

**Submission by Clare Pinder on Behalf of Guardians of the Sounds  
Resource Consent Application U190438  
Proposed Salmon Farm Located North of Cape Lambert, North Marlborough**

**Who are Guardians of the Sounds?**

Guardians of the Sounds began with a large group of Queen Charlotte Sound residents concerned about the devastating effects fast ferry wash was having on the foreshore and people's safety. Many other issues that needed community input were identified throughout the Marlborough Sounds and, to give the community a voice, Guardians of the Sounds was formed in 1988 and became an incorporated society in August, 2000.

Guardians have become an officially recognized community and environmental group through which residents can unite and be heard by local and national government.

The Guardians Charter covers all the Sounds within the jurisdiction of the Marlborough District Council.

The first object of the Society is *"to ensure that the natural environment, water quality, ecological bio-diversity, safety of people and wildlife of the Marlborough Sounds and surrounds are managed wisely both now and in the future."*

The primary role of Guardians is that of environmental 'watch-dog' to ensure the Sounds are managed in a sustainable way for the benefit of the present and future generations of New Zealanders.

The Guardians engages with other environmental groups that collectively represent thousands of paid subscribers and their families in the local community.

**Guardians approach and support for other submitters:**

The Guardians works collaboratively with other environmental groups to gain the best scientific and local knowledge in relation to the impact of changes to the Marlborough Sounds ecosystem. Large scale proposals such as Cape Lambert in the outer sounds is an example of an activity that would have a wide scale impact on the benthic environment, seabed, seabirds, marine mammals, recreational users, and navigation and safety.

The Guardians has read and considered the scientific evidence and the evidence of the other submitters and supports the following:

1. Friends of Nelson Haven and Tasman Bay – Bryony Miller E3 Scientific - Marine Ecology; R Schuckard - Seabirds
2. McGuinness Institute – Elizabeth Slooten – Marine Mammals; Financial Analysis
3. Kenepuru Central Sounds Residents' Association KCRSA– Disease and biosecurity; Water temperatures; Engineering and anchoring
4. Cliff Marchant – On behalf of Marchant family and KCSRA - Unknown effects on amenity; Recreational use for future generations
5. Marlborough Environment Centre – RMA; NZ Coastal Policy Statement Policy 3 (Precautionary approach) and Policy 6 (activities in appropriate places); Climate change; and land-based farming alternatives

## Guardians submission

The Guardians has been the voice of the local community for 33 years. In relation to the expansion of salmon farms in the Sounds, the Guardians has been actively engaged since NZKS's proposal to establish nine new farms in areas where new marine farms were prohibited.

What has been observed is a consistent pattern of approach to consent conditions by NZKS that has continued over the last decade and continues today.

### Starting with the Board of Enquiry (2013)

When granting consents for the three farms, the Board of Inquiry was at pains to ensure a precautionary approach through its consent conditions:

*[438] This astonishing gap in the prediction of effects on the environment cannot be explained away by emphasising that the modelling is conservative and nor can it simply be filled by invoking adaptive management. It is a fundamental failing in the assessment of effects on the environment that we would not expect to see in a project of this magnitude and importance.*

*[439] Accordingly we can only consider granting consent for these graduated increases in feed discharge levels with any increases based on a more robust monitoring and adaptive management regime than that presented in the proposed conditions.*

The Board of Inquiry went on to require the conditions of consent now in place. NZKS participated in setting the conditions, agreed to comply with them, and then went on to disregard them.

**Fast forward to 2020. NZKS apply to increase the number of pens at Waitata Reach. U190357. Declined.**

Waitata is one of the newly consented farms under the BOI.

*143. I have considered all the evidence presented to the hearing and the submissions that I have received since. I conclude that the applicant has failed to show that this proposal meets the purpose of the RMA: in particular, the failure to address the existing depositional footprint already covering 14 hectares beyond consented maximum and the applicant's failure to profile the expected footprint from the increase in pen area.*

*144.*

*Further, the applicant has failed to satisfy me that the existing farm is safe in navigational terms, or that the increase in pen size will result in a farm which is safe in terms of navigation.*

*145.*

*These two matters alone leave me no option but to decline the application.*

The company's attempt to change the rules came after Council found that pollution from the Waitata Reach salmon farm had spread over an area at least 58% greater than what the resource consent allowed.

**2021 - NZKS have another attempt at changing consent conditions at two of the BOI consented farms U140294 and U140296**

To change Condition 36 of Coastal Permit U140294, in order to increase the Maximum Initial Feed Discharge at the Waitata salmon farm from 3,000 tonnes per annum to 4,000 tonnes per annum.

To change Condition 40 of Coastal Permit U140294, in order to alter the Environmental Quality Standards and the definition of Enrichment Stages for seabed deposition at the existing Waitata salmon farm.

To change Condition 40 of Coastal Permit U140296, in order to alter the Environmental Quality Standards and the definition of Enrichment Stages for seabed deposition at the existing Ngamahau salmon farm.

The application was declined in its entirety. I have included Commissioner McGarry's conclusion at the end of this submission as I believe it encapsulates the issues associated with salmon farming in the Sounds and demonstrates the attitude that NZKS has towards consent conditions and compliance.

In summary. Council's independent commissioner Sharon McGarry accepted the community groups' argument and refused the company's application: "I agree with submitters that adaptive management is about changing the scale of the activity to meet the limits and standards of the consent, not changing the conditions of consent to meet the desired scale of activity.

"There is clear evidence of non-compliance with the conditions that should not be addressed by changing the conditions. The deposition footprint [how far the pollution has spread] significantly exceeds the consented deposition footprint... and is resulting in measurable changes in the benthic environment," Ms McGarry said.

Guardians of the Sounds welcomed the decision. "It's not reasonable for NZ King Salmon to think it can constantly push the boundaries and break the rules to meet its business targets at the expense of the Sounds environment."

**2021 - NZKS files a declaration to the Environment Court** to in order to alter the Environmental Quality Standards and the definition of Enrichment Stages for seabed deposition at all their salmon farms.

The declaration was filed in the Environment Court before Commissioner McGarry reached her decision at the Council hearing for U140294 and U140296 described above. In response to a proposed court timeframe that was unmanageable the Marlborough District Council counsel commented;

*"In view of the current Level 4 lockdown, it will be difficult for the Respondent to meet its obligations in terms of the current evidence exchange timetable. The Applicant's evidence is long in volume but, in the Respondent's view, is short on meaningful content. The Applicant's witnesses have made very brief evidential statements and attached large volumes of detailed reports and other material, including evidence given at other hearings. The Applicant's witnesses have not, in their evidence, endeavoured to set out how these reports relate to the issue the subject of the Application."*

**2021 - NZKS appeals the decision to the Environment Court for U140294 and U140296 described above**

This notification has just been received by (some of the) s274 parties to the decision at the Council hearing for U140294 and U140296 described above

## **Conclusion**

From the outset, starting with the BOI, NZKS has been heavy on the volume, light on the detail, farming to suit their operations not the consent conditions, have not supplied evidence in timely manner, and not engaged with the community in a fair and reasonable manner.

The Cape Lambert resource consent application is no different. A massive amount of evidence has been tabled, some of it with no relevance to the current application; documentation has been provided that conflicts with itself (modelling, pen sizes etc.); detailed engineering evidence was not supplied by the statutory deadline (despite being promised to be tabled by 10<sup>th</sup> August 2021); offers of meaningless consultation and mediation were given (so it looks good to the hearing panel); no proposed consent conditions have been tabled; the hearing has been delayed and rescheduled several times; and submitters have been unable to engage expert witnesses because evidence has not been tabled.

NZKS's modus operandi is entirely predictable and has not changed in ten years. From the BOI through to this current application comments from the BOI, Commissioners' and Council all say exactly the same thing. Best summarised by Council's independent commissioner Sharon McGarry. "I agree with submitters that adaptive management is about changing the scale of the activity to meet the limits and standards of the consent, not changing the conditions of consent to meet the desired scale of activity.

"There is clear evidence of non-compliance with the conditions that should not be addressed by changing the conditions. The deposition footprint [how far the pollution has spread] significantly exceeds the consented deposition footprint... and is resulting in measurable changes in the benthic environment," Ms McGarry said.

## **Recommendation**

That the panel declines the application for a salmon farm in the outer Sounds at Cape Lambert. There are significant gaps in information, and critical evidence is absent despite NZKS having a lengthy period of time to provide it. In the past NZKS has agreed to consent conditions only to breach those consents and then litigate to change them. As a community we are tired of this behaviour, and it should not be rewarded.

It's not reasonable for NZ King Salmon to think it can constantly push the boundaries and break the rules to meet its business targets at the expense of the Sounds environment.

It falls increasingly on community groups to protect the marine environment. It's a privilege to be farming for free in public water space, and this company is abusing that privilege as well as the environment.

Clare Pinder

For Guardians of the Sounds

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RESOURCE CONSENT: U140294 and U140296 Refused  
Commissioner McGarry

## **Conclusion**

160. *The change to single year class farming (since the consents were granted) has caused interpretation issues because it has changed the rate of feed discharge over a year. There is no 'ambiguity' in the definition of what constitutes 'a year' as claimed in the 2020-2021 annual monitoring, it is simply that it is now the rate of feed over an 18-20 month period that is important. The modelling undertaken by Dr Keeley used historical monitoring data (2005-2009) from salmon farms operating under relatively constant annual feed levels. The conditions imposed were designed for relatively constant feed discharges year after year and repeated annually monitoring. Monitoring annually at a similar time each year and at peak feed levels is not possible with a single year class 18-20 month cycle. It is highly unlikely the Applicant can meet the requirement to have consistent annual feed levels for three years or three years of stability in the receiving environment.*

161. *The reference site benthic 'conditions' are critical for assessing compliance at the Zone 3/4 boundary (OLE). The selection and timing of monitoring of reference sites is uncertain. The reference sites must be appropriately located to represent background environmental conditions in sites with comparable flow regime and should not be located in sites where they may be affected by other marine farm sites. It appears that some of the reference sites are located in close proximity to other marine farm sites and it is questionable whether these are appropriate. Furthermore, it is critical that reference sites are sampled at the same time as the other monitoring sites. In my view, such critical matters should be set by the conditions of consent and not left to the MEM-AMP, which may be subject to change.*

162. *It is extremely concerning that the 2020/2021 annual monitoring report changed the reference sites used to assess compliance with the EQS and that data collection from the reference sites was not at the same time as the other monitoring stations. This significantly undermines the effectiveness of the latest monitoring results and the ability to compare the results over time with previous monitoring years. It also prevents any assessment of compliance with the EQS at the Zone 3/4 boundary. This illustrates to me the importance of setting these critical factors in the conditions of consent and not allowing changes to the monitoring through the MEM-AMP process without the certification of the Council. This is a significant gap in the current conditions and warrants the Council's urgent attention. U140294 and U140296- Page 28*

163. *The focus of attention needs to be on reviewing the conditions to ensure effective, robust and consistent monitoring of environmental effects is occurring (for the term of the consent) and not on arguments of interpretation to enable compliance with EQS to enable feed increases. I consider the existing conditions are not fit for purpose given the change to single class farming and the failure of the conditions to require effective monitoring of environmental effects.*

164. *I agree with Dr Giles that there is a very real risk of ongoing non-compliances with the current conditions and potential for alternating between compliance and non-compliance (the 'yo-yo scenario') under the single class farming model. In my view, the effects of such variability in feed inputs must be assessed and addressed through specifically designed monitoring and not by trying to change conditions drafted for historical operations.*

165. *I find the significant uncertainties and shortcomings of the conditions and monitoring programme for the current farming operation will not be addressed by changing the conditions as proposed. There is no certainty of a future consent holder initiated wider review of conditions to address these concerns and I consider this to be irrelevant to my decision here.*

166. *Dr Giles' assessment of the benthic effects was limited to reviewing the information contained in the annual monitoring reports, which does not include information held by the Applicant on exact feed discharges in relation the timing of monitoring. She was therefore unable to carry out any statistical analyses of trends or a robust assessment of the likely effects of the proposed feed increase. I agree that there is a critical need to better understand the relationship between short-term feed discharges and ES responses to determine appropriate monitoring timing in order to assess maximum benthic effects. There is*

also a need for better understanding of the benthic response to the practice of fallowing and recovery of benthic conditions.

167. I consider that there is a high risk that granting the condition changes sought will further decrease the effectiveness of the current monitoring conditions and allow for greater adverse benthic effects both in magnitude and extent. It is also likely that the changes sought will have other unforeseen consequences for other conditions. While I tried to address this risk during the hearing, it is clear that the focus of the applications and the assessment of effects are too narrow to address the fact that the conditions were simply not drafted for operating single year class farming and are therefore not fit for purpose.

168. I do not share Mr Johnson's confidence that these concerns will be addressed by a future consent wide review initiated by the consent holder and disagree that granting these applications would be an interim measure. I consider the development of the BMP guidelines is useful for providing guidance for monitoring effects, but it is a tool for assessing compliance with the conditions of consent. The consent conditions must set the appropriate limits and standards to be met. I consider the BMP guidelines are a distraction from ensuring the consent conditions are appropriate, effective, complied with and enforced by the Council.

169. I agree with Dr Giles and the submitters that there is an urgent need for the Council to undertake a review of all of the conditions to ensure they are fit for purpose and that the actual effects are within the scope of the activity, as consented. The Applicant has ignored the fact that the depositional footprint is greater than predicted and subsequently consented, and that any increase in feed inputs is dependent on demonstrating stability in the receiving environment and compliance with the limits and standards of the consent. There is a concerning attitude that feed increases were U140294 and U140296- Page 29 anticipated when this is clearly dependent on the ability to determine maximum sustainable feed levels and demonstrate compliance with the consent limits.

170. In my view, there is clear evidence of non-compliance with the conditions that should not be addressed by changing the conditions. The deposition footprint significantly exceeds the consented deposition footprint at RIFL and is resulting in measurable changes in the benthic environment beyond the Zone 3/4 boundary (OLE). The intention of the BOI was clearly that outside of Zone 3, deposition levels would be close to background levels and that benthic conditions would be comparable to appropriate control sites. This is clearly not the case and measurable changes have occurred up to 800 m from the cages.

171. The Applicant has exceeded Waitata feed discharge levels allowed under the consent in 2020/2021 without complying with the conditions of consent that would enable an increase. This has further increased the extent and magnitude of effects beyond the consented deposition footprint. In addition, the Applicant has changed the monitoring programme in this period which has undermined the Council's ability to consistently and robustly determine compliance with EQS. In my view, these are serious breaches of the conditions of consent which should not and cannot be remedied by granting the changes sought.

172. It is up to the Council, as the Consent Authority, to determine whether a consent holder is compliant with the conditions of consent. It is not for the consent holder to determine this or to decide it has met the conditions to allow any feed increases.

173. I agree with submitters that adaptive management is about changing the scale of the activity to meet the limits and standards of the consent, not changing the conditions of consent to meet the desired scale of activity. Determination

174. For the reasons outlined in this decision, the Marlborough District Council REFUSES all three section 127 applications by New Zealand King Salmon Company Limited to changes Conditions 36 and 40 of Coastal Permit U140294 ('the Waitata application') and Condition 40 of Coastal Permit U140296 ('the Ngamahau application').