



Proposed new Rules for Marine Farming in the Marlborough Sounds

Key Issues Brief for Members

Dear Members

The purpose of this brief is to summarise the key issues arising in proposed new rules for marine farming in the Sounds and to let you know how the committee is proposing to respond to the Marlborough District Council ('MDC') on them.

It is important that you carefully consider these issues. Some of the matters identified in this brief are of critical importance to the central sounds area.

We want to know whether you agree with us or not so please give us your feedback on these issues. Email us on committee@kcsra.org.nz

Please also consider emailing your own comments or feedback *direct to the Marlborough District Council*. The email address for this is rps@marlborough.govt.nz

We have identified 5 key issues for your consideration, addressed below in the following order:

- Making existing marine farms 'controlled activities'
- Introducing provision to extend the preferred marine farming area out to 300m from shore
- Extending the area where marine farming is prohibited
- Dealing with existing farms in areas where marine farming is actually prohibited
- The length of the term for marine farm coastal permits

1. Controlled Activity Status

- 1.1 MDC are proposing that all existing marine farms, excluding fin-fish farms, be given what is called 'controlled activity' status if they are located between 100m and 300m from shore.
- 1.2 This would mean that renewals of the coastal permits for these farms *could not be refused*, and with no public notification, the public thereby removed from the consent renewal process.

1.3 The committee believes that this is fundamentally wrong. We give a number of reasons for this as follows.

1.4 *Public Domain*

1.4.1 The Sounds waterways are public domain. An automatic renewal system will deny any regard being had to what the public actually wants for this public domain in the future. In other words, controlled activity status will lock in the existing level of marine farming *whether or not that turns to be what the public actually wants as time moves on*. Whilst marine farming may have some economic benefits, we do not believe that any industry or user of public domain can be so important as to warrant such pre-emptive rights over public domain for the future.

1.4.2 We do not believe that the Marlborough District Council ('MDC') has provided any legitimate basis for this proposal. We are advised that this change is proposed to *'acknowledge the contribution that these farms collectively make to Marlborough's social and economic wellbeing and to recognise the existing investment marine farmers have made in marine farming infrastructure.'* We believe that the economic contribution made by marine farms should rightly be considered. However, these are matters that should rightly be considered and weighed, like everything else, against other public values that are held in the relevant permit area.

1.5 *Errors of the Past*

1.5.1 The proposal also pre-supposes that all existing farms are appropriately located and/or sized. We do not believe that this is the case, with some existing farms currently inappropriately located and/or inappropriately sized for their location. Many of the earliest marine farms were granted by MAF in Wellington, and never given the higher level of scrutiny that new applications today must face. Granting controlled activity status would effectively lock these mistakes of the past into the future.

1.6 *Ecological Concerns*

1.6.1 There is also growing concern held for the ecological sustainability of the current level of mussel farming occurring, particularly in areas such as Beatrix Bay. A recent review commissioned by the Association suggests that Beatrix Bay is not a suitable area for intensive mussel farming and that it is likely, if not probable, that the existing level of mussel farming there is having/has had a cumulative and potentially serious impact on the indigenous ecosystems of the bay. This is corroborated by some existing mussel farmers who observe much longer growing times for inside lines, and by long-term locals who have witnessed a virtual wipe out of inter-tidal shellfish and other activity in the bay since mussel farming has intensified there.

1.6.2 Similar or even more intensive mussel farming is currently also occurring in Kauauroa Bay, Clova Bay, Horseshoe Bay and parts of Crail Bay. Some of these areas will be no more suitable for intensive mussel farming than Beatrix Bay. Landowners in some of these areas also report the virtual disappearance of any visible inter-tidal life form in conjunction with the intensification of mussel farming in the area.

1.6.3 There is clearly a large information and understanding gap in this area and the ecological systems of these areas appear to be at serious risk. There is an urgent need to address these concerns and in light of this it seems quite inappropriate to us that farms in these areas should be locked into a system whereby renewals of their coastal permits cannot be denied.

- 1.6.4 There are many farms that may already be 'controlled activities'. This is because farms that were consented before 1996 and which have not been varied in size or permitted species since have 'controlled activity' status under the current rules. The committee believes there is no longer any reason for the renewal of these farms to be automatic and beyond a public values test.
- 1.6.5 The committee's view is that *all* marine farms should require *no less* than a full 'discretionary activity' assessment on their renewal – that is, be open to a full and fresh environmental and public value test on each renewal. The committee acknowledges that this will necessarily involve a renewal process every 20 years for some 500 or so coastal permits in the Sounds. However, we do not believe that the prospect of a weighty process is any basis to abandon environmental responsibilities nor to deny the public the right to voice and contest for their values. In any event many coastal permits now share a common renewal date of 2024 such that, if necessary, many renewals might be heard on a consolidated basis.

2. Change in Preferred Zone for Marine Farms to 100m to 300m from shore

- 2.1 Under current rules marine farming is 'preferred' in an area between 50 and 200 meters from shore. It is proposed that this preferred zone be altered to between 100 and 300m from shore. This amounts to a 33% increase in the zone preferred for marine farming. It is also proposed that farming beyond this zone be altered from a 'non-complying' activity to a 'discretionary' activity. This will make it easier to apply for marine farm permits beyond the preferred zone.
- 2.2 The committee supports the proposal to move the preferred area out to 100m from shore. This is because it will make navigation inside of farms easier and because it is likely to assist somewhat with inter-tidal and sub-tidal ecosystem recovery in heavily farmed areas. It is also the area most frequented by the recreational cod-fishermen.
- 2.3 However, the committee is concerned that no case has been made for any overall extension in the preferred marine farming zone, nor for making it easier to gain consents beyond the preferred zone. It appears to be an arbitrary allocation of public space without any rational justification. We are also particularly concerned at the inappropriateness of this in central Pelorus areas where farming is probably already at or beyond acceptable limits, not least from an ecological perspective.
- 2.4 MDC acknowledge that an expanded preferred zone would not be appropriate for all areas and suggests that this could just be left to be determined through the consent process. However, areas and bays have a finite environmental capacity and, as is the case for the existing plan, there are no policies proposed to assist in determining whether an area can cumulatively tolerate further marine farms. Hearing Authorities acknowledge cumulative impacts but are reluctant to load the responsibility for them onto individual permit holders or applicants. This gap needs to be addressed and this is a role for plan policies and rules.
- 2.5 The committee believes that objective policies and rules must be introduced in this regard before there is any net increase in the preferred zone for marine farming, or before there is any change from 'non-complying' status down to 'discretionary' status for farming outside the preferred zone. These policies and rules should ensure that marine farms do not cumulatively dominate the landscape or natural character of an area, do not cumulatively materially impede recreational use, public access or other public amenity of an area, and do not have cumulative adverse ecological impacts on an area. Policy should be clear that no further farming can occur once this threshold is reached. We note that it was accepted when marine farming was first introduced in the Sounds that no more than 10% of bays or areas should be encumbered with marine farms. Public values in the Sounds domain have increased since then. As

such, a 10% encroachment guideline would seem, if anything, a generous guideline today.

- 2.6 Where cumulative thresh-holds are considered to have been exceeded in an area then it is imperative that policies also direct where the responsibility lies for any corrective reduction in farming that is required. This should have regard to fairness across all contributing permit holders. To this end policy might prescribe a system of farm reduction responsibility that is based on the relative contribution of individual farms to the cumulative problem. For example, if an area is considered to be over-farmed by 25% then on application for renewal farms may need to reduce their water column dropper line area by 25%.
- 2.7 We note in this regard that specific policies requiring reductions or alterations to structures upon renewal of a coastal permit is not in any way unusual or inequitable. Indeed, MDC is proposing putting existing mooring and jetty coastal permit holders on notice to the effect that inconsistencies between their existing permits and the direction of the new policies for mooring and jetties will be a significant factor in determining whether a renewal consent for their mooring or jetty is even granted. We see no reason why marine farms should be treated any differently.
- 2.8 In summary, whilst expansion out to 300m may well be appropriate in some areas, it is not appropriate for areas that are probably already over-farmed such as Beatrix Bay, Clova Bay, Horseshoe Bay and parts of Crail Bay. Moreover, we believe it should not occur *anywhere* without also introducing objective policies and rules that address cumulative tolerance limits and how to allocate the responsibility for these cumulative limits across the individual permit holders.

3. Extending Prohibited Areas

- 3.1 MDC propose the retention of areas where marine farming is a prohibited activity. These are Coastal Marine Zone 1 areas under the current rules.
- 3.2 It is also proposed that these areas be extended to include the currently un-farmed areas of the Tawhitinui Reach, Anakoha Bay, Waitata Bay, Port Ligar, Forsyth Bay, Admiralty Bay, the area from Whakamawahi Point across to Tawero Point and down to the head of Clova Bay, and island areas around D'Urville and off the coast of the Sounds.
- 3.3 Members may wish to consider whether there are other areas that should also be considered as prohibited areas for marine farming.
- 3.4 We commend MDC for this proposal and believe that residents will welcome the certainty that it will bring.

4. Existing Farms in Prohibited Areas

- 4.1 There are currently 22 marine farms operating in existing prohibited areas under an historic exemption. Most of these have 'controlled activity' status as well, because they were consented before 1996. These farms are historical anomalies that need to be addressed.
- 4.2 Several options are proposed by MDC. These are removing the exemption so they cannot be renewed on expiry, removing the prohibited zoning from the area, making the farms a 'discretionary activity' so that on expiry application can be made for renewal under standard criteria with an overlay that regard also be had to the prohibited nature of the area, or shifting them to an area where marine farming is not prohibited.

- 4.3 Areas in the Central Pelorus with such farms include Clova Bay (1), Tuhitarata Bay in Beatrix Bay (1), Marys Bay in Homewood Bay (2) and Fairy Bay (3).
- 4.4 The harsh reality is that a coastal marine farm permit is a privilege and nothing is owed by the public to coastal permit holders. Prohibited areas in the central Pelorus are highly valued and it would seem highly unlikely that the public value of farms within these areas was greater than the public value of the overall prohibition for the area. Because of this the committee believes that the removal of a prohibited zoning because there is a marine farm in it is not an appropriate approach.
- 4.5 The committee has no objection to these farms being relocated in principle, although it is unclear just how this might be effected at a practical level without raising more issues than it purports to address.
- 4.6 The MDC propose that as a minimum these farms have the opportunity to test for renewal under standard criteria with regard also given to whether the farm detracts from the integrity of the overall prohibition for marine farming in the area. We accept that it is not inconceivable that the weight of public benefit supports a farm remaining in a prohibited area, notwithstanding its impact on the integrity of the wider prohibition zone. For example, if the protected area was large, the particular farm immaterial relative to it, and if the farm otherwise passed the environmental and public value discretionary assessment criteria. The committee also believes that if this test is to be applied then it must be applied on a full discretionary activity basis, including whether or not the farm is within the preferred zone for marine farming.
- 4.7 MDC propose that regard also be had to whether opportunities have been made for the relocation of these farms to other areas when assessing them for renewal. As noted, no concessions are owed to marine farm coastal permit holders and as such we believe that this is a mis-guided proposal. We believe that having regard to whether permit holders had been offered relocation opportunities would be unfair on the public stakeholders in the area and as such it is not an appropriate consideration.

5. Coastal Permit Term

- 5.1 Recent aquaculture law reform introduced a *minimum* term of 20 years for marine farm coastal permits. The MDC propose that this also be the *maximum* term. This is because the Sounds public domain is used or valued for a range of different reasons, because there is growing pressure and increasing demand for coastal space, because the issues facing coastal space are changing and challenging, because the coastal environment is dynamic in nature and constantly changing, and because matters of national importance under the Resource Management Act 1991 need to be recognised and provided for on an ongoing basis.
- 5.2 We would add to this list the large information gaps on the ecological impact of mass mussel farming on indigenous ecosystems in sheltered or low flushing waterways.
- 5.3 We commend the MDC for proposing a maximum term of 20 years for marine farm coastal permits and agree with this proposal.
- 5.4 We also believe that the MDC reasons for making 20 years a maximum term are also reasons why marine farm coastal permits should not be renewed as controlled activities without full environmental and public value testing.

Once again, we want to know whether you agree with us or not so please give us your feedback on these issues. Email us on committee@kcsra.org.nz

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