

Combined Submission of Kenepuru and Central Sounds Residents Association Inc, Clova Bay Residents Association Inc and Guardians of the Sounds Inc.

Government Proposals to Extend Existing Marine Farm Resource Consent Terms by 25 Years

4 March 2024

Some Background

Our groups support environmentally appropriate aquaculture in Marlborough and have a long history and depth of experience and knowledge in Marlborough aquaculture policy and law. Over the last decade or more we have invested thousands of hours of professional level volunteer time toward ensuring that aquaculture in Marlborough is efficient and environmentally appropriate. This has included leading roles in many forums, hearings and cases, including High Court and Court of Appeal cases. More pertinently, we have been working actively with Marlborough District Council (Council) and industry over the last decade or so on a statutory review of the relevant Marlborough plans as they relate to aquaculture. This has included numerous submission processes and 2 years of work on the Marlborough Aquaculture Rules Working Group (MARWG) – a collaboration of Council, community and industry along with delegates from the Ministry for Primary Industries and the Department of Conservation. The output of the MARWG process included the identification of areas in Marlborough that are considered inappropriate for existing aquaculture.

These areas were largely adopted by Council as proposed inappropriate areas for aquaculture in Variation 1 of the proposed Marlborough Environment Plan (MEP).

The Government Proposals

Last Thursday we received an invitation to attend a next day (Friday 1 March) 45 minute on-line discussion on a Government proposal to legislatively extend all existing marine farm consents by 25 years.

A brief slide presented records that the Government has committed to *delivering longer durations for marine farming consents in order to provide greater certainty for the aquaculture sector*. This is somewhat commensurate with the National and New Zealand First 2023 coalition agreement which undertakes to *Deliver longer durations for marine farming permits and remove regulations that impede the productivity and enormous potential of the seafood sector*.

There is also some concern raised with a bottleneck of consent renewals in 2024.

During the discussion we were advised that we could file written feedback by 12:00 pm on Monday 4 March - although we were advised that submissions a little late would be received just the same. This very short submission timeframe necessarily renders our feedback brief. It is nonetheless very relevant.

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

As you will be aware the NES-MA were promulgated to address the very issues raised by this consent term extension proposal. The NES-MA achieve this by pushing regard to most significant and cumulative environmental effects up to the relevant plan level.¹ The effect is that existing marine farms can renew without regard to most environmental issues and this effects virtual certainty of re consenting. The exception is where a relevant plan has specifically identified area as being inappropriate for aquaculture.

The Marlborough NES-MA Relocation Issue

As noted Council largely adopted the output of the MARWG group to determine 'Aquaculture Management Areas' (AMA) in Variation 1 of the MEP. These were further refined as such by the Hearing Panel in its decision on Variation 1 in May 2023². These AMA's provision for almost all of Marlborough's existing non-fin fish aquaculture activity. The remaining area falls as inappropriate area for aquaculture for the purposes of the NES-MA.

We note an NES-MA re consenting issue identified for Marlborough was raised by the *Report on the Three Year Review of the National Environmental Standards for Marine Aquaculture*. This issue affects existing activity that needs to move so as to be away from the coastline by at least 100m. The issue is that this often necessarily involves consenting an area that is not currently consented and that is also a non-complying activity for aquaculture under the subsisting Marlborough Sounds Resource Management Plan (MSRMP) (i.e. if it is more than 200m from shore). As a result the virtually certain re consenting process afforded by the NES MA stood as not available for the re consenting of this part of the activity.

We submit that this issue no longer subsists for almost all existing Marlborough marine farms. This is because (as far as we are aware) there are no environment court appeal points on the proposed controlled activity status for existing marine farms renewing and relocating into new space under Variation 1. This means the NES-MA can now apply to all proposed AMA area that is not currently consented and that was a non-complying area under the MSRMP - providing only that the relevant AMA area itself is not under a specific appeal.

Marlborough Variation 1 Schedule 1-3 Issues

Another potential issue for re consenting confusion in Marlborough is the Variation 1 'Schedule 1-3 processes'. These Schedules identify area that may have some sensitive benthic habitat and/or that is earmarked for allocation as replacement space for dislodged activity elsewhere.

¹ This is of course self-evident from the regulations themselves but is widely accepted as the intention of the regime – see for example 4.3.1 of the *Report on the Three Year Review of the National Environmental Standards for Marine Aquaculture* and the section 46A *Report and recommendations on the submissions and the subject matter of the proposed National Environmental Standard for Marine Aquaculture June 2020*.

² These provisions do not address fin fish aquaculture. As such, for NES-MA purposes there are currently no inappropriate areas for fin fish farming in Marlborough.

There is no uncertainty presented by the Schedule 1-3 allocation procedure. This is merely a mechanism to protect first consent application rights for new area to a designated dislodged consent holder.

There is also no uncertainty presented by the MEP Schedule 1-3 processes in relation to potential benthic issues. These schedules identify existing or proposed marine farm area where some control is reserved over adverse effects on benthic habitat. Importantly, these are matters of *consent control* only. They are not consent standards and as such they cannot effect the granting of the replacement consent. The only reconsenting issue presented by this consent control is thus one of potential cost – notably where it is determined necessary to actually survey the benthic environment to identify any area that might need to be protected by the likes of a structures exclusion zone. Moreover, in almost all cases any potential benthic concerns are contained to a very small part of the relevant marine farm area.

The Potential Effect of the Proposals on Marlborough

In our view this means that any residual reconsenting uncertainty subsisting in Marlborough is now limited to the following situations:

- Where the AMA proposed for an existing marine farm includes new area that was a non-complying area under the MSRMP and that particular AMA area is now under a specific environment court appeal;
- Where no AMA is proposed for an existing marine farm and that has been specifically appealed to the environment court.

To put this in context, there are approximately 600 marine farms in Marlborough. Appeals have been lodged by community groups affecting around 49 of these. Of these, 22 are about the efficacy of economically insignificant marine farms in low flush water less than 8 metres deep. The other 27 only seek some adjustment or realignment of existing AMA area to address navigation, ecological, natural character or natural landscape issues.

The fundamental point here is that Marlborough has now all but completed the government sponsored NES-MA prescribed procedure to facilitate the virtually certain renewal of marine farm resource consents for existing activity *without compromising environmental values* - with the determination of any residual issues from this process now in the appropriate forum for that - the environment court.

A new government proposal to simply extend all existing resource consents by 25 years will thus achieve virtually nothing in terms of consent security for Marlborough marine farms - but it will enable all area that has been properly and democratically determined to be inappropriate for aquaculture pursuant to the prescribed government procedure for doing just that to continue for at least 25 more years.

To be clear, there is no Government policy to compromise environmental standards for aquaculture activity. Any consent term extension for area already operatively determined as inappropriate for aquaculture under the NES-MA procedure (such as most area within 100m of shore) or that is currently before the environment court and that is duly operatively determined as inappropriate area under the NES-MA, would, in our view, not only fundamentally clash with Part 2 of the Resource Management Act 1991 but also amount to a clear breach of natural justice and quite a significant challenge to public trust and confidence in due process.

Marlborough Recommendation

In our view there is no need for any further legislative intervention in Marlborough in order to achieve the Government's objectives of consent term certainty. However, if there must be some form of additional legislative certainty and/or consent term extension in Marlborough then it **should properly recognise the existing government sponsored NES-MA procedure for doing this**. For example, something along the following lines:

Consent terms are extended by the lesser of 25 years and:

out to the point in time that is 3 years from the date the area of activity is operatively determined as inappropriate for aquaculture as defined in Regulation 6 of the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020;

otherwise out to the point in time that is 5 years from the date operative provisions in the relevant plan facilitate a new consent being sought for the area under the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020.

The effect would be the exclusion of properly determined inappropriate area from any unnecessary consent term extension, and at least 5 more years for all other marine farms in Marlborough to re-consent through the NES-MA procedure (or the Council plan procedure if even simpler). This would avoid any 2024 bottleneck and give all existing *and appropriate* aquaculture activity at least 25 years of consenting certainty ahead. This method would also ensure that any unforeseen technical or other contingencies arising in completion of the relevant plan review process do not disrupt or shorten this forward consent continuity for existing and appropriate aquaculture activity.

We would be most happy to contribute further as required. Please contact Trevor Offen (022 677 4921) or Andrew Caddie on 027 492 9967 in the first instance.



Trevor Offen for and on behalf of

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Guardians of the Sounds Inc