

15 November 2020

Hon David Parker
Minister for the Environment
Minister for Oceans and Fisheries
Executive Wing
Parliament Buildings
Wellington

A Need for Transition
Resource Management (National Environmental Standards for Marine Aquaculture)
Regulations 2020 (NES)

Dear Minister

I am writing to you in my capacity as Chair of the Marlborough Sounds based Clova Bay Residents' Association Inc and on behalf of the Kenepuru and Central Sounds Residents' Association Inc.

We were part of a local community group press release copied to you recently regarding significant environmental and democratic issues arising with the NES. We **attach** a copy of that press release (Appendix 1) for ease of reference and background. We also respectfully **attach** (Appendix 2) a short but more technically focused note on the NES transitional issues at issue here.

We have been in discussions with the Marlborough District Council (MDC) over a potential solution to these transitional issues. MDC advises us that the proposed aquaculture chapter of the Marlborough Environment Plan (MEP) is now before you for pre-notification review. MDC has suggested that we defer to you for guidance to MDC on the transitional issues presented by the NES.

Accordingly, we respectfully **request** that you recommend to MDC that the aquaculture provisions incorporate an appropriate policy or provision to address the transitional issues presented by the NES. That is, a policy or rule to ensure that existing aquaculture activity that is found to be inappropriate activity through the current Schedule 1 MEP plan review process is not wrongly re-consented under the NES for 20 or more years in the meantime.

One solution we have raised is for MDC to adopt a policy of imposing a contingent consent term. This would fairly cover cases where the NES requires the renewal of an existing aquaculture consent but before what is 'inappropriate aquaculture' has been operatively determined under the MEP. A contingent consent term is one that would be issued for the shorter of 20 years or that period of time through until the activity is found to be inappropriate under the MEP plan review process.



Unilaterally imposing aquaculture activity consent terms that may turn out to be less than 20 years might only be done if required to ensure that adverse effects on the environment are adequately managed¹. That is clearly the case here.

We are looking at this in the context of an activity that has had to be re-consented by the NES but **before** critically assumed environmental and democratic events precedent to the NES operating have **actually occurred**.

We trust you will agree that there is a need for MDC to adopt an appropriate transitional policy in the MEP aquaculture chapter.

We look forward to hearing from you.

Sincerely



Trevor Offen B Com CA (PP)
Clova Bay Residents Association Inc
Kenepuru and Central Sounds Residents Association Inc

¹ Section 123A(2)(b) of the Resource Management Act 1991.



APPENDIX 1

Group Press Release

Public Stripped of Democratic Rights on Aquaculture in the Marlborough Sounds

After waiting 25 years the Marlborough public are quietly being stripped of their right to have a say on Marlborough Sounds aquaculture settings for another generation. This is the effect of a recently promulgated National Environmental Standard for Aquaculture (NES).

From 1 December 2020 existing Sounds aquaculture will be able to gain new resource consents for a default minimum term of 20 years using a new streamlined process under the NES. The public will be excluded from this process. This process will prohibit any regard being had to what should rightly be treated as outstanding areas and to the adverse cumulative effects of existing Sounds aquaculture.

Modern standards and assessment tools show that some areas, such as Clova Bay in the Pelorus Sound, are taking major ecological hits through existing farming intensities. There are other areas, such as East Bay in Queen Charlotte Sound, that might rightly deserve to be protected as outstanding areas.

A critical premise of this new NES process is that the Marlborough public has had it's say on existing aquaculture - through a process of identifying inappropriate aquaculture areas under the new Marlborough Environment Plan (MEP).

The problem is this is yet to happen - Marlborough District Council (MDC) has still not proposed any aquaculture rules for the MEP. Even if it does before 1 December, all indications are that MDC will adopt an unfounded baseline that existing aquaculture can all be accommodated. It will not be based on a public and independently adjudicated process of what are outstanding areas and nor will it be based on appropriate cumulative ecological effect standards and principles.

These things will need to be taken up and properly addressed through the yet to happen MEP public hearing and appeal process - after the aquaculture chapter has been notified by MDC. This hearing process can't happen before 1 December 2020. This means that come 1 December the NES stands to facilitate a premature re-consenting of some Sounds aquaculture - and for a default minimum term of 20 more years.

It has been 25 years since the Marlborough public had a planning say on Sounds aquaculture. Over that time landscape values have changed and decision makers have failed to properly grapple with growing cumulative effects and ecosystem impacts. Sounds aquaculture is now well beyond anything contemplated 25 years ago.

To now deny the public the opportunity of a say for another generation is undemocratic. To do so without a proper assessment of existing activity under modern standards and principles is also reckless.

The solution is simple. MDC must adopt a transitional re-consenting process for existing aquaculture to ensure that inappropriate aquaculture is not wrongly consented for another generation.

This media release is from: Kenepuru and Central Sounds Residents Association Inc ; Clova Bay Residents Association Inc; East Bay Conservation Society Inc; Guardians of the Sounds Inc; Friends of Nelson Haven and Tasman Bay Inc; Marlborough Environment Centre Inc.



APPENDIX 2

Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 (NES)

Note on The Need for Transition

What the NES Does

The Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 (NES) take effect from 1 December 2020². As from that point existing marine farm resource consents that are like for like³ can all be renewed with discretion limited to a few prescribed matters – namely for this purpose noise, rubbish and debris, structure layout and density (for navigational safety, public access and coherent appearance purposes only), structure integrity, effects on reefs, biogenic habitat and regionally significant benthic species if within 20 meters of the farm, adverse sea mammal and seabird interaction, and biosecurity⁴.

If an existing farm is within an existing or proposed ‘outstanding’ area then discretion is also afforded to effects on the values that make the area ‘outstanding’⁵.

Either way there will be no public notification (unless there are special circumstances)⁶.

The rules will not apply if a farm is within an area that has, since 1 January 2019, been determined as inappropriate for existing aquaculture by a plan or proposed plan. As far as we know there are currently no such areas in Marlborough.

As matters stand the NES will facilitate the renewal of all existing Marlborough Sounds aquaculture on a like for like basis for a default minimum term for 20 more years⁷ without any regard to cumulative effects and without any public input.

Why is this a Problem

There are high public values in the Sounds. There are landscape, natural character and indigenous biodiversity cumulative effect issues with the existing location and density of aquaculture in some parts of the Sounds. Some of these adverse effects are potentially significant.

A key principle of the NES is that *public engagement* on, and *decisions about*, whether existing aquaculture is appropriate or inappropriate should be made strategically and *up front* during the plan-making process, in accordance with Policies 7 and 8 of the New Zealand Coastal Policy Statement 2010 (NZCPS)⁸.

More particularly, the NES clearly contemplates that cumulative effect issues, such as around ecological carrying capacity (which goes to NZCPS 11(b) - Indigenous Biodiversity), natural character and landscapes (which goes to NZCPS 13.1b and 15b), Natural Character Restoration (NZCPS 14 – which goes to ecological carrying capacity/Indigenous Biodiversity issues), and the

² Section 2 NES

³ Section 14 NES

⁴ Section 18 NES

⁵ Section 21 NES

⁶ Section 24 NES

⁷ Section 123A Resource Management Act 1991

⁸ For example, see paragraph 4.1.3.3 on page 17 of the Section 46A(4)(c) Fisheries New Zealand report entitled *Report and recommendations on the submissions and the subject matter of the proposed National Environmental Standard for Marine Aquaculture*.



need to be precautionary (NZCPS 3), are all best dealt with strategically and *up front* at the plan development phase – that is, through the identification of ‘inappropriate existing aquaculture’.

An aquaculture chapter for the new Marlborough Environment Plan (MEP) may well be notified before 1 December 2020. However, there seems likely to be some disparity as between what is proposed by the MEP as inappropriate existing aquaculture and what is ultimately found to be inappropriate existing aquaculture through the Schedule 1 plan change process⁹. There is no prospect of the public exhausting its legitimate expectation of a full and independently adjudicated hearing and appeal process on what is inappropriate existing aquaculture before 1 December 2020.

The consequence is that existing aquaculture that is duly found to be inappropriate existing aquaculture through the Schedule 1 process may nonetheless, in the meantime, have been wrongly re-consented under the NES for a default minimum term of 20 more years.

In short, the NES stands to frustrate the NZCPS by facilitating premature consent renewals for existing inappropriate aquaculture.

⁹ Indications are that MDC will base its notified aquaculture provisions on an unfounded premise that existing aquaculture can all be accommodated. This extends to ignoring what modern scientific carrying capacity models and calculations are showing as potentially significant cumulative indigenous biodiversity effects in some areas. This on the basis that such effects should be left until empirically determined - notwithstanding the precautionary principle. Appeals lodged on the already notified Landscape, Natural Character and Indigenous Biodiversity chapters of the MEP are further testament to aquaculture driven disparity between what is proposed by the MEP and what might ultimately be held as appropriate aquaculture through the Schedule 1 process.

