

RESOURCE MANAGEMENT ACT 1991**Decision of Marlborough District Council**

RESOURCE CONSENT: U200301

APPLICANT: The New Zealand King Salmon Company Limited

LOCATION: Ruakaka Bay, Queen Charlotte Sound/Tōtaranui

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

New coastal permit (renewing U021247 in part) for the continuation of subsurface anchoring structures positioned within a 6.8 hectare area of the existing **11.3 hectare** salmon farm (site 8274) located in Ruakaka Bay.

DECISION: **Granted**

RESOURCE CONSENT ISSUED:

Coastal Permit

Certificate of Resource Consent

Consent Holder:	The New Zealand King Salmon Company Limited
Consent Type:	Coastal Permit
Consent Number:	U200301
Marine Farm Site No.:	8274
Lapse Date:	1 November 2023
Expiry Date:	31 December 2024

Pursuant to sections 34A(1) and 104A and after having regard to Part 2 matters and section 104 of the Resource Management Act 1991, the Marlborough District Council **grants** the application for a new coastal permit (renewing U021247 in part) for the continuation of subsurface anchoring structures positioned within a 6.8 hectare area of the existing 11.3 hectare salmon farm (site 8274) located in Ruakaka Bay, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

Conditions

1. This resource consent must not be implemented concurrently with consent U021247 insofar as U021247 relates to the subsurface anchoring system the subject of this consent. In the event that this consent U200301 is implemented, the consent holder must within one month thereafter provide written advice of such implementation to the Compliance Manager, Marlborough District Council. Such advice must include details of the type, number and location of anchors and anchor warps installed.
[Note: Any surrender or partial surrender of U021247 must accord with section 138 of the Resource Management Act 1991.]
2. The subsurface anchoring structures authorised by this consent must be laid out in accordance with the farm layout identified in OCEL drawing number DR-051103-031 Revision 40, attached as Appendix A to this consent.
3. Within two years of the implementation of this consent, the consent holder must provide documentary evidence to the Compliance Manager, Marlborough District Council, illustrating the actual as-built location of the subsurface anchors and anchor warps in relation to the boundaries of the 6.8 hectare consent area shown in Appendix A.
4. Beyond 20 metres from any surface structure, no mooring line shall be within 4 metres of the surface of the water.
5. All anchoring structures authorised by this consent and all parts thereof must be designed, constructed, installed and maintained in a manner which ensures that they are restrained, secure, in working order and within the consent area at all times.
6. The design, including the design loading, for the anchoring and mooring warp system shall be specified by a suitably qualified and experienced engineer (the engineer) to cater for the maximum wave loading, and maximum tidal range and currents. The design report and plans must be provided to the Compliance Manager, Marlborough District Council, within three months after the commencement of the consent.

7. The anchoring and mooring warp system shall be monitored and maintained in accordance with a "NZ King Salmon Mooring Maintenance Policy" which is prepared, or reviewed and accepted, by a suitably qualified and experienced engineer, in consultation with the district Harbour Master, and provided to Compliance Manager, Marlborough District Council. The monitoring shall include continuous monitoring of the actual mooring loads caused by the hydrodynamic forces on the marine farm by tidal currents and waves, designed to demonstrate that the design loading on the anchors and mooring warps is not exceeded, as recommended by the engineer.
8. The NZ King Salmon Mooring Maintenance Policy may be revised from time to time by the consent holder. Any revisions must be prepared, or reviewed and accepted, by a suitably qualified and experienced engineer, in consultation with the district Harbour Master, and provided to the Compliance Manager, Marlborough District Council.
9. The consent holder must take whatever steps are reasonably necessary to avoid any non-biodegradable debris being lost in or from the consent area, and take whatever steps are reasonably necessary to retrieve any non-biodegradable debris lost in or from the consent area.
10. Upon the expiration, forfeiture or surrender of the consent, the consent holder must remove all anchors and anchor warps and any associated equipment from the consent area, and restore the area as far as is practicable to its original condition to the reasonable satisfaction of Council. If the consent holder fails to do this Council may arrange compliance on the consent holder's behalf and expense.
11. In accordance with section 128 of the Resource Management Act 1991, the Marlborough District Council may, during the months of January to December (inclusive) in any year for the duration of this consent, serve notice of its intention to review the conditions of this consent for any of the following purposes:
 - a) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage;
 - b) To review the effectiveness of the consent conditions in avoiding or mitigating any adverse effects on the environment and arising from the exercise of this consent and, if necessary, to avoid, remedy or mitigate such effects by way of further or amended conditions;
 - c) To review the adequacy of and necessity for monitoring the effects of the activity on the environment; and/or
 - d) To ensure that adverse effects on navigation, public access and visual amenities are adequately avoided, remedied or mitigated.

Advice Notes

1. All electronic correspondence relating to the operation of this consent and compliance with consent conditions should be sent to: monitoring@marlborough.govt.nz.
2. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the administration and monitoring of this resource consent and conditions herein.
3. The consent holder will in the future be required to pay coastal occupation charges if they are imposed through Marlborough District Council's resource management plans.

Reasons

Proposal

1. The applicant seeks a replacement resource consent for a 6.8-hectare subsurface anchoring area associated with the existing Ruakaka salmon farm (site 8274) located in Ruakaka Bay.
2. The submitted farm layout plan shows eleven screw anchors and associated anchor warps are to be located within the subject 6.8-hectare area. The associated net pens, barge and surface buoys are entirely located within the 4.5-hectare area consented under resource consent MFL001 and are not the subject of this consent.
3. The application seeks a consent expiry date to align with MFL001, that being 31 December 2024.

Activity Status

Marlborough Sounds Resource Management Plan (the Sounds Plan)

4. The site is zoned Coastal Marine 1 (CMZ1) in the Sounds Plan. Although new marine farms are prohibited in the CMZ1, the Sounds Plan provides for the continuation of existing farms subject to certain limitations. The related policies state at Policy 9.2.1.1.15 to “*Enable the renewal as controlled activities of marine farms authorised by applications made prior to 1 August 1996 as controlled activities...*”. And at Policy 9.4.1.1.7 “*Recognising (by way of controlled activity status) the importance of renewing the majority of existing marine farms authorised by applications made before 1 August 1996 while mitigating adverse effects on the environment by way of conditions.*” These policies are then implemented through a somewhat convoluted rule framework, the relevant parts of which I set out below.
5. Rule 35.2 of the Sounds Plan states that application must be made for a resource consent for a Controlled Activity with respect to – amongst other things – marine farms previously authorised, as provided for in Rule 35.2.5 set out below.

Rule 35.2.5

“Marine farms authorised by a current Coastal Permit (pursuant to the Resource Management Act 1991) or current Marine Farm Lease or Licence (pursuant to the Marine Farming Act 1971) applied for prior to 1 August 1996; or authorised by a new Coastal Permit, the application for which constituted a renewal of a Coastal Permit, Marine Farm Lease or Licence specified above which was current at the date of the application being made for the new consent, are Controlled Activities provided that the activity conforms to the following standards, and provided further this rule shall not apply to the marine farms shown on Appendix D2.

NB: ‘Current’ means a Coastal Permit, Marine Farm Licence or Marine Farm Lease in force and operative in accordance with its terms as at the date of application.

35.2.5.1 Standards

a) *The structures and anchoring systems established on the marine farm shall be those authorised by the current Coastal Permit, Marine Farm Licence or Marine Farm Lease applied for prior to 1 August 1996, except that in the case of marine farms listed in Appendix D, as controlled activities, this standard shall not apply to the replacement of surface structures with sub-surface structures.*

b) *The marine farm shall occupy only that area and only for the purposes and for the species authorised by the current Coastal Permit, Marine Farm Licence or Marine Farm Lease applied for prior to 1 August 1996.*

c) *The species to be farmed on any marine farm shall be only those authorised by the current Coastal Permit, Marine Farm Licence or Marine Farm Lease applied for prior to 1 August 1996.*

d) *The lighting system utilised on the marine farm shall at all times comply with the conditions of the current Coastal Permit, Marine Farm Licence or Marine Farm Lease applied for prior to 1 August 1996, or in the absence of any such conditions the beaconage and buoyage standard required by 'The system of Buoyage and Beaconage for New Zealand, Ministry of Transport: Nov 1991', and 'Maritime Safety Authority Marine Farm Lighting Marking and Structures Criteria 2' and standards or substitutions in replace thereof."*

6. With regard to the above rule, the subject 6.8-hectare area contains subsurface structures used for aquaculture and therefore constitutes a marine farm under the Sounds Plan definition. Although the application is expressed as seeking to renew consent U950656, that permit expired on 24 May 2003. Therefore U950656 is not a *current coastal permit* as required by Rule 35.2.5. What is now sought is in fact a partial renewal of current coastal permit U021247, or in other words a 'renewal of a renewal'. While Rule 35.2.5 could have been worded more clearly, it is adequately clear that such a 'renewal of a renewal' falls within the ambit of Rule 35.2.5.

7. The next step is to assess the activity for conformity with the standards listed at 35.2.5.1 a)-d), as follows:

Standard 35.2.5.1 a)

8. The application document U021247 (date stamped 25 November 2002) relevantly summarised that proposal as "*To install in a configuration chosen at the discretion of the applicant, salmon farming structures up to a total surface area of 2 hectares within an area of 11.303 hectares...*" Paragraph 13 of that application stated that the moorings would be nylon rope fixed to either concrete or screw anchors, and that the cage and barge designs would be similar to those currently in use. The related decision document relevantly expressed the activity as "*To continue the occupation of the seabed by marine farming structures in Ruakaka Bay authorised by MFL1, and previous resource consents U950656 and U980543...*".

9. The relevant consent conditions imposed on U021247 (as changed 26 November 2007) expressly limit the occupancy to the 11.303 hectare applied for (Condition 4), and restrict the area of surface structures to a maximum of 2.0 hectares within a specified 3.2 hectare envelope (Condition 5). Condition 5 further prevents the installation of any new structures north of the line formed by the southwest boundary of the MFL001 area, and prevents any new structures being added east of existing structures. It is reasonably clear that, subject to those above parameters, the current coastal permit U021247 allows the consent holder to determine the exact positioning of the farm structures including the associated anchor blocks and anchor warps. This conclusion is supported by Condition 2 of Council's original decision of 19 March 2004 on U021247, which stated "*...the configuration of structures, including the accommodation and feed barges, within this defined area shall be at the discretion of the consent holder.*"
10. Having outlined above what the current coastal permit U021247 authorises, this can be compared to the content of the current application. The application U200301 expressly excludes the 4.5 hectare area covered by MFL001, and is concerned only with the 6.8 hectare area which surrounds MFL001 on three sides. The submitted drawing shows only subsurface screw anchors and subsurface anchor warps are proposed to be located within that 6.8 hectare area. Based on the above it can be reasonably concluded that these proposed anchoring systems fall within the bounds of those authorised by the current coastal permit U021247, and therefore the proposal conforms with standard 35.2.5.1 a) of the Sounds Plan.

Standard 35.2.5.1 b)

11. The current coastal permit U021247 concerns an 11.3 hectare area bounded by a specific set of NZMG coordinates contained in the decision document. The current application U200301 seeks to occupy a smaller 6.8 hectare area located entirely within the larger 11.3 hectare area approved by U021247. Similarly, the current application seeks to use the 6.8 hectare area for subsurface screw anchors and anchor warps, that being a subset of the activities approved by U021247 (Note: U021247 also enabled surface structures to be located within small areas of the subject 6.8 hectare area). Taking a purposive approach to this Sounds Plan standard, the current application does not seek consent for a larger area or any additional purposes to those approved by U021247. The current proposal therefore conforms to standard 32.2.5 b) of the Sounds Plan.

Standard 35.2.5.1 c)

12. As the current application relates only to the anchoring system of the farm and does not propose to farm any species, Sounds Plan standard 35.2.5.1 c) is not applicable to the proposal.

Standard 35.2.5.1 d)

13. As the current application relates only to the subsurface elements of the anchoring system of the farm, Sounds Plan standard 35.2.5.1 d) is not applicable to the proposal.

Conclusion

14. Taking a purposive approach to the interpretation of Rule 35.2.5 of the Sounds Plan, the current application U200301 to renew (in part) current coastal permit U021247, which itself replaced U950656, conforms to the applicable standards under 35.2.5.1 and therefore constitutes a **controlled activity**.

Proposed Marlborough Environment Plan (PMEP)

15. There are no applicable rules having current legal effect in the Proposed Marlborough Environment Plan (PMEP).

Matters of Control

16. Section 104A of the Resource Management Act 1991 (the RMA) requires that resource consent must be granted for a controlled activity and states that conditions may only be imposed for those matters over which control is reserved in the Sounds Plan. The Sounds Plan sets out the following matters of control at 35.2.5.3:

“Conditions may be imposed in respect of the following matters over which the Council has reserved control:

- a) The duration of the consent (subject to the maximum period specified in Rule 35.2.5.2 above);*
- b) Information and monitoring requirements;*
- c) The provision of warning devices and signs;*
- d) The layout and positioning of the marine farm structures to ensure public access (including recreational and forestry access) through the area and the preservation of navigational safety both within the marine farm and within the vicinity of the marine farm;*
- e) The extent and nature of disturbance to the foreshore and seabed;*
- f) Administrative charges payable;*
- g) The adverse effects of any marine farming related structures on navigation or on visual amenities;*
- h) The adverse ecological effects of the activity;*
- i) Adverse effects of marine farming activities and structures previously addressed by way of conditions in earlier Coastal Permits, Marine Farm Licences and Leases pertaining to any particular marine farm site;...”*

Notification

17. For reasons recorded separately the application was processed without public or limited notification.

Assessment of Effects

18. In terms of the considerations required by sections 104(1)(a), as limited by section 104A of the RMA and Part 35.2.5.3 of the Sounds Plan, subject to the conditions imposed the proposed subsurface anchoring system is concluded to be likely to have acceptably small adverse effects on the existing public access, navigational safety, visual amenities and ecological systems of the site and surroundings. In reaching this conclusion it is assessed that the proposed anchoring system would be appropriately located and designed to ensure navigational safety in the area, and is unlikely to have significant adverse effects on ecological systems.

Relevant Statutory and Plan Provisions

19. In terms of the considerations required by sections 104(1)(b) of the RMA, as restricted by section 104A of the RMA, Policies 6, 11, 13, and 18 of the New Zealand Coastal Policy Statement 2010; Objectives 5.3.10 and 8.1.2 and Policies 5.3.11, 7.1.7, 7.1.10, 7.2.10 and 8.1.5 of the Marlborough Regional Policy Statement; Objectives 2.2.1, 4.3.1, 5.3.1, 8.3.1, 9.2.1.1, 9.4.1.1 and 19.3.1 and Policies 2.2.1.2, 4.3.1.2, 8.3.1.2, 9.2.1.1.1, 9.2.1.1.2, 9.4.1.1.1 and 19.3.1.1 of the Sounds Plan; and Objectives 6.2, 7.2 and 8.1 and Policies 6.2.2, 7.2.4, 8.3.1, 13.2.6, 13.10.5, 13.10.8, 13.10.9 and 13.10.10 of the PMEP (appeals version) are of relevance to an evaluation of the proposal.
20. In very broad terms the relevant provisions seek the positive economic and related benefits of aquaculture while managing the adverse environmental effects to maintain indigenous biodiversity, visual values and public use of the sea. With regard to the relevant provisions and based on the information provided, it is concluded that the proposed subsurface anchoring system would be consistent with many of the identified provisions of the Sounds Plan and PMEP.

Conduct of the Applicant

21. Section 165ZJ(1AA) of the RMA states that the consent authority must consider all relevant information available in relation to the existing coastal permit, including any available monitoring data. Subsection 165ZJ(1) states that the consent authority must also consider the applicant's conduct in relation to compliance with the relevant regional coastal plan and compliance with resource consent conditions for current or previous aquaculture activities undertaken by the applicant. With regard to these matters the relevant compliance records held by Council show that the farm has for many years been located partially off-site. Consent conditions have been imposed to ensure the structures are positioned within the authorised farm boundaries in the future.

Value of the Investment

22. Section 104(2A) of the RMA states that the consent authority must have regard to the value of the investment of the existing consent holder. The subject anchoring system supports the adjoining salmon farm which contains stock worth several millions of dollars once harvested. This matter would only become relevant if consent were to be refused, in that it would be appropriate to allow the stock to be harvested prior to removal of the anchoring system.

Part 2 Resource Management Act 1991

23. With regard to the matters of national importance and other matters, including subsections 6(c), 6(d) and 7(c), along with the relevant principles of the Treaty of Waitangi as required by Part 2 of the RMA, it is concluded that the sole purpose of the RMA would be better achieved through a grant of resource consent, subject to the specified conditions.

Consent Duration and Lapse Date

- 24. Section 123A(2) of the RMA requires that the consent must be for a period not less than 20 years unless the applicant has requested a shorter period. In this case the applicant has appropriately requested an expiry date to match that of MFL001, being 31 December 2024.

- 25. In accordance with section 125(1)(b) of the RMA, a lapse period of three years is imposed. The lapse date is therefore 1 November 2023.

Recommended for approval:



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Peter Johnson
Lead Senior Environmental Planner

Approved:



15 October 2020

Anna Eatherley
Marlborough District Council Manager Resource Consents

Additional Important Information for Resource Consent Holders

The following information provided in this information sheet is a guide to the legal rights of applicants and submitters.

If you want to discuss matters raised in this information sheet you are welcome to contact Council. However, if you require specific advice you should contact an independent professional and refer to the relevant sections of the Resource Management Act 1991.

Commencement of a Resource Consent

Refer to section 116 of the Resource Management Act 1991

- Where no submissions were lodged or any submissions were withdrawn, a resource consent commences, (and may be actioned) on the date of the receipt of the decision.
- Where submissions were lodged to the application, and not withdrawn, the resource consent commences once the time for lodging an appeal has passed, provided no appeals have been received, or when all appeals have been resolved or withdrawn.
- If the resource consent was for activities controlled by the district plan on reclaimed land or land in the coastal marine area, or a restricted activity; then there are specific provisions regarding the commencement of resource consent. These provisions are outlined in section 116 of the Resource Management Act 1991.

Lapsing

Refer to section 125 of the Resource Management Act 1991

- If no lapse date is specified in the conditions of this consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to).

Conditions of Resource Consent

Refer to section 108 of the Resource Management Act 1991

- If conditions are imposed these will be set out in the decision document.
- Please read your consent and ensure that you fully understand any conditions.
- If you have concerns with any condition(s), in the first instance you should discuss your concerns with Council, although an option may be to lodge an appeal or objection.
- It is a legal requirement that there be **compliance with** all conditions.
- If any conditions are contravened it may be that the Council or members of the public will initiate enforcement action (outlined in Part XII of the Resource Management Act 1991).

Change or Cancellation of Conditions of Resource Consent

Refer to section 127 of the Resource Management Act 1991

- The consent holder may apply to the Council to change or cancel conditions of the consent, except a condition specifying duration.

Monitoring Fees

Refer to section 36 of the Resource Management Act 1991 and the Council's Schedule of Fees

- The consent holder will be charged for actual and reasonable costs associated with the monitoring of this consent.

Objections

Refer to section 357 of the Resource Management Act 1991

- In certain circumstances the applicant has the right to object to the Council's decision.
- Any objection shall be made in **writing** and will need to outline the reasons for the objection.
- An objection needs to be lodged with the Council within **15 working days** of the Council's decision being received by you or your agent.

Appeals

Refer to Form 16 and sections 120 and 121 of the Resource Management Act 1991

- The applicant and any submitters have the right to appeal the whole or any part of the Council's decision, however there is no right of appeal against the whole or any part of the decision to the extent that the decision relates to one or more of the following, but no other, activities:
 - a) a boundary activity, unless the boundary activity is a non-complying activity;
 - b) a subdivision, unless the subdivision is a non-complying activity;
 - c) a residential activity as defined in section 95A(6), unless the residential activity is a non-complying activity.

A submitter can only appeal to the Environment Court if their appeal is related to a matter raised in their submission and their submission, or the part of their submission to which the appeal relates, has not been struck out under section 41D of the Resource Management Act 1991.

- A notice of appeal must be lodged with the Environment Court and the Council, within **15 working days** of the Council's decision being received (or received by your agent on your behalf). A copy also needs to be served on the applicant and submitters to the application within 5 working days of the notice being lodged with the Environment Court.

Before lodging an objection or an appeal it is recommended that you seek professional advice.

Annotation History

Date	Reason for Amendment/Alteration