

Marlborough Mussel Farming

Implications of the National Environmental Standard – Aquaculture (NES)

What is the NES ?

The NES is a regulation and is mostly about how new consents for existing aquaculture can be attained. My focus here is mussel farms (although the NES applies to fin-fish farms as well).

In short, as from 1 December 2020 if an existing farm is all within an area that is not mapped or identified as inappropriate for aquaculture by a Marlborough District Council (MDC) plan or proposed plan, then that mussel farm can get a new consent processed without public input and with MDC limited on what it can have regard to. It will pretty much be a rubber-stamping process.

The same will apply if a farm wants to re-position. An existing farm will be able to re-position under the same rubber-stamping process providing that no more than 1/3rd of it is moved onto new territory.

Is that Fair on the Public?

Removing the public from decisions on such a large amount of environmentally exploitive activity in such a highly valued public area is undemocratic, probably unprecedented in NZ, and contrary to fundamental principles of the RMA. To this the Ministry for Primary Industries (MPI) say the idea of the NES is that the public get their say on existing Sounds aquaculture through the Marlborough Environment Plan (MEP) process – by identifying where mussel farming is inappropriate. However, the NES has been set to take effect from 1 December 2020 - clearly insufficient time for the public to actually have any say on the MEP aquaculture rules. So no, there is nothing fair about this.

What is MDC Doing ?

Meanwhile MDC proposes to notify aquaculture rules for the MEP adopting a premise that virtually all of the existing aquaculture in the Sounds is 'appropriate'. MDC has not, and in my view cannot, support this position environmentally.

So Where are we Left ?

Because MDC's proposed MEP aquaculture rules will not classify existing farms as 'inappropriate' the MEP will not affect the application of the NES. Thus, come 1 December, and whether or not MDC has actually tabled its proposed MEP aquaculture rules by then, existing farms will be able to, and surely will, apply for a rubber-stamp for a default minimum term of 20 more years.

So the public are now shut out of the decision making process on Marlborough Sounds aquaculture for a generation. The exceptions are those very few farms that are literally within areas that the current rules or the proposed MEP hold as 'outstanding'.

Remind me - why do we care ?

Broadly, the NES assumes it is OK to rubber stamp existing farms consents because most issues arising from existing farming are cumulative effects that cannot be addressed at the individual farm resource consent level. The NES leaves cumulative effects to be addressed at the MEP level – through a process of determining inappropriate areas for aquaculture.

The problem, of course, is that this has all been timed so that the Marlborough public doesn't get a chance to do this before existing farms can all be rubber stamped for another generation.

Why are There Cumulative Effect Problems ?

We have different standards today than when most existing farms were originally consented (e.g. the New Zealand Coastal Policy Statement 2010). We have also had decades of systemic failure in the consenting of Sounds aquaculture.

A key mussel farming issue we face in the Central Sounds area is the loss, or risk of loss, of indigenous biodiversity through over-farming. This is particularly the case in areas such as northern Kenepuru Sound and parts of the Beatrix/Crail/Clova Basin. In short, modern modelling is showing that in these areas cultured mussels are dominating the ecosystems – they are effectively dictating the type and abundance of indigenous biomass that is left to function within it. This includes an almost complete obliteration of zooplankton by cultured mussels. Any surviving natural ecosystem biomass in these areas is rendered even more vulnerable to other stressors, such as climate change and siltation. This manifests up through the food chain. Long term locals in these areas can correlate the proliferation of marine farms over the last two or three decades with markedly reduced visible life in the inter-tidal zones and a loss of wild shellfish and fish stocks.

The other issue we face is cumulative landscape and natural character effects. There are numerous areas throughout the Sounds where mussel farming has been allowed to creep up to the point that it now dominates the landscape and/or natural character of the area. This is not acceptable under today's regulatory framework and standards.

There are any number of other reasons why existing farming may not necessarily be OK. Some are in shallow or still water and are not economic whilst historical consenting failures has rendered others unreasonably infringing visual amenity or impinging on navigational routes or coastal access.

Is there anything we can do ?

There is of course little practical likelihood that changes can be effected to the NES before 1 December. It was timed to be released just before Parliament broke for the election. Ministers Nash and Parker do need to be put on notice that their NES has locked in potentially inappropriate levels of aquaculture and left the public stripped of its democratic right to participate in Sounds aquaculture decisions for a generation.

And there is also no practical likelihood that MDC will change from its path of notifying an aquaculture chapter holding that virtually all existing aquaculture is 'appropriate'.

One might be forgiven for thinking there has actually been some kind of orchestration effected to protect existing Sounds aquaculture from environmental scrutiny – at least for another generation.

What About Contingent Renewal Terms ?

One glimmer of hope for the public lies in consent term. MDC is still able to give a term of less than the default 20 year minimum - if required to ensure that adverse effects on the environment are adequately managed.

Here we have a situation where the NES prohibits regard being had to cumulative effects at the consent renewal level because such should be addressed at the MEP level – but then at the same time facilitates new consents for these farms before the MEP has had a chance to actually address those cumulative effects.

Accordingly, it seems rather appropriate that MDC adopt a system of applying a contingent consent term system for existing farms - when they are renewed under the NES but before the aquaculture rules of the MEP are operative. More particularly, in this situation consents should be issued for terms that are the lesser of 20 years or through until the point in time that some or all of the farm area is held to be inappropriate under the MEP. This way any marine farm that is consented under the NES but which is subsequently found to be wholly or partly inappropriate under the MEP can be immediately corrected for – whilst the balance of the NES consented farming activity is left to see out its default 20 year minimum consent terms unaffected.

But the NES also strips the public of its right to participate in resource consent hearings. So the public has no structured legal path to enforce the use of contingent consent terms by MDC. There is no conceivable reason why MDC would not adopt such a system. However, we have every reason to believe it will not. This is because under the MEP existing consent holders are likely to be allocated rights to apply for new resource consents for free. History shows that rather than taking free use as an environmentally focused social contract, industry will instead take it as an incentive to strongly challenge and deny any environmentally focused initiative that stands to put their free use at risk. MDC, unfortunately, can be sometimes inclined to appease this self-interested industry behaviour.

MDC has gone to quite some lengths to make new consents for existing Sounds aquaculture easy to get. That's great – but it needs to also confront its responsibility to hear and take account of public values and to see that the environmental settings are right.

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16 September 2020