying any part of the coastal marine area—

- (a) where the occupation is reasonably necessary for another activity; and
- (b) where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and
- (c) for a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense

Turning to the applications themselves: that which seeks to modify U090660 merely retains (former) condition 2 and adds nothing further. The 'service barge' application (put forward under s88) mentions 'occupation' in the AEE, firstly in a sentence beginning "The barge will be occupied in daytime hours ...", secondly in the sentence "No permanent occupation will be provided on the barge", and thirdly (and more importantly) in the statement "Consent is required ... for the associated occupation of the coastal marine area, introduction of a structure and discharges to coastal waters." In the first two of these the word 'occupation' is clearly not being used in its defined sense.

In paragraph 11 of his s42A report Mr Brosnan says:

The original proposal was presented as two separate applications: 1) variations to U090660 to allow flexibility in cage location and design, and variations to Environmental Quality Standards; 2) a new coastal permit of a barge. ... I was of the opinion [for reasons that we will come to later] that a proposal to vary U090660 to allow different cages in different positions was outside the scope and consideration of U090660 and was more appropriately addressed through a section 88 application. Hence file 130781 was created and the relevant application material duplicated.

That approach led to a *re-formulation* of the changes proposed in the original applications, relevantly to describe them (in part) as for new coastal permits "to occupy coastal space with a ... barge ..." and (again more importantly) "to occupy the coastal area with a variety of cage designs..."¹³ As we understand it, limited notification was affected on this basis.

Again, one of us (JM) has reservations – it seems to him to be axiomatic that even if the references to occupation in the re-formulated descriptions are to be understood in the defined sense (which he doubts), a consent holder cannot be "expressly allowed" to carry out an activity, consent for which was not expressly applied.

These issues were discussed in the course of the hearing. We note the applicant's position to be that, if the present applications are approved, it will have rights sufficient for its purposes. In particular, he has provided us with material indicating that the *extent* to which members of the public might be excluded was put before the decision-maker in U090660, referring to passages in the s42A report prepared for that hearing.

We cannot determine this issue – that is the province of a Court of competent jurisdiction. Having identified and discussed the possibility of a problem, all we can now do is proceed on the basis of the applicants' stance.

¹³ The applicant does not seem to have accepted this way of looking at things. In his opening, Mr Davies identified the applications (in support of which he appeared) as set out on the face-page to this decision, and continued to deal with them in that way.

THE STATUTORY CONTEXT(S)

Section 88 – consents that authorise activities

As received, one of the present applications was expressed to be made in terms of s88 of the Act. When considered within the overall statutory scheme that section provides one of the means¹⁴ by which the proscriptions of Part 3 of that Act may be avoided; that is, s88 consents authorise the carrying out of activities which, in terms of that Part, cannot otherwise lawfully be undertaken.

Later sections¹⁵ detail the procedures to be followed and the matters to be considered. In particular, section 104(1) sets out the matters to which we are to have regard, "subject to Part 2" of the Act".

In general, decision-makers cannot determine the date upon which a resource consent commences – that depends upon whether an appeal is lodged and, if so, when it is determined.¹⁶ Additionally, section 116A, which has to do with the commencement of a coastal permit for *aquaculture* activities, allows for consideration by the chief executive of the Ministry of Fisheries following which that functionary may intervene in the RMA process. Some permissible interventions can affect the date upon which a coastal permit for aquaculture activities is to commence.

Section 123A provides that:

(1) A coastal permit authorising aquaculture activities to be undertaken in the coastal marine area must specify the *period* for which it is granted.

(2) The *period* specified under subsection (1) must be not less than 20 years *from the date of commencement of the consent* under section 116A unless—

(a) the applicant has requested a shorter *period*; or

(b) a shorter *period* is required to ensure that adverse effects on the environment are adequately managed. [our emphasis]

In consequence, decision-makers in our position cannot determine the *date* upon which an aquaculture consent is to expire. Presumptively therefore, s88 consents authorising aquaculture activities will expire on presently unspecifiable dates not earlier than some time in 2034 (as compared with the present situation: 31 December 2024.)

Activities the subject of consideration under this section have the status ascribed to them by the provisions of the relevant plan.

¹⁴ The others are: permitted activity status in terms of a relevant Plan; particular statutory authorisations 9as in the case of some pre-existing activities)

¹⁵ Sections 89 to 121

¹⁶ Section 116

Section 127 – the alteration of existing consents

Section 127 provides a means by which “[t]he holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent”. Cases decided under this section establish the following propositions:

- Whether an application is a proper one for consideration under s 127 (rather than as for a new consent under s88) turns on the question of whether what is sought is fundamentally different in nature (or gives rise to materially different adverse effects on the environment) than is the case of the existing consent regime; a question of fact and degree to be determined in the circumstances of each case;¹⁷ and
- Artificial distinctions should not be drawn between the activity consented to and the ‘conditions’ of consent (therein so described).

The criteria noted in the first bullet point are not easy to apply in particular cases, and will remain so until fleshed out by a series of court decisions. At first sight, however, it seems that fundamental or adverse difference will fall to be judged in the context of matters relevant to the purpose of the Act. If that is the case then the second (materially different adverse effects on the environment) may well be subsumed by the first so that s127 will be available so long as (i) the impacts of the proposed changes are not materially different *when judged in Part 2 terms*, and (ii) no extension of the term of consent is sought¹⁸. On this base the test (fundamental or material difference) has to do with consequence, rather than description.

Taken in combination, the two ‘bullet point’ matters require a realistic approach rather than one bound by form. So viewed, the question of whether s127 should be invoked in any particular case has analogies to (i) the issue of ‘scope’ in plan change cases; and (ii) the extent to which a consent may depart from its originating application. Questions of this sort do not answer to simple criteria and, depending on circumstances; there may be considerable room for judgments of fact and degree.¹⁹

S127 (3) provides:

Sections 88 to 121 apply, with all necessary modifications, as if—

- (a) the application were an application for a resource consent for a discretionary activity; and
- (b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.

At least in the present context clause (b) does not seem to narrow our ability to consider effects on the environment: the clear inclusion (through s3) of *cumulative* effects enables us to ask whether the “effects of the change”, *when accumulated to those of the consent that it is sought to change* (as well as to such other existing environmental effects of relevance), extend the totality of effects beyond the tolerable range.

¹⁷ The *Body Corporate* decisions – (2000) 6 ELRNZ 183 and [2000] 3 NZLR 513

¹⁸ Section 127(1) (b)

¹⁹ As, e.g. in *Clearwater Resort Ltd v Christchurch CC* HC Christchurch AP34/02, and *Haslam v Selwyn District* (for which we do not have a reference) where the location of an industrial composting operation was shifted from one side to the other of a large rural block

The present applications

In the preceding section we noted that, during the processing of the applicant's s127 application, it became (in the Council's system) two applications separately identified – this on the basis of a view that "a proposal to ... allow different cages in different positions was outside the scope and consideration of U090660", the consent that the applicant now seeks to vary. According to Mr Davies, this is ultimately a matter for us to determine, citing one of the *Body Corporate* decisions in support of his submission to this effect.²⁰

In many cases it may be possible to decide this question at an early stage. Given, however, that it turns on fact-and-degree issues – whether there *is* a fundamentally different activity and/or materially different adverse effects – there will be cases in which the decision will need to await evidence and argument. We think that this is one such case and will turn our minds again to the issue at a later stage in this decision.

For the moment, however, two points may be made. Firstly, and to the extent that the issue has to do with the scope of the original consent, we note that the *application* (from which consent U090660 emerged) itself contemplated a migration of cages. Our reading of the decision suggests that the decision to decline consent to this aspect of the then proposal was based on a precautionary approach which "requires that movement of the fish cages or fallowing should be dealt with as a variation to allow for comprehensive review without the constraints of s128 of the Resource Management Act" (para (vi))

Secondly, Mr Brosnan appears to have thought that "the authority can only consider persons involved in the original process or those affected by the change..." That seems to us not fully to reflect the statutory provisions relating to notification (and in particular the effect of s127 (4)).

THE STATUTORY CRITERIA

Section 104(1) provides that:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

- (a) any actual and potential effects on the environment of allowing the activity; and
- (b) any relevant provisions of—
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Those provisions are applicable (with necessary modifications) to 'change' applications²¹ as if:

- (a) the application were an application for a resource consent for a discretionary activity; and
- (b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.

²⁰ (2000) 6 ELRNZ 183 at [73]

²¹ Section 127(3)

It now seems clear that, in the present context, the expression 'subject to Part 2 [of the Act]' requires decision-makers, after considering all relevant matters and giving them their appropriate weight, to exercise an overall and integrated judgment as to whether grant of consent (or approval of an application for change) would better meet the single purpose of the Act than would refusal of consent (or rejection of the proposed change)

SECTION 104(1)

Overview

In summary form, the applicant's present (and overall) proposal has three elements for which approval is sought:

- (a) Four alternative ways of carrying on aquaculture activities on the MFL048 site;
- (b) In relation to the salmon farming element of each of them, the attachment of a set of conditions that better reflect current 'best practice' than do those presently applicable; and
- (c) The establishment of a (relatively) permanent barge as an adjunct to salmon farming, with related discharges of 'greywater' to water in the coastal marine area.

The first of the 'options' detailed in the s127 application is significant in that it provides for precisely the same arrangement of activities as is presently authorised by U090660. Thus, and as well as forming Option 1 in the present proposal, it represents the position that would obtain were the present applications refused. Accordingly *its* consequences form a kind of touchstone by which the three other options are to be measured.²²

The importance of this point comes from the requirement of an 'overall judgment' referred to in the previous section. In the end, our decision must come down to a choice between approval (with or without conditions²³) and rejection – the latter carries with it the likely consequence that at least the salmon farming aspects of the present consent regime will be re-commenced. It follows that, when we come to consider, and to ascribe significance to, the environmental effects of the present proposals, we are engaged in a comparative exercise.

The actual and potential effects on the environment of allowing the activity

We think that the issues and evidence are well summarised by Ms Dawson, a resource management consultant called by the applicant, and we largely accept her expressions of opinion (based as they are on other evidence before us). We discuss 'environmental effects' under six heads:

Effects on natural character, landscape character and visual amenity values

Option 1 (the presently consented situation) provides for a row of 9 circular cages (of two sizes) along the seaward edge of MFL048 and indicates 6 longlines between them and the landward edge. If our earlier analysis is correct, the continued existence of a longline operation depends upon deemed resource consent MFL048 as amended. Thus the effects for consideration here (and which are to form the basis of a comparative exercise) are those of (i) the 'polar circle' cages (impounding 3912m² of CMA surface area), (ii) the salmon farming operations associated with

²² We are here setting aside for the moment the proposal for a barge.

²³ The s108 power to impose conditions is available in the case of s127 applications – s127(3)

their use, (iii) a 6-line mussel farm to landward of them, (iv) the mussel farming operations,²⁴ and (v) restrictions of public access associated with that.

On the assumption that the 'barge' proposal receives consent in relation to *this* option at least one of the 6 longlines is likely to go and some aspects of the operational movements will decrease. The barge will, however, have visible presence, as will some consequent operational movements.

Options 2 – 4 involve differing cage designs and configurations which, from a seascape / visual perspective can be expected to elicit differing responses. An important feature of each of these options is that they involve clusters of cages that will move about the site so as to enable conditions for the protection of the marine environment to be met. In the opinion of Mr Langbridge, a landscape architect called by the applicant:

On balance, if one was to consider the relative differences [between cage designs] and the impact that these differences would have on the overall qualities and characteristics of the inner waters of this part of the bay ... they would be largely comparable.

Mr Langbridge is also of the view that:

- The landscape values of the wider Sounds are not threatened by what is proposed;
- Locally, the landscape is unremarkable, without a specific unique landscape feature or characteristic of note or value, although it forms a valued part of the 'fabric' of the bay;
- The local landscape reflects its zoning, a 'working' landscape with evidence of productive forestry on land and marine farming activities within the coastal waters
- When viewed from the middle distance the observed landscape is large scale, extensive and panoramic, with evidence of a working character. The landscape is not pristine, and at this distance would not be substantially affected by increases in the visibility of salmon farming;
- The addition of a barge would, at distances greater than 600 metres or so, have relatively limited visual effect;
- The greatest effect of all proposals will be experienced from close quarters, from which viewpoints the impact of all options will be "highly substantial", the difference between the options would, however, depend on the viewpoint adopted and (so far as Options 2 – 4 are concerned) the position of the cage clusters at the time.

One consequence of cage cluster movement (Options 2 – 4) is that, when compared with Option 1, more of the MFL048 area will *seem* to be available for public use because of the *absence* of a mussel farming element. (At this point we note that the pen areas are, according to Mr Gillard: Option 1, 3912 m²; Option 2, 2700m²; Option 3, 3200 m²; Option 4 2292 m². In addition there will be, as practical impediments to public access, aspects of the attendant mooring system and, if consented, the barge itself.)

This feature was advanced as a *positive* environmental effect (comparatively speaking) capable of off-setting (in part) the increased visibility of Option 2 – 4 cages and the proposed barge. There seems some force in the point but, given continuance of mussel farming as part of Option 1 (and assuming the existence of a barge); such an off-set is not available to it.

²⁴ Perhaps including – although this was never referred to – beach debris that is often a consequence of mussel harvesting operations.

Overall we conclude that, for Options 2 – 4 plus barge, the *overall* landscape/visual effect will be in the 'neutral to slightly improved' range when the comparison is made between each of them and the activities authorised by a combination of deemed resource consent MFL048 and U090660 (Option 1 as proposed). However, when the comparison is made between Option 1 (assuming the presence of both a remnant mussel farm and the proposed barge) the overall assessment moves to 'slightly detrimental'. In making these assessment we assume the existence of appropriate consent conditions.

Noise

The evidence of Mr Halstead, an acoustical engineer called by the applicant, was that *operational* noise from the barge would not be unreasonable, given a restriction of barge operations to daylight hours – a condition proposed by the applicant. This was not contested at the hearing and we accept his conclusions.

One matter that was raised at the hearing was the potential for 'nuisance noise' arising from the use, by those working on the barge and in the salmon farming operation, of 'ghetto-blasters'. The applicant offered a condition in that regard which seemed acceptable to the submitters present.

Smell

The concern here arises from 'morts' – dead fish recovered from the cages. The applicant acknowledges that fish deaths are not uncommon (indeed, on occasion, can be calamitous) and gave evidence of its practice of investigation, mort recovery, storage (in sealed containers) and disposal off site. Although the formal submissions (and some of the submitters present) indicate the desirability of "stringent conditions" in this regard there was no real indication of what conditions of that sort might look like. Given the applicant's evidence we see no need to take that matter further

Effects on the seabed environment

U090660 both enables salmon farming (in larger cage areas than those contemplated for Options 2 – 4) and provides a set of conditions intended to limit the effects of the consented activity on the seabed environment. As Dr Taylor acknowledged, those controls do not *directly* address effects on the water column or the biota within it – instead (the more easily monitored) benthic effects may be viewed as a proxy for those above.

Part of the purpose of the present application is to replace the old conditions with new – ones that we accept better reflect current best practice. Underlying this purpose, however, is the intention that the new conditions should have the effect for which the old were designed, but without the deficiencies that they have been discovered to have. At the heart of Dr Taylor's evidence is his opinion that this is what they do.

If the s127 application is properly to be considered as for a new consent then, in theory, it is open to us to 'wind back' benthic effects by the imposition of more stringent conditions. Leaving aside the difficulty of ascertaining what those conditions might be, it is worth noting that the *grant* of a later consent (even if intended as a replacement) does not extinguish the old. It is always open to a consent holder to decide *not* to give effect to a consent with the result that, on expiry of the statutory period, it expires or lapses. A condition attached to the later consent, including one purporting to extinguish the earlier, obtains 'life' only when that consent is given effect to.

Some of the 'limiting' conditions of the 'old' consent have been carried forward to the 'new' – in particular, that which limits the ultimately permissible feed discharge. But the point of our earlier comment is that, were we to take the s88 route and issue a *replacement* consent with conditions of greater stringency, the applicant could simply elect not to accept it and return to its currently existing authorisations. We can see no practical benefit in this course.

Nevertheless Mr Schuckard argued that we should take it, primarily because, on his view:

- The new conditions are *less* restrictive than the old;
- The site is intrinsically unsuited to salmon farming;
- Conditions of a kind approved by the Board of Enquiry are unsuited to 'low flow' conditions;
- There are possible adverse consequences of salmon farming (e.g., an increase in harmful algal blooms) which the applicant has not adequately 'cleared away' and
- There are methodological deficiencies in the approach taken by the Cawthron Institute, advisers to the applicant.

We think that we understand the arguments advanced by Mr Schuckard in support of these propositions – all that we wish to say is that the evidence before us, considered as a whole, does not convince us of them,

There is, however, one aspect of Mr Schuckard's argument that we would like to pursue further. He argued for a lower EQS maximum for zones 1 and 2 – the areas below and beside (i) the net pens in Option 1, and (ii) the total net pens area in Options 2-4. His argument for this was based on a schematic diagram found in the application documentation and which shows, in general terms, the way in which aspects of the monitoring and compliance conditions were intended to work. Mr Schuckard's point was that this showed that an EQS assessment of 5 was positioned close to what might be described as a 'tipping point'. Setting the limit at 4.5 would, he thought, give time for management responses to 'kick in' before the tipping point was reached.

We agree with this argument, at least in part. The issue, however, goes to management rather than to compliance, and we think that it can be dealt with by a condition requiring management responses *before* the 'compliance' limit is reached.

Effects of discharges from the barge

We were informed that the discharge, to the coastal marine area, of 'wash down' water from vessels is a permitted activity in the Marlborough Sounds Resource Management Plan (The Plan). A discharge permit for that is therefore not required. This part of the 'barge' application is intended to deal with greywater generated from inside the covered structure on the barge, primarily for reasons of equipment cleaning and personal hygiene.

Quite small volumes are involved – 10,000 litres/year²⁵ averages as around 30 litres/day, well within the range granted in previous consents. We do not think that, at this level, there will be any noticeable effects on the environment.

Effects on navigational safety

Although this was raised in formal submissions it was not addressed in any significant way by submitters at the hearing. We think that this is a matter than can be adequately addressed by conditions on any consent.

²⁵ Not per day, as indicted in part of the s42A report

Relevant provisions of identified statutory documents

There are no national environmental standards or other regulations of relevance.

The New Zealand Coastal Policy Statement 2010 contains several objectives and policies relevant to the present applications but, in the present circumstances, little in the way of clear guidance. Some of the objectives and policies are (arguably) advanced by marine farming in Crail Bay²⁶, while others are (again arguably) contravened.²⁷ Regardless of where the balance falls however, and for reasons already discussed, the NZCPS can have little impact until circumstances arise in which the question of whether marine farms ought to continue in existence at the two sites falls for consideration. Until then, the fact remains that they *are* there and are entitled to remain in something like their present form and with something like their present consequences.

Relevant Plans

The areas now under consideration are within Marine Zone 2 of the Plan, a zone within which the existence of aquaculture activities is contemplated. The *status* of those activities depends, however, upon where in that zone they are. The Plan provides for a 'ribbon' around the coast within which marine farming is a discretionary activity – outside that ribbon (but within Marine Zone 2) the activity is non-complying.

There is room for doubt as to precisely where the seaward edge of that ribbon is. To avoid that issue, and for the purposes of the 'barge' application, Mr Davies accepts that we should consider the proposal as for a non-complying activity. Presumably he would take the same stance if we were to take the view that the s127 application should be considered in terms of s88.

In that event sections 104(2A) and 104D are relevant. The first requires that regard be had to "the value of the investment of the existing consent holder". The applicant led no evidence as to that. The second imposes a threshold test:

... a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- (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 objectives and policies of—
 - (i) the relevant plan ...

For reasons already given – to be supplemented by one to follow – we are of the view that clause (a) is met. As to clause (b): after considering the relevant provisions of the Plan we accept Mr Brosnan's assessment that the proposals are not contrary to them, an opinion supported (in the case of the barge application) by Ms Dawson.

As Mr Brosnan points out, the Plan provides little in the way of 'policy' direction capable of informing the discretion to grant or refuse consent to a marine farming activity within Marine Zone 2 when the farm in question is wholly or partly outside the discretionary activity 'ribbon'. The most that we think can be said is that non-complying status carries with it the inference that consent is likely to be refused unless some Part 2 consideration justifies grant. That will be discussed below.

²⁶ Notably Objective 6; Policies 6 and 8

²⁷ Notably Objectives 2 and 4; Policies 13 and 15 (although in the latter case, Plan provisions suggest that aquaculture development within the relevant area is not 'inappropriate')

Against that inference, however, is one arising from the fact that the Plan provides for marine farming and points to Marine Zone 2 as the appropriate place. It can thus be said – perhaps more forcibly in the case of those farms wholly within the ‘ribbon’ – that the boundary between effects which are adverse and those which are not should be drawn in a way that recognises the general appropriateness of marine farming within the zone

Other relevant matters

Although Option 1 contemplates the continued existence of mussel farming within the MFL048 area the applicant led no evidence with regard to it. We are thus wholly unable to evaluate the extent to which the environmental effects of mussel and salmon farming might combine – either cumulatively or otherwise. During the hearing a suggestion was made that some synergies were possible – mussels taking up some part of the nutrient enrichment created by uneaten salmon feed. On the other hand it seems at least possible that a constant rotational process whereby one activity succeeds the other could impact adversely on the seabed and its biota. We have no information either way.

All that the applicant said about Option 1 was that it wished to retain that as an option. Seemingly, it has no present intention to take up mussel farming. We thus have difficulty in understanding why it should accept a condition requiring suspension of its MFL048 rights in the event that it takes up Options 2 – 4 but reject that approach in relation to Option 1. As earlier indicated, we think that the ‘barge’ proposal reasonably calls for some sort of ‘set-off’.

The 2010 decision in U090660 rejected the ‘rotational’ aspects of the then proposal largely because of its potential to impact adversely on the inshore environment, particularly given concerns about an absence of significant water flow (leading to a more concentrated deposition) and doubts about the speed at which the seabed under the cages might recover.²⁸ Dr Taylor’s evidence deals with these issues in some detail, concluding that the issues may effectively be dealt with through the monitoring now proposed and through the use of rotation as a management tool. As we understand it, rotation is not seen as a means of reducing the wider-field effects of salmon farming – rather, it spreads the near-field effects over a wider area in a way that allows for seabed recovery, now understood to occur more rapidly than was previously thought. We accept this approach noting that the continuance of salmon farming on this site is likely to depend on that operation’s ability to meet near-field conditions – that is, the EQS standards for Zones 1 & 2.

SECTION 88 OR SECTION 127?

We have concluded that

- The consent which it is sought to alter is that identified in the council records as U090660. That authorises *only* the establishment of a 3912m² salmon farm at a specified location within the 4.5ha area identified in MFL048;
- The proposed alterations are, essentially (i) to the types of cages used, (ii) to the positioning of those cages within the MFL048 area (a rotational system proposed for Options 2 – 4) and to the suite of monitoring and compliance conditions, so as better to achieve the originally intended environmental effect;
- These alterations will alter, to some extent, the way in which environmental effects of the salmon farming operation will impact but without altering, in any significant way, the nature or extent of those impacts; and

²⁸ The decision-maker relied on material in the s42A report and evidence presented by the Department of Conservation

- No consequences will arise of significance so far as the provisions of relevant statutory documents or of Part 2 of the Act are concerned

We are therefore of the view that, in relation to the applicant's s127 application, the relevant tests are met.

CONDITIONS

With each of its applications the applicant provided a draft set of conditions, which, by the commencement of the hearing, had been modified in an attempt to meet some matters raised in submissions. During the course of the hearing the applicant accepted changes to these drafts and later provided us with up-dated drafts. In general, we accept the appropriateness of the conditions now proposed.

There are, however, some alterations that we think should be made. In the case of the s127 application we think that there should be conditions:

- Suspending the effect of MFL048 for so long as *any* of the options authorised by (amended) consent U090660 are implemented;
- Clarifying that rotation is not a feature of Option 1;
- Providing that the consent holder is not unreasonably to impede public access to and over that part of the MFL048 area as is not used for salmon farming purposes
- Requiring the consent holder to advise the Council immediately that its monitoring suggests that an EQS level of 4.5 has been or is likely to have been reached in relation to zones 1 and 2, and provide the council with a management plan showing how it proposes to avoid a breach of the conditions of compliance;
- Picking up a recommendation by Mr Langbridge that the cages be finished in recessive colours / shades; and
- Requiring the removal of all structural elements on expiry of the consent.

In relation to the 'barge' application, conditions:

- Precluding the use of radios with speakers 'exterior' to the barge enclosure, except such as are necessary for the purposes of maritime safety

PART 2 MATTERS

Section 8 says that:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Further, s7 (a) requires us to have particular regard to kaitiakitanga; s6 (e) that we recognise and provide for "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga."

Objectives and Policies to a similar effect are to be found in the Sounds Plan.

Mr Smith developed these matters in considerable detail with the intention of showing that matauranga maori afforded an additional and (statutorily) necessary dimension in the question of what counts as the sustainable management of natural and physical resources. We accept that this is so, and accept also that Ngati Kuia are kaitiaki of the area of present concern... From that standpoint, and on behalf of his iwi, Mr Smith listed the 'adverse effects' of concern as follows:

- alteration of natural coastal processes, particularly sediment transport processes from marine farm structures, and nutrient cycling processes.
- deposition of shell, uneaten feed and waste material beneath farms.
- disposal of non-biodegradable material into the CMA ...
- degradation of natural character, landscape and amenity values.
- disturbance to the foreshore and seabed.
- adverse effects on ecology and marine habitat.
- entanglement of marine mammals and birds ...
- exclusion of other uses from marine farming areas.
- conflicts with recreational uses and boat mooring areas.
- adverse effects on navigational safety.
- impacts on onshore facilities ...
- high levels of noise associated with marine farming activities.
- adverse effects on water quality ...
- adverse effects on areas of significance to tangata whenua.

As will be seen, these are generic concerns and, with the exception of the last, not only to tangata whenua – in most cases (and where relevant to the present applications) they relate to matters that we have considered elsewhere in this decision. To the extent that we have not, we have this to say:

- We accept that Ngati Kuia have customary rights in relation to the Crail Bay area. So far as we are aware, however, these are not (yet) of the kind to which s6(g) applies;
- While we agree that we should (where open to us under the Act) protect "areas of significance to tangata whenua" from adverse effects, the evidence does not indicate, in sufficiently particular terms, where those areas are, what their significance might be and why they stand in need of protection;
- To the extent that Mr Smith spoke of strategies being developed within his iwi (and others), these seem not yet to have reached a stage at which they could provide us with guidance. In particular, we think that what Mr Smith called his iwi's "standing opposition to introduced fin fish" has a long way to go before effect could be given to it in proceedings of this nature.

That said, we have listened carefully what Mr Smith had to say and, to the extent open to us, have given consideration to it in coming to our decisions.

As to the balance of sections 6 and 7, we agree with Ms Dawson and Mr Brosnan that the matters there set out will not be compromised. We would add:

- Some improvement in public access can be expected (s6(d))
- By contributing to the longevity of salmon farming on this site, the rotational system will improve, albeit in a small way, its efficient use and development.

Taking in to account all of the matters discussed above we conclude that the purpose of the Act would be better met by approval of the s127 application and grant of s88 consent than would be the case were the present applications refused.

FORMAL DECISIONS

For the foregoing reasons

- (a) The conditions of consent U090660 are changed pursuant to s127 of the Act. That consent is to have the form set out in Attachment A;
- (b) That part of the foregoing application as was notified under number U130781, having been dealt with under s127, does not call for decision;
- (c) Application U130743, as sought in the application of 5 December 2013, is granted in an amended form, subject to conditions. The resulting consent is to have the form set out in Attachment B;



Cr D Oddie
Commissioner



Cr J Arbuckle
Commissioner



J Milligan
Commissioner

4 April 2014

Attachment A

MARLBOROUGH DISTRICT COUNCIL – Coastal Permit U090660

Consent is granted to the establishment, within the area known as MFL048 (site 8513), of a farm for the raising of Pacific King Salmon (*Oncoshynchus tshawytscha*) within net pens, to enable the placement of those net pens on site in any one of four configurations (Options 1 – 4), to allow disturbance of the seabed for the positioning of anchoring devices, to provide for the discharge of feed supplies to water within the coastal marine area for the feeding of finfish and to permit the discharge of waste from finfish to the water column and seabed

Subject to the following conditions:

[Note: Where the original conditions of coastal permit U090660 have been changed under s127 of the RMA1991 deletions are shown crossed out and additions shown underlined]

1. This consent shall expire on 31 December 2024 (being the expiry of MFL048).

Occupancy & Activity

2. That the occupancy be limited to the area illustrated on the plans attached to this consent (Appendix B), and confined to the area specified within the schedule of New Zealand Map Grid coordinates.

Structures

3. The structures shall be limited to anchors, ropes, ~~eages~~ net pens and barges, floats, lights and other necessary navigational aids associated with the marine farming of the approved species. All structures shall be situated and secured so as to remain within the boundaries of the consent area and approved site at all times.
4. The maximum number of ~~eages~~ net pens shall be either:
 - a. ~~9~~ Nine plastic circle ~~sea-eage~~ net pens (being ~~6-x~~ six 509m² ~~eages-~~ net pens and ~~3-x~~ three 286m² ~~eages-~~ net pens) ("Option One"); or
 - b. Three 30m x30m steel net pens ("Option Two"); or
 - c. Two 40m x 40m steel net pens ("Option Three"); or
 - d. Two 1146m² plastic circle net pens ("Option Four")
 - e. If Option 1 is exercised, the net pens shall be moored in the location originally approved by this consent – that is U090660 as granted by the decision of 9 July 2010 (See Appendix B). Under this option rotation is not approved.

- f. If Options Two, Three or Four are exercised, the net pens shall be able to be moored in the alternative configurations shown on DR-051103-200 (for Option Two), DR-051103-201 (for Option Three) or DR-051103-202 (for Option Four) – See Appendix B. There shall be no constraints on the frequency and timing of movements between the alternative configurations. For the avoidance of doubt, net pens may only be moored in the alternative configurations shown on the plans attached to this consent.
5. Should any of the foregoing options be exercised, MFL048 (permitting the growing of mussels and other shellfish) shall not be exercised concurrently.
 6. The eages net pens will be contained wholly within the boundaries of permit MFL048 and shall be identified on a survey plan specifying co-ordinates of each corner of the farm area in NZ Map Grid and shall be supplied to Council within 1 month of the date of this consent or of any amendments to this consent relating to net pen locations.
 7. The placement of marine farm lighting and marking shall be approved by the Harbourmaster under his Maritime Delegation from the Director of Maritime Safety pursuant to Sections 200, 444(2) and 444(4) of the Maritime Transport Act 1994. An approved lighting plan will be provided by Council.
 8. The anchoring system to be used shall be designed and supervised by an accredited marine engineer. A plan of the approved mooring system shall be provided to Council.
 9. The consent holder shall maintain all structures to ensure that they are restrained, secure and in working order at all times so as to not create a navigational hazard and take whatever steps are reasonably necessary to retrieve any non-biodegradable debris lost in or from the permit area. The anchoring systems shall be installed and maintained in accordance with the anchoring plan and an approved maintenance schedule to be prepared.
 10. The consent holder shall notify the Chief Hydrographer/Topographer of Land Information New Zealand and the Marlborough District Council within 3 months of the establishment of the approved structures.

Coastal Permit (Discharge to Seawater)

1. This consent shall expire on 31 December 2024.
2. Only extruded pellets or similar shall be at the site provided that the consent holder shall provide on request at any time particulars of all aquaculture feed used on site and shall ensure that the feed utilised is of a standard consistent with the particulars set out in the letter dated 14 December 2009 from Skretting Australia held on Council file U090660.
3. The permit holder shall provide Council with a monthly record of the volumes of feed discharged at each cage on each site. The report shall be in the format attached hereto as Appendix A.

Staging of Discharge Volumes

Stage 1

4. The first stage of the consent shall be for a period of not less than 18 months from commencement of the operation of this consent. The maximum volume of feed to be discharged during stage 1 shall be 1,000 metric tonnes per 18 month period.
5. Within 6 months of commencement of the consent, the consent holder shall monitor the sea floor in accordance with the environmental monitoring programme to be agreed, as specified under conditions ~~23~~ 24 to ~~26~~ 28.
6. A full report detailing the state of the sea floor shall be submitted to the Council within 2 months of the monitoring set out in condition 5 being completed.
7. On receipt of the monitoring report, the Council shall if necessary, within 1 month, initiate a review of the conditions of this consent, including the maximum volumes to be discharged, in accordance with sections 128 and 129 of the Resource Management Act 1991, and as further specified under condition ~~29~~ 30.
8. Within 1 year after commencing the discharge set out in condition 4, the consent holder shall monitor the sea floor in accordance with the environmental monitoring programme to be agreed.
9. A report detailing the state of the sea floor shall be submitted to the Manager, Resource Consents, Marlborough District Council, within 2 months of the monitoring required in condition 8 being completed.
10. On receipt of any of the monitoring reports provided for in this consent, the Council shall if necessary, within 1 month of receipt of the same, initiate a review of the conditions of this consent, including the maximum volumes of feed to be discharged, in accordance with sections 128 and 129 of the Resource Management Act 1991, and as further specified under condition ~~29~~ 30.

NOTE:

- a. It is expected that no review will be required if any additional adverse effects between the monitoring show that such effects are no more than minor.
- b. The consent holder is expected to give effect to this consent as soon as practicable.
- c. It is accepted that some variation of about 15% of the 1,000 metric tonnes per annum discharge within each 12 month period will not be significant in assessing any change in effects between the two monitoring events in conditions 5 and 8.

Stage 2

11. 18 months after the commencement of consent and subject to receipt by Council of the monitoring reports specified under conditions 6 and 9 above and further subject to any review of conditions of this consent specified in condition 10, the consent holder may in any 18 month period discharge up to a maximum of 1,770 metric tonnes.

12. 6 months after commencing discharge at the 1,770 metric tonnes per 18 month maximum specified above, (or such lesser maximum as per condition 17) the consent holder shall monitor the sea floor and water column in accordance with the environmental monitoring programme to be agreed, as specified under conditions ~~23~~ 24 to ~~26~~ 28.
13. A full report detailing the state of the sea floor and water column shall be submitted to the Council within 2 months of the monitoring being completed.
14. On receipt of any monitoring report provided for in this consent, the Council shall if necessary, within 1 month, initiate a review of the conditions of this consent, including the maximum volumes to be discharged, in accordance with sections 128 and 129 of the Resource Management Act 1991, and as further specified under condition ~~29~~ 30.
15. 12 months and annually thereafter after commencing discharge at the 1,440 metric tonnes maximum specified above (or such lesser maximum as per condition ~~48~~ 19), the consent holder shall monitor the sea floor and water column in accordance with the environmental monitoring programme to be agreed. A full report detailing the state of the sea floor and water column shall be submitted to the Manager, Resource Consents, Marlborough District Council, within 2 months of the monitoring being completed.

Following/Site Rotation

16. This consent is specific in approving the activity at the location set out in the application.
17. If Option One is exercised, the consent does not approve rotation of the ~~eages-net pens~~ within the marine farm provided that:
 - d. If there are events or circumstances that give rise to the need to move the marine farm activities the consent holder shall advise the Council of those circumstances and the need to move the ~~eages-net pens~~. Particulars shall include the event, effects, likely duration and proposed remedial steps.
 - e. The Council may give approval to move the ~~eages-net pens~~ to an alternative location within the farm for a period of not more than 6 months in total on such conditions as it thinks fit.
 - f. More than one application may be made during the term of this consent but each shall be for no more than 6 months in total and no application shall have the effect that the ~~eages-net pens~~ are left on an alternate site for a period of more than 6 months. For the avoidance of doubt successive applications without reinstatement to the original site shall not be permitted.
 - g. At the conclusion of any term specified by Council for any approval under this condition the ~~eages-net pens~~ shall be reinstated to their original location. (NOTE: This does not preclude a variation to this consent or this provision).
18. If Option Two, Option Three or Option Four are exercised the net pens shall be able to be moored in the alternative configurations shown on DR-051103-200 (for Option Two), DR-051103-201 (for Option Three) or DR-051103-202 (for Option Four). There shall be no constraints on the frequency and timing of movements between the alternative configurations. For the avoidance of doubt, net pens may only be moored in the alternative configurations shown on the plans attached to this consent.

Implementation of Stages and Discharge Volumes

- ~~4719.~~ For the avoidance of doubt in interpreting the above conditions, there shall be a review of conditions prior to each of the above stages. The consent holder shall not increase the discharge of feed until the Council confirms they are satisfied that the subject stages are individually and cumulatively compliant with Environmental Quality Standards in conditions ~~19 21 to 22 23~~.
- ~~4820.~~ Should the consent holder not discharge feed to the maximum volume permitted under Stage 1, then the increase in feed permitted within the next stage shall be no more than 500 metric tonnes above the maximum feed volume discharge under the previous stage. The 500 metric tonne increment shall apply at 18 month intervals i.e. 500 metric tonnes increase each 18 months until the maximum applicable to Stage 2 is achieved.

Environmental Quality Standards (EQS)

- ~~19.~~ The Environmental Quality Standards (EQS) that shall be applied for seabed effects follow the model as presented in the application, i.e. seabed effects are 'zoned' around the cages to allow for a mixing or transition zone. Outside this zone no adverse effect on the seabed is allowed. Three 'zones' under and around the marine farms shall be established as follows:
- ~~h.~~ Referred to as 'Zone 2' Beneath the cages and out to 50 metres from the cages.
 - ~~i.~~ Referred to as 'Zone 3' From 50 metres to 150 metres from the outside edge of the cages.
 - ~~j.~~ Referred to as 'Zone 4' Beyond 150 metres from the outside edge of the cages.
- ~~20.~~ The zones shall be distorted to allow for the action of tidal currents such that the total area of each zone remains the same as if concentric zones were around the marine farm.
- ~~21.~~ In this instance the zones shall be distorted as shown in the application document. The extent to which the zone boundaries can deform will be specified in the consent holders' environmental monitoring plan based on the shape of the predicted depositional footprint (i.e. Length:Width).
- ~~22.~~ The EQS in each zone will be managed with reference to permitted 'impact stages', as depicted and defined in Figure 1. In relation to Figure 1, the effects within the zones specified in condition 19 will not exceed (i.e. be higher than) the following impact stages.
- ~~Zone 2 shall not be more than the transition between Stages IV and V.~~
 - ~~Zone 3 shall not be more than the transition between Stages III and IV.~~
 - ~~Zone 4 shall not be more than the transition between Stages I and II.~~

~~Note: These zones may be further refined once the monitoring programmes required by conditions 23 to 25 are completed.~~

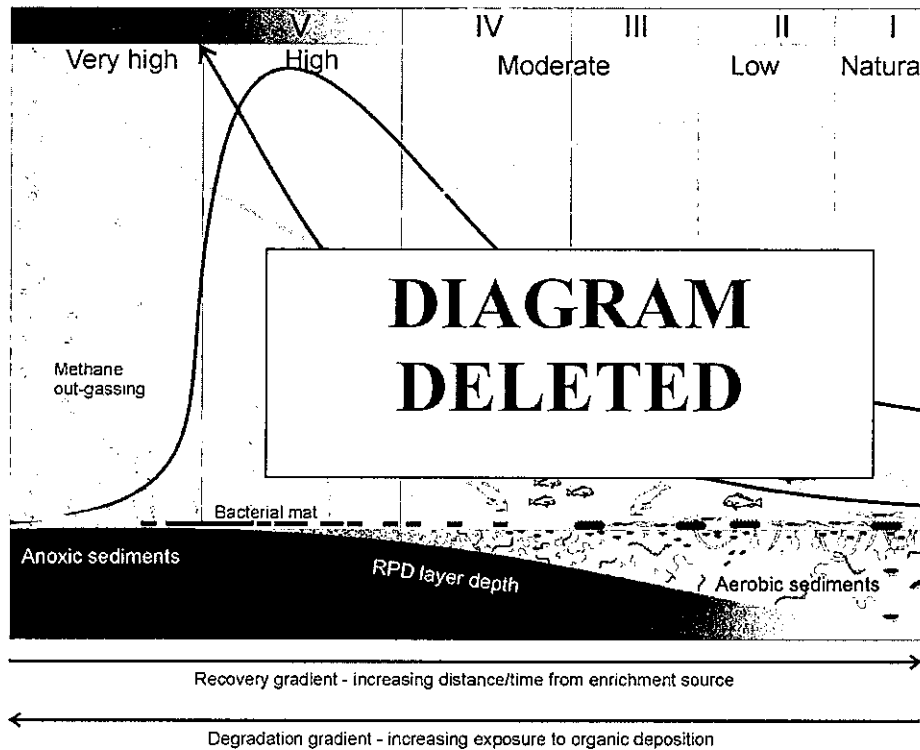


Figure 1. — ~~Stylised diagram indicating how environmental variables change over an enrichment gradient in relation to impact stages I-VI.~~

21. The discharge of feed shall meet the requirements of Conditions 22-23 relating to Environmental Quality Standards (EQS) at all times. Any breach of these requirements shall, as soon as practicable, and not later than two (2) working days after the consent holder discovers the breach, be notified to the Marlborough District Council. [Refer to Condition 31 below for the procedure to be followed in the event of non-compliance].
22. EQS Compliance Zones shall be defined for the farm, in accordance with Figure 1 (attached) and the dimensions and areas contained in Table 1.

Table 1: Maximum distances of EQS Compliance Zone 2/3 and Zone 3/4 boundaries from the nearest edge of the salmon farm net pen boundary; and the maximum total affected area of Zones 1, 2 and 3

| <u>EQS Compliance Zone Boundary Dimensions (maximum distances)</u> | | <u>EQS Compliance Zone Area (Maximum area)</u> |
|--|--|---|
| <u>Distance from net pen boundary to Zone 2/3 boundary</u> | <u>Distance from net pen boundary to Zone 3/4 boundary</u> | <u>Total compliance zone area of Zones 1, 2 and 3</u> |
| <u>Metres (m)</u> | <u>Metres (m)</u> | <u>Hectares (ha)</u> |
| <u>50m</u> | <u>150m</u> | <u>19.7ha</u> |

23. At all times, the seabed beneath and in the vicinity of the farm shall comply with the EQS specified in Table 2. Zone dimensions and area for compliance purposes shall be defined in accordance with Condition 22. Enrichment Stages (ES) shall be defined in accordance with Figure 2 (attached) and Table 3 (attached). For the avoidance of doubt, the EQS shall be calculated for compliance purposes as the mean of all sample replicates taken at a single sampling station (refer to Figure 1). Standard errors or confidence limits of the mean EQS at each sampling station shall be reported in the monitoring report (refer to Condition 27).

Table 2: Environmental Quality Standards (EQS)

| <u>Compliance Zone</u> | <u>Compliance Monitoring Location*</u> | <u>EQS</u> |
|--|--|---|
| <u>Zones 1 & 2 – beside and beneath the net pens</u> | <u>Measured at the following locations:</u> <ul style="list-style-type: none"> - <u>the north east corner of each net pen configuration used in any one year; and</u> - <u>the centre of the net pen boundary.</u> | <u>ES≤5.0</u> <u>No more than one replicate core with no taxa (azoic)</u> <u>No obvious spontaneous out-gassing (H₂S/methane)</u> <u>Bacteria mat (<i>Beggiatoa</i>) coverage not greater than localized/patchy in distribution</u> |
| <u>Zone 3 – near to the net pen boundary</u> | <u>Measured at the Zone 2/3 Boundary</u> <u>Note: Due to the presence of mussel farms adjacent to the site, it is intended that Zone 2/3 sampling stations will be established on the eastern side of the farm only.</u> | <u>ES≤ 4.0</u> <u>Infauna abundance is not significantly higher than at corresponding "Pen" Station</u> <u>Number of taxa >75% of number at relevant/appropriate reference Station(s)</u> |
| <u>Zone 4 – outside the footprint area</u> | <u>Measured at the Zone 3/4 Boundary</u> <u>Note: Due to the presence of mussel farms adjacent to the site, it is intended that Zone 3/4 sampling stations will be established on the eastern side of the farm only.</u> | <u>Natural conditions. ES<3.0 and no more than ES 0.5 greater than the highest ES score for a relevant reference site</u> <u>OR</u> <u>Natural conditions. ES<3.0 and seabed conditions must remain statistically comparable with relevant appropriate / reference station(s)</u> |

*Examples of sampling station locations are shown in Figure 1. For the avoidance of doubt these are diagrammatic only.

Environmental Monitoring and Reporting

2324. Prior to exercising the consent and following any changes to the monitoring requirements in this consent, the consent holder shall prepare an environmental monitoring programme to show compliance with the Environmental Quality Standards set out in conditions ~~19~~ 21 to ~~22~~ 23 of this consent.
2425. This monitoring programme and any updates to it shall be submitted to the Council for approval and shall address, but not be limited to, the following effects within the boundary of the marine farm and in the immediate vicinity beyond the boundary of the marine farm:
- k. Effects on water quality (including nitrogen and phosphorous);
 - l. Seabed deposition (sedimentation and crop loss) and oxygen depletion;
 - m. Effects on benthic community composition and abundance;
 - n. Effects of heavy metals – copper and zinc; and
 - o. The appropriateness of and need for fallowing.
2526. The survey/monitoring programme shall describe:
- p. The surveys, baseline and/or ongoing, to be undertaken;
 - q. Location and extent of any environmental features within the vicinity and potential impacts on these features;
 - r. The environmental performance indicators that are to be used to assess effects;
 - s. Methods, location and frequency of sampling, including reference sites;
 - t. A definition of species diversity and what comprises the transitional zone; and
 - u. Recording and reporting requirements.
2627. A monitoring report is to be prepared at least annually, and will include:
- v. Presentation of monitoring results;
 - w. A comprehensive and integrated report on the effects of the development and operation of the farm to date, including maximum biomass of fish and feed volumes discharged over that year;
 - x. An assessment as to whether or not the farm is having a significant adverse effect on the environment or not;
 - y. Recommendations as to how any adverse effects on the environment can be avoided, remedied or mitigated;
 - z. The adequacy of the monitoring programme. Note: The monitoring programme shall be public record; and
 - aa. The state of the seabed before and after fallowing.

2728. The consent holder shall commission an independent person (or persons) with appropriate expertise in environmental monitoring to undertake the monitoring and reporting work required by the conditions of this consent.
2829. The Marlborough District Council may require an independent peer review of the surveys, monitoring and reporting required by this consent. Such a peer review will be at the cost of the consent holder.
2930. That in accordance with sections 128 and 129 of the Resource Management Act 1991, the consent authority may review the conditions of this consent by serving notice of its intention to do so for one or more of the following purposes.

| PURPOSE(S) | TIME(S) OF SERVICE OF NOTICE |
|---|--|
| To modify the monitoring programme. | Within 1 month of receipt of any monitoring report as required by the conditions of this consent. |
| To deal with any adverse effects that may become apparent as a result of the exercise of this resource consent | <p>Within 1 month of receipt of the monitoring report required by conditions 5, 7 and 9 of this consent (Stage 1).</p> <p>Within 1 month of receipt of the monitoring report required by conditions 13 and 15 of this consent (Stage 2).</p> <p>Within 6 months of receipt of any other monitoring report required under the conditions of this consent.</p> |
| To require the consent holder to adopt the best practicable option to avoid, remedy or mitigate any adverse effect on the environment relating to the activity. | <p>Within 1 month of receipt of the monitoring report required by conditions 5, 7 and 9 of this consent (Stage 1).</p> <p>Within 1 month of receipt of the monitoring report required by conditions 13 and 15 of this consent (Stage 2).</p> <p>Within 6 months of receipt of any other monitoring report required under the conditions of this consent.</p> |

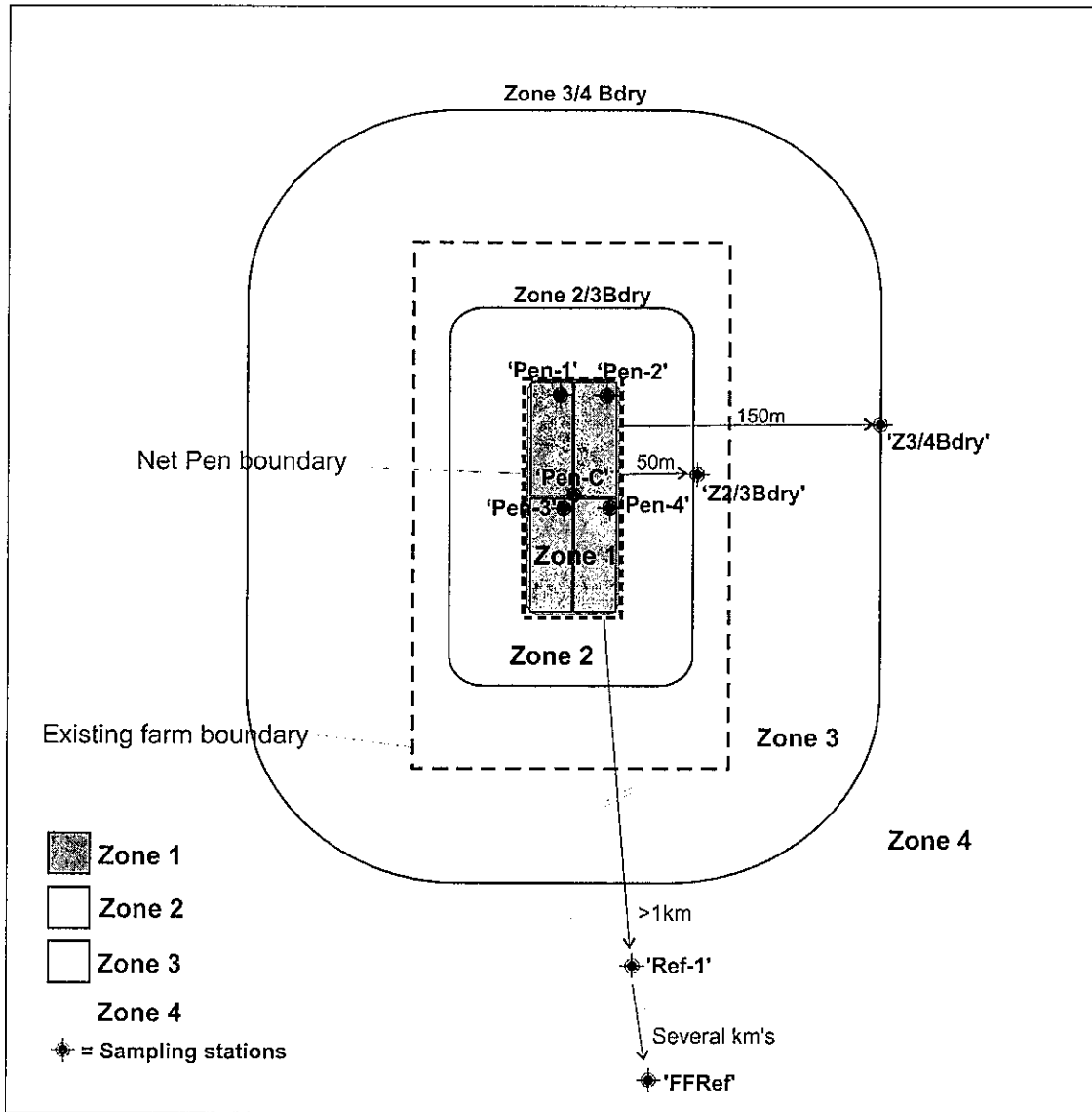
3031. In the event of non-compliance with the Environmental Quality Standards set out in conditions ~~19-21~~ to ~~22~~ 23, the consent holder shall work with the consent authority to ensure the full compliance is re-established within 24 months.
3132. Pursuant to section 36 of the Resource Management Act 1991 and Marlborough District Council's Schedule of Fees, the consent holder shall pay all actual and reasonable costs associated with any review of this resource consent.
3233. Inspection and monitoring by Marlborough District Council's Regulatory Department in respect of the conditions of this consent may take place annually or more frequently in the event that a previous inspection or complaint indicates the need for more frequent inspection and monitoring.

The costs of these inspections and any formal monitoring programme established in consultation with the consent holder will be charged to the consent holder in accordance with Council's Schedule of Fees approved pursuant to section 36 of Resource Management Act 1991.

Additional Conditions

1. In order to reduce their visual obtrusiveness the 'above water' elements of net pens (including predator fencing and screens) are to be finished in a dark shade of a recessive colour.
2. The consent holder is not to unreasonably impede public access to and over that part of the MFL048 area as is not used for salmon farming purposes.
3. The consent holder is to advise the Council immediately when monitoring by or on behalf of the consent holder suggests that an EQS level of 4.5 has been, is likely to have been or is, before the next scheduled monitoring, likely to be reached in relation to zones 1 and 2, and forthwith provide the Council with a management plan showing how the consent holder proposes to avoid a breach of the conditions of compliance set out above.
4. On the expiry of this consent all net pens and other structures (including all anchoring devices) shall be removed from the site.

Figure 1: Environmental Quality Standard (EQS) - Definition of EQS Compliance Zones



Note – Figure 1 is diagrammatic only

Figure 2: Schematic Diagram of Enrichment Stages

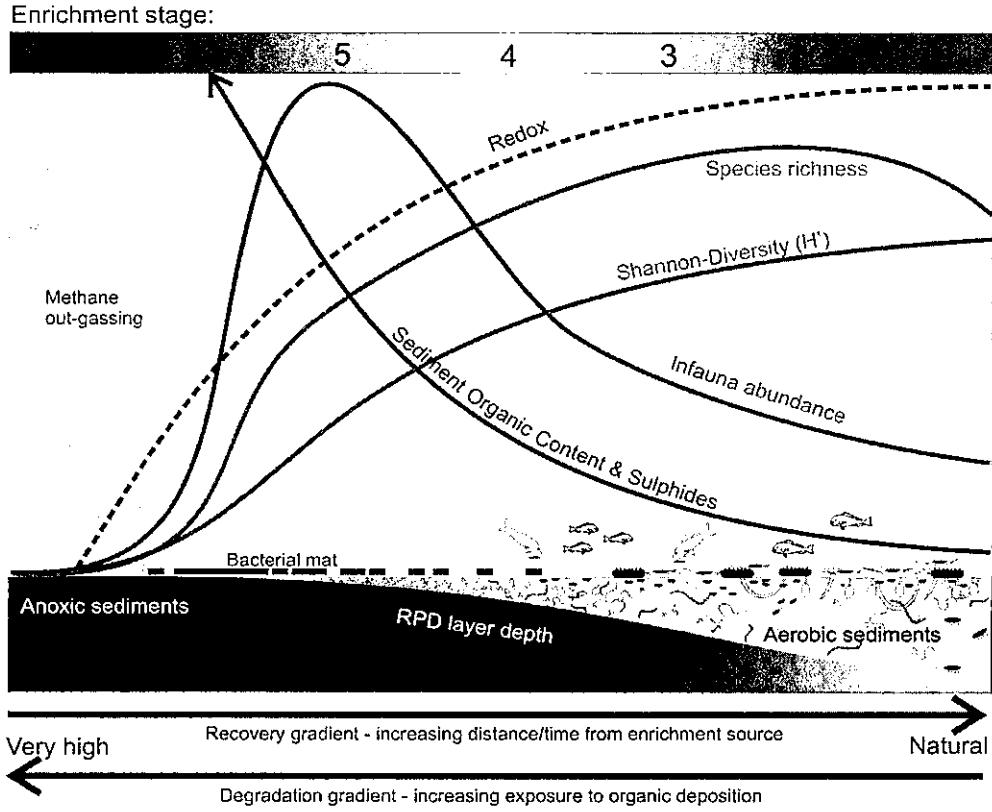


Table 3: General Description and Environmental Characteristics of Enrichment Stages (ES)

| <u>ES</u> | <u>General description</u> | | <u>Environmental characteristics</u> |
|-----------|---|-----------|---|
| <u>1</u> | <u>Natural/pristine conditions</u> | <u>LF</u> | <u>Environmental variables comparable to unpolluted/ un-enriched pristine reference site.</u> |
| <u>2</u> | <u>Minor enrichment: Low level enrichment. Can occur naturally or from other diffuse anthropogenic sources. 'Enhanced zone'</u> | <u>LF</u> | <u>Richness usually greater than for reference conditions. Zone of 'enhancement' – minor increases in abundance possible. Mainly compositional change. Sediment chemistry unaffected or with only very minor effects.</u> |
| <u>3</u> | <u>Moderate enrichment: Clearly enriched and impacted. Significant community change evident.</u> | <u>LF</u> | <u>Notable abundance increase, richness and diversity usually lower than reference site. Opportunistic species (i.e. Capitellid worms) begin to dominate.</u> |
| <u>4</u> | <u>High enrichment: Transitional stage between moderate effects and peak macrofauna abundance. Major community change.</u> | <u>LF</u> | <u>Diversity further reduced, abundances usually quite high, but clearly sub-peak. Opportunistic species dominate, but other taxa may still persist. Major sediment chemistry changes (approaching hypoxia).</u> |
| <u>5</u> | <u>Very high enrichment: State of peak macrofauna abundance.</u> | <u>LF</u> | <u>Very high numbers of one of two opportunistic species (i.e. Capitellid worms, Nematoda). Richness very low. Major sediment chemistry changes (hypoxia, moderate oxygen stress). Bacterial mat usually evident. Out-gassing occurs on disturbance of sediments.</u> |
| <u>6</u> | <u>Excessive enrichment: Transitional stage between peak abundance and azoic (devoid of any organisms).</u> | <u>LF</u> | <u>Richness & diversity very low. Abundances of opportunistic species severely reduced from peak, but not azoic. Total abundance low but can be comparable to reference sites. %OM can be very high (3-6 times reference).</u> |
| <u>7</u> | <u>Severe enrichment: Anoxic & azoic; sediments no longer capable of supporting macrofauna with organics accumulating.</u> | <u>LF</u> | <u>None, or only trace numbers of macrofauna remain. Some samples with no taxa. Spontaneous out-gassing; <i>Beggiatoa</i> usually present but can be suppressed. %OM can be very high (3-6 times Ref).</u> |

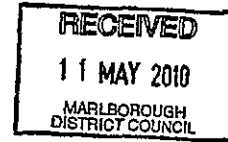
APPENDIX A

MARLBOROUGH DISTRICT COUNCIL – Coastal Permit U090660

Report Format

EXAMPLE

APPENDIX 'A'



FEED TO BROOD REPORT

SITE 8513/L48 Crail Bay

Month October 2010

10 Brood opening total feed to date
Kgs

| 10 Brood | Cages | Current month feedout kgs |
|----------|-------|---------------------------|
| 10B01 | 1 | |
| 10B02 | 2 | |
| 10B03 | 3 | |

Totals

10 Brood closing total feed to end October
Kgs

11 Brood opening total feed to date
Kgs

| 11 Brood | Cages | Current month feedout kgs |
|----------|-------|---------------------------|
| 11B01 | 1 | |
| 11B02 | 2 | |
| 11B03 | 3 | |

Totals

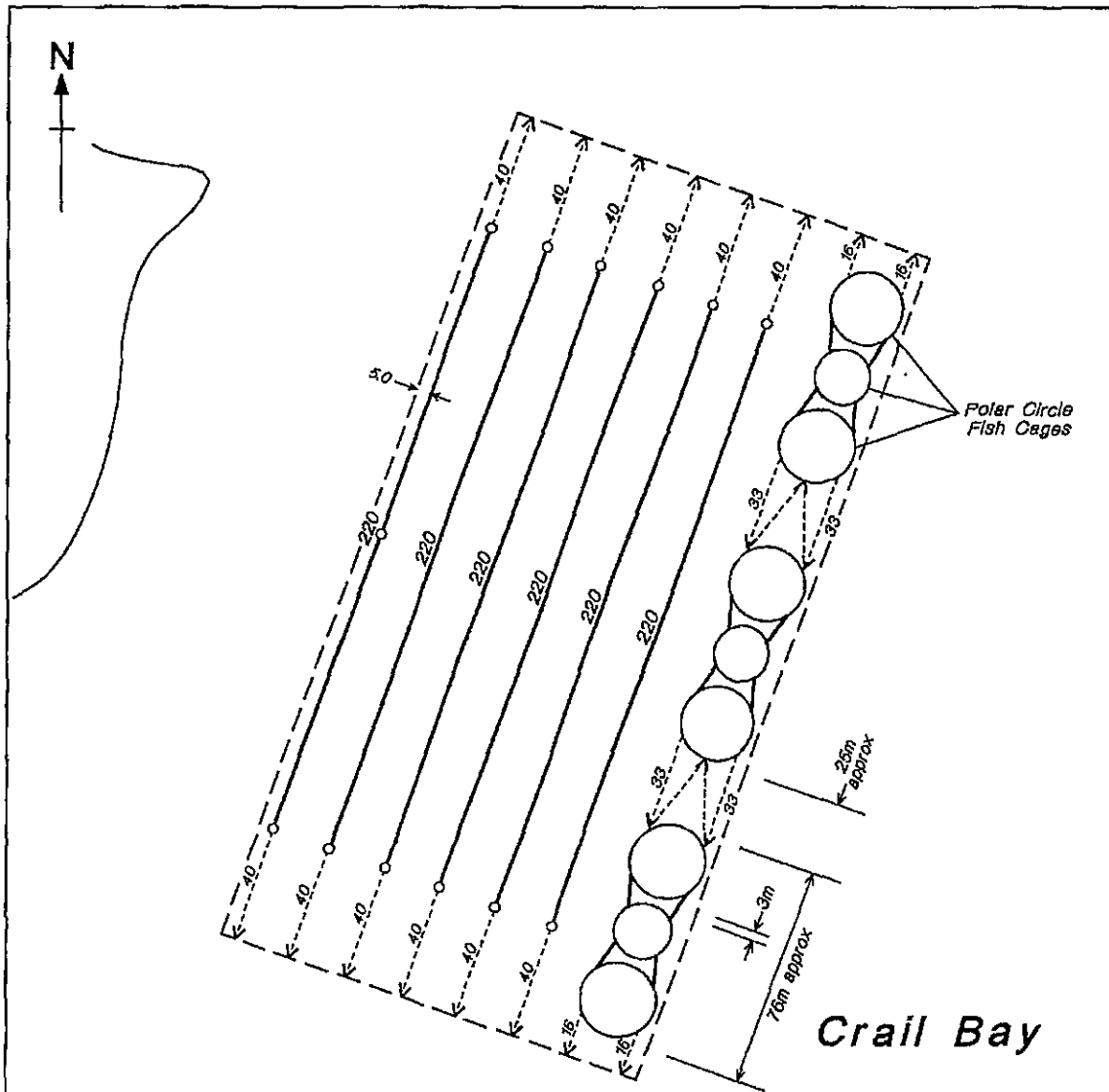
11 Brood closing total feed to end October
Kgs

m

APPENDIX B

MARLBOROUGH DISTRICT COUNCIL – Coastal Permit U090660

Relevant Plans



- REFERENCE**
- Orange Float
 - ∧ Anchors
 - - - - - Anchor Warp (32mm Rope)
 - Backbone (24-28mm Rope)

RECEIVED
 - 7 SEP 2009
 MARLBOROUGH
 DISTRICT COUNCIL

NOTE: Longline Spacing = 20m
 Total Longlines = 8
 Total Backbone Length = 1320m
 Warp Lengths = 50m (surface loss)

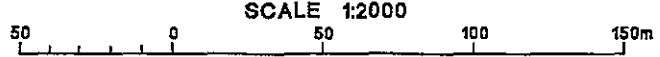


PALMS

Variation of Structures

MFL 048 (Site 8513)

Marlborough Mussel Co Ltd

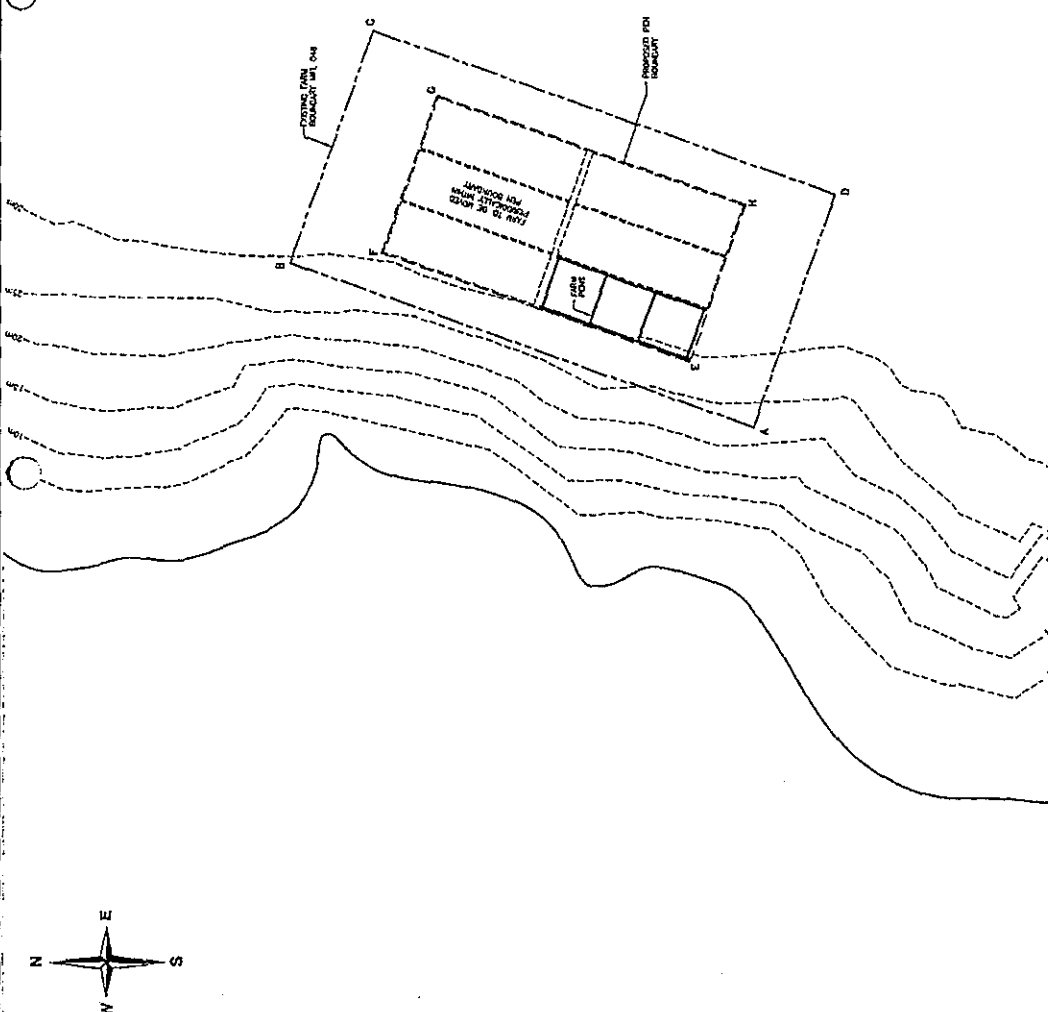


11 August 2009

MF_1913a

| COORDINATE SCHEDULE | | NEW ZEALAND MAP GRID | |
|---------------------|-----------|----------------------|------------|
| COORDINATE | Easting | Northing | Coordinate |
| A | 271134.20 | 6411981.32 | |
| B | 297144.83 | 661254.12 | |
| C | 297195.03 | 661254.04 | |
| D | 281148.29 | 671197.20 | |
| E | 291137.53 | 651196.30 | |
| F | 281143.85 | 661214.85 | |
| G | 281146.20 | 661214.15 | |
| H | 281146.20 | 661198.45 | |

Crail Bay
PELORUS SOUND



NOTE:
1. PROPOSING INFORMATION HAS BEEN
PREPARED BY THE ENGINEER AND
DOES NOT REPRESENT THE
OPINION OF THE ENGINEER.

LEGEND:
EXISTING TRACK
PROPOSED FARM BOUNDARY



PRELIMINARY

Scale (m)
1:2500
Date of Issue
28/07/2013

Project No.
DR-051103-200

Sheet
1

NEW ZEALAND KING SALMON LIMITED
MFL 048, CRAIL BAY, PELORUS SOUND
PROPOSED 30303 FARM LAYOUT

The drawings and all related
documents are the property of
the Client and shall remain
the property of the Client.

CONSULTANTS NZ LIMITED
45 Queen Street
PO Box 100
Auckland, NZ
Phone: (09) 379 2222
Fax: (09) 379 2210

Checked
Drawn
Supervised
Date

Approved
Date

PRELIMINARY COPY
Date
18/07/13

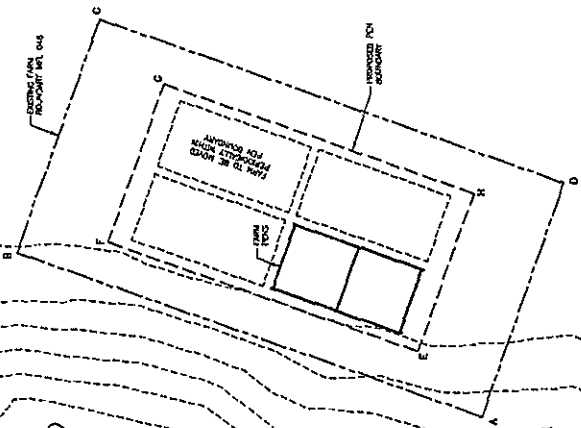
Checked
Date

Checked
Date



| COORDINATE SCHEDULE | | NEW ZEALAND MAP GRID | |
|---------------------|-----------|----------------------|------------|
| COORDINATE | EASTING | NORTHING | COORDINATE |
| A | 251147.50 | 601181.52 | |
| B | 251147.50 | 601204.12 | |
| C | 251149.00 | 601216.04 | |
| D | 251149.00 | 601181.52 | |
| E | 251147.50 | 601186.30 | |
| F | 251145.50 | 601144.20 | |
| G | 251145.50 | 601181.52 | |
| H | 251145.50 | 601196.30 | |

Craill Bay
PELORUS SOUND



NOTE:
4. APPROXIMATE INFORMATION HAS BEEN SOURCED FROM CARTOGRAPHIC MATERIALS. DO NOT RELY ON THIS DATA FOR LEGAL PURPOSES.

LEGEND:
--- DOTTED LINE BOUNDARY
--- DOTTED LINE BOUNDARY



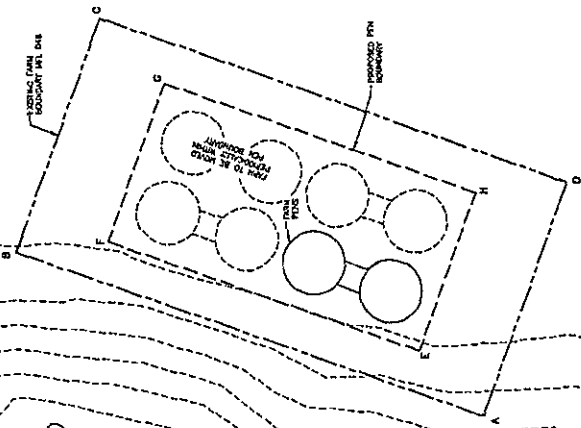
PRELIMINARY

| PRELIMINARY ISSUE | Date | By | Checked | Approved | Checked | Approved | Checked | Approved |
|-----------------------------------|----------|---------------------------------|---------|-----------------------------------|---------|----------------------------|---------|----------|
| 1 | 18/07/13 | RKL | | | | | | |
| PREPARED BY | | DESIGNED BY | | CHECKED BY | | APPROVED BY | | |
| James Edwards | | James Edwards | | James Edwards | | James Edwards | | |
| PROJECT NO. | | DRAWING NO. | | SHEET NO. | | SHEET TOTAL | | |
| DR-051103-201 | | DR-051103-201 | | 1 | | 1 | | |
| PROJECT NAME | | CLIENT | | DRAWN BY | | SCALE | | |
| NEW ZEALAND KING SALMON LIMITED | | NEW ZEALAND KING SALMON LIMITED | | MFL 048, CRAIL BAY, PELORUS SOUND | | PROPOSED 4040Z FARM LAYOUT | | |
| PROJECT LOCATION | | PROJECT NO. | | SHEET NO. | | SHEET TOTAL | | |
| MFL 048, CRAIL BAY, PELORUS SOUND | | DR-051103-201 | | 1 | | 1 | | |
| PROJECT DESCRIPTION | | PROJECT NO. | | SHEET NO. | | SHEET TOTAL | | |
| PROPOSED 4040Z FARM LAYOUT | | DR-051103-201 | | 1 | | 1 | | |
| PROJECT NO. | | DRAWING NO. | | SHEET NO. | | SHEET TOTAL | | |
| DR-051103-201 | | DR-051103-201 | | 1 | | 1 | | |
| PROJECT NAME | | CLIENT | | DRAWN BY | | SCALE | | |
| NEW ZEALAND KING SALMON LIMITED | | NEW ZEALAND KING SALMON LIMITED | | MFL 048, CRAIL BAY, PELORUS SOUND | | PROPOSED 4040Z FARM LAYOUT | | |
| PROJECT LOCATION | | PROJECT NO. | | SHEET NO. | | SHEET TOTAL | | |
| MFL 048, CRAIL BAY, PELORUS SOUND | | DR-051103-201 | | 1 | | 1 | | |
| PROJECT DESCRIPTION | | PROJECT NO. | | SHEET NO. | | SHEET TOTAL | | |
| PROPOSED 4040Z FARM LAYOUT | | DR-051103-201 | | 1 | | 1 | | |



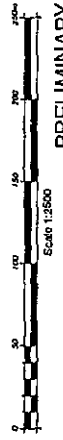
| COORDINATE SCHEDULE | | NEW ZEALAND MAP GRID | |
|---------------------|-----------|----------------------|------------|
| LETTER | EASTING | NORTHING | COORDINATE |
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| B | 250147.00 | 602204.12 | |
| C | 250148.00 | 602184.04 | |
| D | 250148.00 | 601191.33 | |
| E | 250149.00 | 602184.04 | |
| F | 250149.00 | 601191.33 | |
| G | 250150.00 | 602184.04 | |
| H | 250150.00 | 601191.33 | |

Crail Bay
PELORUS SOUND



NOTE:
 1. DIMENSIONS, MEASUREMENTS AND SPACING ARE TO BE CHECKED BY THE CLIENT.
 2. DIMENSIONS, MEASUREMENTS AND SPACING ARE TO BE CHECKED BY THE CLIENT.
 3. DIMENSIONS, MEASUREMENTS AND SPACING ARE TO BE CHECKED BY THE CLIENT.

LEGEND:
 DASHED LINE: EXISTING POND BOUNDARY
 DOTTED LINE: PROPOSED POND BOUNDARY



PRELIMINARY

| | | | |
|-------------|---------------|---------------------|------------|
| Block (L2) | 12500 | Date of Preparation | 09/10/2010 |
| Project No. | DR-051103-202 | Rev. | 1 |

NEW ZEALAND KING SALMON LIMITED
MFL 048, CRAIL BAY, PELORUS SOUND
PROPOSED 2 x PC120 FARM LAYOUT

CONSULTANTS NZ LIMITED
 82 Chivers Hill Street
 Mt Roskill, Auckland
 P.O. Box 10704
 P.O. Box 10704
 P.O. Box 10704

| Drawn | Checked | Reviewed | Approved | Date |
|-------|---------|----------|----------|------|
| | | | | |

| Rev. | Date | Drawn | Checked | Approved |
|------|----------|-------|---------|----------|
| 1 | 19/01/13 | RWC | | |

DO NOT SCALE FROM DRAWING

Attachment B

MARLBOROUGH DISTRICT COUNCIL – Coastal Permit U130743

Consent is granted to the stationing, within the 4.5 hectare area identified in MFL048, of a barge with a covered enclosure, to be used for the storage and handling of feed and the storage of equipment ancillary to the activities authorised by consent U090660 and for the provision of on-site amenities for people employed in those activities; for the occupation of that part the coastal marine area as is from time to time taken up by that barge; and for discharges of greywater to the coastal marine area

Subject to the following conditions:

1. This consent shall expire on 31 December 2024 (being the expiry of U090660).

Activity location

2. The activities hereby authorised shall be limited to the area illustrated on the plan attached to this consent [*This is the same plan as is attached to MFL048*], and there specified with the schedule of New Zealand Map Grid co-ordinates.

Structures

3. The structures shall be limited to a barge and associated anchors, ropes, lights and other necessary navigational aids associated with the marine farming of the approved species. The barge shall be situated and secured so as to remain within the boundaries of the MFL048 site at all times, and is at all times to be attached to and located to the landward of one or more of the cages authorised by U090660.
4. The barge shall only be staffed, and any plant or equipment on it shall only be used, during day time hours between the hours of 7am to 8pm except for emergency work outside these hours arising from the need to protect life or limb or prevent loss or serious damage to property or minimise or prevent environmental damage.
5. No permanent staff accommodation shall be provided on the barge.
6. The barge shall be moored on the landward side of any net pen structures.
7. The barge shall only be located on the site while the farm is stocked with fish, 1 month prior to stocking and until one month after harvest.
8. The barge shall not exceed the following maximum dimensions:
 - 30 metres in length and 10 metres in width;
 - 2.5 metres in height above the water line in the case of the 'Kaiwaka', and 1 metre for any other barge;
9. The total footprint of all buildings on the barge shall not exceed 100m².

10. The maximum height of buildings (excluding cranes or supporting equipment) on the barge shall not exceed 3 metres above the deck level.
11. The exterior of any building on the barge shall be painted or otherwise finished in dark recessive colours.
12. Activities on the barge shall be conducted to ensure that noise arising from such activities does not exceed 55 dBA L10 and no Lmax limit, when measured at the boundary of the Coastal Marine Zone.

Noise shall be measured in accordance with NZS 6801:2008. Adjusted levels shall be determined in accordance with NZS 6802:2008. Any construction activities will meet standards specified in NZS 6803:1999.

The following activities shall be exempt from the above noise standard:

- noise generated by navigational aids, safety signals, warning devices, or emergency pressure relief valves;
 - noise generated by emergency work arising from the need to protect life or limb or prevent loss or serious damage to property or minimise or prevent environmental damage;
 - noise generated by the arrival and departure of vessels servicing the marine farm.
13. The use of outdoor radios or similar external speakers on the barge is prohibited, except for maritime radio broadcasts provided for the purposes of maritime safety.
 14. The placement of barge lighting and marking shall be approved by the Harbourmaster under his Maritime Delegation from the Director of Maritime Safety pursuant to Sections 200, 444(2) and 444(4) of the Maritime Transport Act 1994. An approved lighting plan will be provided to the Harbourmaster, if required.
 15. The consent holder shall maintain the barge to ensure it is restrained, secure and in working order at all times so as to not create a navigational hazard and take whatever steps are reasonably necessary to retrieve any non-biodegradable debris lost in or from the permit area. The anchoring systems shall be installed and maintained in accordance with an anchoring plan and maintenance schedule to be prepared and provided to the Council.

Discharge to Seawater

16. No more than 10,000 litres of greywater shall be discharged from the barge per annum. "Greywater" shall be defined as freshwater contaminated by human contact, excluding toilet wastes, in this context usually originating from wash hand basins and sinks.

Attachment C

SUMMARY OF EVIDENCE HEARD

Mr M J Gillard: 29 years' experience with NZKS; variety of roles; now responsible for resource management and contractual issues within the company; experience involves the construction and management of sea farms, and as a member of industry bodies.

- MFL048 was acquired by NZKS in July 2011 together with a freshwater hatchery; although fish harvested in December 2011 the farm is not economic as a production farm when prices are low; present intention is to use it as a nursery during the cooler months with the fish being transferred to other sites for on-growing; hope to introduce smolt April/ May this year.
- Proposal involved a rotation of cages within the site, ¼ in use at any one time; transfer to other sites will involve towing the cages; a possibility that some on-growing will occur at this site.
- Proposal involves an on-site barge, primarily to store feed which will reduce regular visits by 'large vessels'.
- Proposal involves replacement of monitoring and compliance conditions (attached) to the present salmon farming consent with those of a kind approved by the BoA and now regarded as 'best practice'; some 'greywater discharge' with minimal impact.
- Company has a protocol about 'morts'; dead fish removed at least twice/week, placed in sealed bins which are regularly emptied to approved disposal facilities.
- Under present conditions feed discharge staged – this will remain; present permitted discharge less than 100-mt / 18 months.
- Present pens ('polar circles') unsuitable to present purposes – pens used will need to be compatible with those at other sites.

Following re-call

- Since adoption by his company of its present protocol relating morts there has been, to his knowledge, no complaints about smell. Argues against the need for a particular condition.
- At least initially, the types of pens used on the company's other farms will have to be used. Plastic pens need to be sourced and need to be compatible with those used in other company farms. Company is considering the ultimate use of plastic pens in all farms.
- Agrees to condition restricting operations to between 7am and 8pm, and prohibiting the use of 'external' loudspeakers other than those necessary for the purposes of marine safety.
- Gives a further explanation of movements and operations

Dr D I Taylor: PhD (Zoology), Senior Marine Scientist and leader of the Aquaculture Monitoring team at the Cawthron Institute.

- Some corrections to report 2011 come from development of the model used.
- Over time, considerable variations have been observed in the 'natural' baseline.
- Describes site; water velocities are relatively low, leading to a concentrated depositional footprint; close-to-background conditions may thus be expected within 150 metres of the farm boundary.
- Describes the monitoring and scoring methods required by the existing consent (ES), and changes now proposed to bring them in to line with present best practice (EQS) while maintaining a closely similar overall result.
- "To ensure benthic effects remain within EQS, NZ King Salmon propose to manage the intensity of benthic deposition effects at MFL048 through more frequent net pen rotation and fallowing within the site.
- Options described
- "Regardless of the structures option to be used at MFL048, the model outputs suggest that approximately 0.4ha of seabed directly beneath the net pens will be subject to a high intensity of deposition. However the rotational strategy proposed by NZ King Salmon, with net pens moved between net pen stations each year should ensure that the enrichment effects remain within the existing and proposed EQS.
- Explains modelling , leading to conclusions that (i) a central monitoring position should be provided so as to meet concerns about a concentration of adverse deposition arising from 'overlap', and (ii) that rotation will provide a means of (partial) recovery in areas of recent deposition.
- An EQS score of 5 does not indicate non-recoverability; what is important is the existing of a management response as a score of that magnitude is approached.
- No links have been established between salmon farming and the occurrence of harmful algal blooms, themselves a natural feature of the Marlborough Sounds.
- Some detailed response to matters raised in submissions

Mr M M Halstead: Acoustic Engineer, Marshall Day Acoustics; BIE, 26 years' experience; evidence largely to noise from proposed barge.

- Describes project; refers to noise performance standards in Plan.
- Using two machinery options he calculates maximum noise levels as 46dB L_{A10} at bach and 34dB L_{A10} at Moore dwelling; this is within the Plan's daytime noise limits and likely to be exceeded at times by ambient noise.
- Noise effects between 'reasonable' and 'insignificant', provided the operation is restricted to daytime hours.

Mr R M Langbridge: Landscape Architect; 20 years' experience.

- Draws on the landscape report from part of AEE.
- In this area marine farms virtually a continuous ribbon along shoreline.
- Three pockets of residential zoning in vicinity.
- Visibility of site "reasonably low", although boat traffic to the wider bay passes close to the applications site (700m).
- Natural character of the wider bay may be classified as 'high', although this is in the context of a working landscape.
- Native regrowth, although extensive, is not yet notable.
- Overall, the Sounds may be an area of outstanding landscape, but this description is not justified in relation to the scale of this site.
- Describes the landform and vegetative cover; characterises the offshore area as dominated by marine farming, regards the area as 'appropriately' zoned.
- Marine farms are "an integral and consented part of the receiving environment".
- Discusses viewpoints and views obtained; essentially, visual / landscape consequences increase with proximity.
- *Entering bay* – not substantial.
- *Mid-bay*- visible but not dominant.
- Proposed options 2-4 more visible than 1, but still not dominant.
- At this proximity colour becomes important.
- Does not believe that on-site barge will produce effects significantly different from those of a visiting service vessel.
- Does not regard the difference between consented and proposed consequences as significant, although there will be some present and visible.
- *Close at hand*: both consented and proposed elements will be significant visually, but comparable:
- Option 1 – less substantial than that of other options; the conventional service barge will have a more ephemeral quality.
- Relative difference not likely to be substantial "and in my view, not adverse".
- *Viewed from shore* proposed pens (options 2 – 4) would dominate more.
- Because options 2 – 4 will be more compact and are to be rotated, nearby residents will experience more open water space varying as the pods are moved: vertical presence will be more apparent in some locations.

- Impact of the "proposal "less than minor", in other words (his) "not substantial".
- Deals with submissions
- Deals with cumulative effects
- Broad assessment – para 94ff – “On balance, if one was to consider the relative differences, and the impact that these differences would have on the overall qualities and characteristics of the inner waters of this part of the bay, I feel they would be largely comparable.”

Ms Sarah Dawson: BSc (Chem) MSc (Resource Management), Planning consultant for more than 30 years, Director Boffa Miskall Ltd.

- Details proposals and provides sets of proposed conditions.
- S127 application to be considered as a discretionary activity, the barge as non-complying and the greywater discharge as a discretionary activity.
- Argues, contra Mr Brosnan, that changes to pen structures may properly be considered under s127.
- Characterises it 'receiving environment', relying on evidence given by other witnesses
- Compares existing and proposed net pen conditions
- Discusses the likely effects of the proposed moored barge
- Analyses relevant aspect of statutory policy statements and plans
- Addresses s104D
- Concludes
 - (i) No relevant matters of national importance.
 - (ii) Changes to seabed conditions ecologically insignificant, natural character of area already compromised, no other ecological effects anticipated, wider area not adversely affected, proposals consistent with 6(a) and (d).
 - (iii) No anticipated issues relating to 6(e), 7(a); no recognised customary rights relevant to 6(g).
 - (iv) Minor environmental effect changes arising from alterations to the net structures and the presence of a barge will, overall, maintain the quality of the nearby environment – 7(f), amenity effects mitigated and, in the end) reasonable, consistent with 7(c).
 - (v) The net-pen options and barge contribute to the efficient use of natural resources and enhance the enablement of wellbeing.
 - (vi) Overall the proposals will achieve the purpose of the Act.

Mr Graeme Clarke: Marine biologist and marine farmer.

- Supports fish farming in general.
- Pelorus Sound is a highly modified environment
- Provides a historical review with particular reference to Crail Bay.
- "What we have is a highly modified landscape, a highly modified seascape and a degraded social scape".
- Mussel farms and salmon farms should be in the same locality, the former to take advantage of nutrient enrichment from the latter.
- Prefers 'polar circles' (seemingly from an aesthetic/visual standpoint), but not opposed to the flexibility option.
- Concerned about smell from 'morts'.
- Also concerned about the effects of grey-water discharge containing chemical cleaners on water quality.

Ms Kirsten Gerard: Resident

- On the issue of noise, is reasonably happy with what she has heard today.
- Supports the Clarke submission.
- On the issue of smell, supports stringent conditions on the removal of morts, with different summer/winter requirements – morts should be removed daily in the summer.
- Greywater should not be discharged in to the sea, particularly considering the producer statements on cleaners that will possibly be used.
- Prefers 'polar circle cages' – "all of us have got used to them".
- There is a process of re-generation which may, in time, justify the removal of fish farms.
- Speaks of land uses that may have an impact upon marine conditions, and of changes in farming practice that promise improvements.
- The nature (fragility) of Crail Bay requires a cautious approach.
- In an ideal world there would be more intensive monitoring.
- Control sites should be entirely within Crail Bay.
- Argues (essentially) for option 1 – the status quo – as the only option.
- Supports a condition banning 'ghetto-blasters'.

Mr Raymond Smith: Represents Ngati Kuia in a range of environmental / customary fishing / conservation issues. He tohunga taiao me nga tikanga o Ngati Kuia.

- Opposes the applications because of impacts on mauri, taonga, taiao and land and seascape values; notes a standing opposition to the farming of introduced fin fish (as opposed to the farming of native species).
- Provides an extensive explanation of those RMA principles that incorporate a Maori perspective and of the basis of the iwi position.
- Describes historical events /associations of importance to iwi and which underpin their concerns.
- Public rights to the foreshore and esplanade strips reinforce the argument that those potentially affected (by this and other aquaculture activities in the general area) go much wider than local residents and bach-holders.
- A sense that the position of Ngati Kuia on these and other issues is still evolving. Reference to "strategic plans to revive our customary practice and cultural identity in this area" with an emphasis upon maintaining "the mauri of natural and physical resources and to enhance that mauri where it has been degraded by human activity ..."
- "[m]onitoring and compliance [need to be] higher than normal to give tangata whenua and other resource users peace of mind and certainty that our future environmental integrity is secure.
- Supports the evidence of Rob Schuckard.

Mr Rob Schuckard:

- The Bol approach is not appropriate for areas significantly different from those then considered – as, e.g., low flow sites.
- Has concerns with water column stratification – the layering of water having different levels of salinity. Claims that this an issue at Big Glory Bay (Stewart Island) where a dense and harmful algal bloom occurred in 1989 – "may have originated from ... land run off...", "fish feed from salmon farms might have contributed ...", "conditions of the time ... contributing towards the establishment of a stratified water column."
- Critical of the general approach, particularly because of the possibility of wide-field effects (monitoring of which, he accepts, is a function of the unitary authority).
- Concerned about the sufficiency of the model adopted and the weightings involved; concludes that the *old* conditions are more restrictive than those now proposed
- Argues, largely for precautionary reasons, that 4.5 should be adopted as the 'below cage' limit, as it allows for a retreat before collapse (this led to a discussion about the difference between conditions of compliance and those concerned with management responses. That resulted in the suggestion of a condition requiring that, when testing indicated that 4.5 was being approached, the consent holder advise the MDC of its proposals to prevent the compliance limit from being breached).
- Addressed a statement by Dr Keeley (in 2012) to support the assertion that low flow conditions are intrinsically unsuitable for all elements of salmon farming.